

Requested by Senator COURTNEY

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 828**

1 On page 1 of the printed A-engrossed bill, line 2, after “659A.885” delete
2 the rest of the line and line 3 and insert “and section 1, chapter 591, Oregon
3 Laws 2015; repealing section 2, chapter 591, Oregon Laws 2015; and declaring
4 an emergency.”.

5 Delete lines 5 through 16 and delete pages 2 through 10 and insert:

6 **“SECTION 1. Sections 2 to 12 of this 2017 Act are added to and made
7 a part of ORS chapter 653.**

8 **“SECTION 2. Definitions. As used in sections 2 to 12 of this 2017
9 Act, unless the context requires otherwise:**

10 **“(1) ‘Chain’ means an establishment that is part of an affiliation
11 of two or more establishments within the United States, each of which
12 is owned by the same person or entity and operate under identical or
13 substantially similar trade names or service marks, both as defined in
14 ORS 647.005.**

15 **“(2)(a) ‘Employee’ means an employee, as defined in ORS 652.310,
16 who is employed in a retail establishment, a hospitality establishment
17 or a food services establishment and is engaged in providing services
18 relating to:**

19 **“(A) Retail trade, as that term is used in the 2012 North American
20 Industry Classification System under code 44-45;**

21 **“(B) Hotels and motels, as those terms are used in the 2012 North**

1 American Industry Classification System under code 721110, or casino
2 hotels, as that term is used in the 2012 North American Industry
3 Classification System under code 721120; or

4 “(C) Food services, as that term is used in the 2012 North American
5 Industry Classification System under code 722.

6 “(b) ‘Employee’ does not include:

7 “(A) A salaried employee described in ORS 653.020 (3);

8 “(B) A worker supplied to an employer by a worker leasing com-
9 pany, as defined in ORS 656.850; or

10 “(C) An employee of a business that provides services to or on be-
11 half of an employer.

12 “(3) ‘Employer’ means an employer, or a successor to an employer,
13 described in section 3 (1) of this 2017 Act.

14 “(4) ‘Food services establishment’ means the fixed point of sale lo-
15 cation for establishments defined in the 2012 North American Industry
16 Classification System under code 722 as food services and drinking
17 places.

18 “(5) ‘Hospitality establishment’ has the meaning provided in the
19 2012 North American Industry Classification System under code 721110
20 for hotels and motels and code 721120 for casino hotels.

21 “(6) ‘On-call shift’ means any time that an employer requires an
22 employee to be available to work or to contact the employer or wait
23 to be contacted by the employer for the purpose of determining
24 whether the employee must report to work. During the shift, on-call
25 status applies regardless of whether the employee is located on or off
26 the employer’s premises.

27 “(7) ‘Regular rate of pay’ means the regular hourly rate or hourly
28 equivalent that an employer must pay an employee for each hour the
29 employee works during a given work shift, including any shift differ-
30 ential pay. ‘Regular rate of pay’ does not include:

1 “(a) Tips;
2 “(b) Bonuses or other incentive payments;
3 “(c) Overtime, holiday pay or other premium rate; or
4 “(d) Any additional compensation an employer is required to pay
5 an employee under section 6 or 7 of this 2017 Act.

6 “(8) ‘Retail establishment’ means the fixed point of sale location for
7 an establishment defined in the 2012 North American Industry Classi-
8 fication System under codes 441110 to 453998 as a retail trade estab-
9 lishment.

10 “(9) ‘Shift differential pay’ means a pay differential meant to com-
11 pensate an employee for work performed under differing conditions,
12 such as for working at night. ‘Shift differential pay’ does not include
13 any additional compensation an employer is required to pay an em-
14 ployee under section 6 or 7 of this 2017 Act.

15 “(10) ‘Successor’ means a business or enterprise that is substan-
16 tially the same entity as the predecessor employer according to crite-
17 ria adopted by the Bureau of Labor and Industries by rule and
18 consistent with federal law.

19 “(11) ‘Time of hire’ means the period after an offer of employment
20 and acceptance of the offer of employment and on or before the com-
21 mencement of employment.

22 “(12) ‘Work schedule’ means the hours, days and times, including
23 regular work shifts and on-call shifts, when an employee is required
24 by an employer to perform duties of employment for which the em-
25 ployee will receive compensation.

26 “(13) ‘Work shift’ means the specific and consecutive hours the
27 employer requires the employee to work.

28 “(14) ‘Workweek’ means a fixed period of time established by an
29 employer that reflects a regularly recurring period of 168 hours or
30 seven consecutive 24-hour periods. A workweek may begin on any day

1 of the week and any hour of the day and need not coincide with a
2 calendar week. The beginning of a workweek may be changed if the
3 change is intended to be permanent.

4 “(15) ‘Writing’ or ‘written’ means a printed or printable communi-
5 cation in physical or electronic format including a communication
6 that is transmitted through electronic mail, text message or a com-
7 puter system or is otherwise sent and stored electronically.

8 “(16) ‘Year’ means any fixed, consecutive 12-month period of time.

9 **“SECTION 3. Covered employees. (1) Sections 2 to 12 of this 2017**
10 **Act apply to an employee who is employed by an employer, as defined**
11 **in ORS 652.310, that is also one or more of the following:**

12 “(a) A retail establishment that employs 500 or more employees
13 worldwide, including but not limited to a chain or an integrated en-
14 terprise.

15 “(b) A hospitality establishment that employs 500 or more employ-
16 ees worldwide, including but not limited to a chain or an integrated
17 enterprise.

18 “(c) A food services establishment that employs 500 or more em-
19 ployees worldwide, including but not limited to a chain or an inte-
20 grated enterprise.

21 “(2) To determine the number of employees employed by an em-
22 ployer, the calculation shall be based upon the average number of
23 employees employed on each working day during each of 20 or more
24 workweeks in the current calendar year or immediately preceding
25 calendar year.

26 “(3) Separate entities that form an integrated enterprise are con-
27 sidered a single employer under sections 2 to 12 of this 2017 Act. Sep-
28 arate entities will be considered an integrated enterprise and a single
29 employer under sections 2 to 12 of this 2017 Act where a separate entity
30 controls the operation of another entity. The factors to consider in

1 **determining whether separate entities form an integrated enterprise**
2 **include, but are not limited to:**

3 **“(a) The degree of interrelation between the operations of multiple**
4 **entities;**

5 **“(b) The degree to which the entities share common management;**

6 **“(c) The degree to which the entities have centralized control of**
7 **labor relations; and**

8 **“(d) The degree of common ownership or financial control over the**
9 **entities.**

10 **“(4) The Commissioner of the Bureau of Labor and Industries shall**
11 **adopt rules in accordance with the provisions of subsection (3) of this**
12 **section regarding how to determine when separate entities form an**
13 **integrated enterprise for the purposes of sections 2 to 12 of this 2017**
14 **Act.**

15 **“SECTION 4. Good faith estimate of work schedule. (1) An employer**
16 **shall provide a new employee with a written good faith estimate of the**
17 **employee’s work schedule at the time of hire. The good faith estimate:**

18 **“(a) Shall state the median number of hours the employee can ex-**
19 **pect to work in an average one-month period;**

20 **“(b) Shall explain the voluntary standby list described in section 4a**
21 **of this 2017 Act and provide the written notice required in section 4a**
22 **of this 2017 Act;**

23 **“(c) Shall indicate whether an employee who is not on the voluntary**
24 **standby list can expect to work on-call shifts and, if so, set forth an**
25 **objective standard for when an employee not listed on the voluntary**
26 **standby list may be expected to be available to work on-call shifts; and**

27 **“(d) May be based on a prior year schedule if it is a good faith es-**
28 **timate of seasonal or episodic work.**

29 **“(2) The employer shall include the good faith estimate in the lan-**
30 **guage the employer typically uses to communicate with the employee.**

1 **“SECTION 4a. Voluntary standby list. (1) An employer may main-**
2 **tain a standby list of employees whom the employer will request to**
3 **work additional hours to address unanticipated customer needs or**
4 **unexpected employee absences if the listed employees have requested**
5 **or agreed in writing to be included on the standby list and the em-**
6 **ployer notifies each employee in writing:**

7 **“(a) That the list is voluntary and how an employee may request**
8 **to be removed from the list;**

9 **“(b) How the employer will notify a standby list employee of addi-**
10 **tional hours available and how an employee may accept the additional**
11 **hours;**

12 **“(c) That the employee is not required to accept the additional**
13 **hours offered; and**

14 **“(d) That an employee on the standby list is not eligible for addi-**
15 **tional compensation under section 7 of this 2017 Act for the changes**
16 **to the employee’s written work schedule resulting from the employee’s**
17 **acceptance of additional hours offered to the employee as a result of**
18 **being on the standby list.**

19 **“(2) An employer shall provide an employee on the standby list with**
20 **notice of additional hours available by in-person conversation, tele-**
21 **phone call, electronic mail, text message or other accessible electronic**
22 **or written format.**

23 **“(3) An employee who receives notice of additional hours available**
24 **under this section may decline to accept the additional hours offered.**

25 **“(4) An employee who consents to work additional hours in re-**
26 **sponse to an employer’s request under this section is not eligible for**
27 **any additional compensation under section 7 of this 2017 Act for the**
28 **resulting change to the employee’s written work schedule.**

29 **“(5) An employee may request to be removed from the standby list**
30 **at any time.**

1 **“(6) An employer may not retaliate against an employee who:**

2 **“(a) Does not request or agree to be added to the standby list;**

3 **“(b) Requests to be removed from the standby list; or**

4 **“(c) Declines an employer’s request that the employee work addi-**
5 **tional hours as a result of the employee being on the standby list.**

6 **“(7) In addition to any other penalty provided by law, the Commis-**
7 **sioner of the Bureau of Labor and Industries may assess a civil penalty**
8 **not to exceed \$2,000 against an employer that the commissioner finds**
9 **has coerced an employee into requesting or agreeing to be added to the**
10 **standby list in violation of this section. Each violation is a separate**
11 **and distinct offense. In the case of a continuing violation, each day’s**
12 **continuance is a separate and distinct violation.**

13 **“(8) The standby list is not a list of employees scheduled for on-call**
14 **shifts and the employer is not required to include a list of employees**
15 **on the standby list in the written work schedule described in section**
16 **5 of this 2017 Act.**

17 **“SECTION 5. Advance notice of work schedule. (1) An employer**
18 **shall provide an employee with a work schedule in writing at least**
19 **seven calendar days before the first day of the work schedule.**

20 **“(2) The employer shall post the written work schedule in a con-**
21 **spicuous and accessible location, in English and in the language the**
22 **employer typically uses to communicate with the employees.**

23 **“(3) The employer shall provide a written work schedule that runs**
24 **through the last date of the posted work schedule in effect at the time**
25 **of delivery to:**

26 **“(a) A new employee on or before the employee’s first day of work;**

27 **or**

28 **“(b) An existing employee on the employee’s first day of work after**
29 **a leave of absence.**

30 **“(4) The written work schedule shall include all work shifts and**

1 **on-call shifts for the work period.**

2 **“(5) If the employer requests changes to the written work schedule**
3 **after the advance notice required in this section:**

4 **“(a) The employer shall provide the employee with timely notice of**
5 **the change by in-person conversation, telephone call, electronic mail,**
6 **text message or other accessible electronic or written format; and**

7 **“(b) The employee may decline any work shifts not included in the**
8 **employee’s written work schedule.**

9 **“(6) At any time after the advance notice of written work schedule**
10 **required in this section, an employee may request in writing that the**
11 **employer add the employee to one or more work shifts or on-call work**
12 **shifts. Any changes to the employee’s written work schedule resulting**
13 **from such employee-requested work schedule changes are not subject**
14 **to the advance notice requirements of this section.**

15 **“SECTION 5a. Section 5 of this 2017 Act is amended to read:**

16 **“Sec. 5. (1) An employer shall provide an employee with a work schedule**
17 **in writing at least [*seven*] 14 calendar days before the first day of the work**
18 **schedule.**

19 **“(2) The employer shall post the written work schedule in a conspicuous**
20 **and accessible location, in English and in the language the employer typi-**
21 **cally uses to communicate with the employees.**

22 **“(3) The employer shall provide a written work schedule that runs**
23 **through the last date of the posted work schedule in effect at the time of**
24 **delivery to:**

25 **“(a) A new employee on or before the employee’s first day of work; or**

26 **“(b) An existing employee on the employee’s first day of work after a**
27 **leave of absence.**

28 **“(4) The written work schedule shall include all work shifts and on-call**
29 **shifts for the work period.**

30 **“(5) If the employer requests changes to the written work schedule after**

1 the advance notice required in this section:

2 “(a) The employer shall provide the employee with timely notice of the
3 change by in-person conversation, telephone call, electronic mail, text mes-
4 sage or other accessible electronic or written format; and

5 “(b) The employee may decline any work shifts not included in the
6 employee’s written work schedule.

7 “(6) At any time after the advance notice of written work schedule re-
8 quired in this section, an employee may request in writing that the employer
9 add the employee to one or more work shifts or on-call work shifts. Any
10 changes to the employee’s written work schedule resulting from such
11 employee-requested work schedule changes are not subject to the advance
12 notice requirements of this section.

13 **“SECTION 6. Right to rest between work shifts. (1) Unless the em-
14 ployee requests or consents to work such hours, an employer may not
15 schedule or require an employee to work during the following rest
16 periods:**

17 **“(a) The first 10 hours following the end of the previous calendar
18 day’s work shift or on-call shift; or**

19 **“(b) The first 10 hours following the end of a work shift or on-call
20 shift that spanned two calendar days.**

21 **“(2) Except as provided in subsection (3) of this section, an em-
22 ployer shall compensate an employee for each hour or portion of an
23 hour that the employee works during a rest period described in sub-
24 section (1) of this section at one and one-half times the employee’s
25 regular rate of pay.**

26 **“(3) Subsection (2) of this section does not apply to any hour or
27 portion of an hour an employee works during the rest period described
28 in subsection (1) of this section during which the employee is engaged
29 in providing roadside assistance services. As used in this subsection,
30 ‘roadside assistance’ means offsite repair assistance rendered to a**

1 motorist with a disabled vehicle.

2 **“SECTION 6a. Employee right to input into work schedule.** (1) At
3 time of hire and during employment, an employee may identify any
4 limitations or changes in the employee’s work schedule availability.
5 The employee may also request not to be scheduled for work shifts
6 during certain times or at certain locations.

7 **“(2)(a) An employer may require the employee to provide reasonable**
8 **verification of the need for a request made under subsection (1) of this**
9 **section.**

10 **“(b) The employer shall pay any reasonable costs for providing**
11 **verification that is medical verification required under this subsection,**
12 **including lost wages, that are not paid under a health benefit plan in**
13 **which the employee is enrolled.**

14 **“(c) Nothing in this subsection is intended to limit the application**
15 **of ORS 659A.306.**

16 **“(3) An employer may not retaliate against an employee for making**
17 **a request under subsection (1) of this section.**

18 **“(4) An employer is under no obligation to grant an employee’s re-**
19 **quest under subsection (1) of this section.**

20 **“SECTION 7. Compensation for work schedule changes.** (1) As used
21 in this section:

22 **“(a) ‘Group communication’ means communication to all eligible**
23 **employees, either written or oral.**

24 **“(b) ‘Ticketed event’ means a sporting, entertainment, civic, char-**
25 **itable or other event that requires a ticket for admission. The ticket**
26 **may be electronic, physical or a name on a list held by the event**
27 **organizer.**

28 **“(2) An employer shall provide the following compensation to an**
29 **employee for each employer-requested change that occurs to the**
30 **employee’s written work schedule without the advance notice required**

1 in section 5 of this 2017 Act:

2 “(a) One hour of pay at the employee’s regular rate of pay, in ad-
3 dition to wages earned, when the employer:

4 “(A) Adds more than 30 minutes of work to the employee’s work
5 shift;

6 “(B) Changes the date or start or end time of the employee’s work
7 shift with no loss of hours; or

8 “(C) Schedules the employee for an additional work shift or on-call
9 shift.

10 “(b) One-half times the employee’s regular rate of pay per hour for
11 each scheduled hour that the employee does not work when the em-
12 ployer:

13 “(A) Subtracts hours from the employee’s work shift before or after
14 the employee reports for duty;

15 “(B) Changes the date or start or end time of the employee’s work
16 shift, resulting in a loss of work shift hours;

17 “(C) Cancels the employee’s work shift; or

18 “(D) Does not ask the employee to perform work when the employee
19 is scheduled for an on-call shift.

20 “(3) The requirements for additional compensation in this section
21 do not apply when:

22 “(a) An employer changes the start or end time of an employee’s
23 work shift by 30 minutes or less;

24 “(b) An employee mutually agrees with another employee to
25 employee-initiated work shift swaps or coverage. The employer may
26 require that work shift swaps or coverage under this paragraph be
27 preapproved by the employer. The employer may assist employees in
28 finding such arrangements, provided that any employer assistance
29 must be limited to helping an employee identify other employees who
30 may be available to provide work shift swaps or coverage and may not

1 **include the employer arranging the work shift swap or coverage;**
2 **“(c) An employee requests changes to the employee’s written work**
3 **schedule, including adding or subtracting hours, and the employee**
4 **documents the request in writing;**
5 **“(d) An employer makes changes to an employee’s written work**
6 **schedule at the employee’s request under section 5 (6) of this 2017 Act;**
7 **“(e) An employer subtracts hours from an employee’s work sched-**
8 **ule for disciplinary reasons for just cause, provided the employer doc-**
9 **uments the incident leading to the employee’s discipline in writing;**
10 **“(f) An employee’s work shift or on-call shift cannot begin or con-**
11 **tinue due to threats to employees or property or due to the recom-**
12 **mendation of a public official;**
13 **“(g) Operations cannot begin or continue because public utilities**
14 **fail to supply electricity, water or gas or there is a failure in the public**
15 **utilities or sewer system;**
16 **“(h) Operations cannot begin or continue due to a natural disaster**
17 **or a similar cause not within the employer’s control, including when**
18 **the natural disaster or similar cause physically affects the work site;**
19 **“(i) Operations hours change or are substantially altered because a**
20 **ticketed event is cancelled, rescheduled or changes in duration due to**
21 **circumstances that are outside the employer’s control and that occur**
22 **after the employer provides the written work schedule under section**
23 **5 of this 2017 Act;**
24 **“(j) An employer requests that an employee on a voluntary standby**
25 **list work additional hours as described in section 4a of this 2017 Act**
26 **and the employee consents to work the additional hours; or**
27 **“(k)(A) An employer requests that an employee work additional**
28 **hours to address unanticipated customer needs or unexpected em-**
29 **ployee absence;**
30 **“(B) The employee consents in writing to work the additional hours;**

1 “(C) If the employer maintains a voluntary standby list described
2 in section 4a of this 2017 Act, the employer has contacted all of the
3 employees listed on the voluntary standby list and requires additional
4 employee coverage; and

5 “(D)(i) If the employee is working a work shift at the time the
6 employer makes the request, the employer makes the request either
7 individually or as part of a group communication; or

8 “(ii) If the employee is not working a work shift at the time the
9 employer makes the request, the employer makes the request through
10 a group communication.

11
12 **“NOTICE AND RECORDKEEPING REQUIREMENTS**

13
14 **“SECTION 8. Notice and posting requirements. (1) The Commis-**
15 **sioner of the Bureau of Labor and Industries shall make available to**
16 **employers a template of a poster giving notice of the rights described**
17 **in sections 2 to 12 of this 2017 Act. The poster must be in English.**

18 **“(2) Employers shall display the poster at the workplace. If dis-**
19 **playing the poster is not feasible, including situations in which the**
20 **employees work remotely or do not have a regular workplace or job**
21 **site, the employer may provide the poster on an individual basis in a**
22 **physical or electronic format that is reasonably conspicuous and ac-**
23 **cessible.**

24 **“SECTION 9. An employer shall retain records that document the**
25 **employer’s compliance with sections 2 to 12 of this 2017 Act for three**
26 **years.**

27
28 **“RETALIATION**

29
30 **“SECTION 10. Retaliation prohibited. It is an unlawful practice for**

1 an employer to:

2 “(1) Interfere with, restrain, deny or attempt to deny the exercise
3 of any right protected under sections 2 to 12 of this 2017 Act; or

4 “(2) Retaliate or in any way discriminate against an individual with
5 respect to hire or tenure or any other term or condition of employ-
6 ment because the individual has inquired about the provisions of
7 sections 2 to 12 of this 2017 Act.

8
9 “ENFORCEMENT

10
11 “SECTION 11. Enforcement, right of action and administrative
12 remedies. (1) An employee asserting a violation of section 10 of this
13 2017 Act may file a complaint with the Commissioner of the Bureau
14 of Labor and Industries under ORS 659A.820 or a civil action as pro-
15 vided in ORS 659A.885.

16 “(2) The commissioner has the same enforcement powers with re-
17 spect to the rights established under this section and sections 3, 4a,
18 5, 6, 6a, 7, 9, 10 and 12 of this 2017 Act as are established in ORS
19 chapters 652 and 653.

20 “(3) In addition to any other damages provided by law, the com-
21 missioner may assess a statutory penalty as follows:

22 “(a) \$500 for any violation of section 8 of this 2017 Act.

23 “(b) \$1,000 for any violation of section 3, 4a, 5, 6, 6a, 7, 9 or 10 of this
24 2017 Act.

25 “(4) If the commissioner determines that the employer paid the full
26 remedy due, not including any statutory penalty, within 14 days of
27 service of an order, the commissioner shall waive 50 percent of the
28 amount of any statutory penalty imposed by order under this section.

29
30 “LIMITS TO LEGISLATIVE INTENT

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

4 “(2) An action may be brought under subsection (1) of this section alleg-
5 ing a violation of:

6 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
7 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030,
8 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103
9 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
10 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,
11 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320,
12 659A.355, 659A.421, 653.547 or 653.549[.]; or

13 **“(b) Section 10 of this 2017 Act, except an action may not be brought**
14 **for a claim relating to section 6a of this 2017 Act.**

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

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

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

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

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

28 “(4) In any action under subsection (1) of this section alleging a violation
29 of ORS 652.355 or 653.060, the court may award, in addition to the relief
30 authorized under subsection (1) of this section, compensatory damages or

1 \$200, whichever is greater.

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

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

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

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

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

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

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

28 “(e) The court may award reasonable attorney fees and expert witness fees
29 incurred by a defendant who prevails only if the court determines that the
30 plaintiff had no objectively reasonable basis for asserting a claim or no

1 reasonable basis for appealing an adverse decision of a trial court; and

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

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

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

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

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

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

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

30 “(A) Has been injured by an unlawful practice or discriminatory housing

1 practice; or

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

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

9

10

“PREEMPTION

11

12 “**SECTION 14.** Section 1, chapter 591, Oregon Laws 2015, is amended to
13 read:

14 “**Sec. 1.** (1) As used in this section:

15 “(a) ‘Enact’ includes but is not limited to adopt, amend, refer or pass with
16 a delayed operative or effective date.

17 “(b) ‘Local government’ includes a county, city, district or other public
18 corporation, authority or entity organized and existing under statute or city
19 or county charter.

20 ““(c) ‘Work schedule’ means the days and times during which an employee
21 is required by an employer to perform the duties for which the employee will
22 receive compensation. ‘Work schedule’ does not include employee time off for
23 medical reasons or sick time.

24 “(2) The State of Oregon preempts all charter and statutory authority of
25 local governments to enact a requirement relating to work schedules [*before*
26 *the date of adjournment sine die of the 2017 regular session of the Legislative*
27 *Assembly*].

28 “(3) Notwithstanding subsection (2) of this section, a local government
29 may set work schedule requirements:

30 “(a) For public employers; and

1 “(b) In specifications for public contracts or subcontracts entered into by
2 the local government.

3 **“SECTION 15. Section 2, chapter 591, Oregon Laws 2015, is repealed.**

4
5 **“OPERATIVE DATE**

6
7 **“SECTION 16. (1) Sections 2 to 5, 6 to 10 and 12 of this 2017 Act**
8 **become operative on July 1, 2018.**

9 **“(2) Section 11 of this 2017 Act and the amendments to ORS 659A.885**
10 **by section 13 of this 2017 Act become operative on January 1, 2019.**

11 **“(3) The amendments to section 5 of this 2017 Act by section 5a of**
12 **this 2017 Act become operative on July 1, 2020.**

13 **“(4) The Commissioner of the Bureau of Labor and Industries may**
14 **take any action before the operative dates specified in subsection (1),**
15 **(2) or (3) of this section that is necessary to enable the commissioner**
16 **to exercise, on and after the operative dates specified in subsection (1),**
17 **(2) or (3) of this section, all of the duties, functions and powers con-**
18 **ferred on the commissioner by sections 2 to 12 of this 2017 Act and the**
19 **amendments to ORS 659A.885 by section 13 of this 2017 Act.**

20
21 **“CAPTIONS**

22
23 **“SECTION 17. The unit and section captions used in this 2017 Act**
24 **are provided only for the convenience of the reader and do not become**
25 **part of the statutory law of this state or express any legislative intent**
26 **in the enactment of this 2017 Act.**

27
28 **“EMERGENCY CLAUSE**

29
30 **“SECTION 18. This 2017 Act being necessary for the immediate**

1 **preservation of the public peace, health and safety, an emergency is**
2 **declared to exist, and this 2017 Act takes effect on its passage.”.**

3
