

Requested by Representative HOLVEY

**PROPOSED AMENDMENTS TO
HOUSE BILL 3458**

1 On page 1 of the printed bill, line 2, after the second semicolon delete the
2 rest of the line and delete line 3 and insert “and amending ORS 652.010,
3 652.020, 652.355, 652.990, 653.060, 653.256, 653.261, 653.265 and 659A.885.”.

4 Delete lines 5 through 27 and delete pages 2 through 7 and insert:

5 **“SECTION 1.** ORS 652.020 is amended to read:

6 **“652.020. (1) As used in this section:**

7 **“(a) ‘Perishable product’ means any product that may spoil, dete-**
8 **riorate or undergo other material changes that render it unsuitable for**
9 **the use for which it was produced. ‘Perishable product’ includes agri-**
10 **cultural crops, meat and fish.**

11 **“(b) ‘Undue hardship period’ means the period of time during which**
12 **perishable product must be processed after harvesting, slaughter or**
13 **catch.**

14 **“(c) ‘Workweek’ means a fixed period of time established by an**
15 **employer that reflects a regularly recurring period of 168 hours or**
16 **seven consecutive 24-hour periods. A workweek may begin on any day**
17 **of the week and any hour of the day and need not coincide with a**
18 **calendar week. The beginning of the workweek may be changed if the**
19 **change is intended to be permanent and is not designed to evade**
20 **overtime requirements.**

21 **“[(1)] (2)(a) [No person shall be] Except as provided in paragraphs (b)**

1 **and (c) of this subsection and subsection (3) of this section, an em-**
2 **ployer may not require or permit an employee** employed in any mill,
3 factory or manufacturing establishment in this state **to work** more than:

4 **“(A)** 10 hours in any one day[, *or in sawmills, planing mills, shingle mills*
5 *and logging camps more than*]; **or**

6 **“(B) 55 hours in one workweek.**

7 **“(b) An employer may permit an employee described in paragraph**
8 **(a) of this subsection to work up to 60 hours in one workweek if the**
9 **employee requests or consents in writing to work more than 55 hours**
10 **in the workweek.**

11 **“(c) An employer may permit an employee who has consented to**
12 **work more than 55 hours in one workweek under paragraph (b) of this**
13 **subsection to work up to 72 hours in one workweek during the period**
14 **of time that the employer is eligible for an undue hardship period ex-**
15 **emption under subsection (4) of this section.**

16 **“(d) Except as provided in subsection (3) of this section, an em-**
17 **ployer may not require or permit an employee employed in a sawmill,**
18 **planing mill, shingle mill or logging camp to work more than:**

19 **“(A)** Eight hours, exclusive of one hour, more or less, in one day; or
20 [*more than*]

21 **“(B) 48 hours in one workweek.** [*calendar week, except logging train*
22 *crews, guards, boiler operators and persons engaged in the transportation to*
23 *and from work, and employees when engaged in making necessary repairs, or*
24 *in the case of emergency where life and property are in imminent danger.*
25 *However, employees may work overtime not to exceed three hours in one day,*
26 *conditioned that payment be made for said overtime at the rate of time and*
27 *one-half the regular wage.*]

28 **“(3)(a) An employee may work overtime up to three hours more**
29 **than the applicable limit for the maximum allowable hours of em-**
30 **ployment in one day as described in subsection (2) of this section.**

1 **“(b) An employer shall compensate an employee who works over-**
2 **time hours described in paragraph (a) of this subsection at one and**
3 **one-half times the employee’s regular rate of pay for each overtime**
4 **hour or portion of an hour the employee works.**

5 **“(c) An employer shall calculate an employee’s overtime compen-**
6 **sation on a daily basis under paragraph (b) of this subsection and on**
7 **a weekly basis under ORS 653.261 (1) and pay the greater of the two**
8 **amounts if, during the same workweek, the employee works more**
9 **than:**

10 **“(A) The applicable limit for the maximum allowable hours of em-**
11 **ployment in one day as described in subsection (2) of this section; and**

12 **“(B) Forty hours in one workweek as described in ORS 653.261 (1).**

13 **“(d) An employer that makes an overtime payment to an employee**
14 **pursuant to paragraph (c) of this subsection satisfies the overtime**
15 **compensation requirements under this subsection and ORS 653.261 (1).**

16 **“(4)(a) An employer is eligible for an undue hardship period ex-**
17 **emption from the restrictions on work hours under subsection (2)(a)**
18 **and (b) of this section if the employer, in the ordinary course of the**
19 **employer’s business, processes perishable products. The undue hard-**
20 **ship period exemption shall be effective only during an undue hardship**
21 **period. An employer may be eligible for more than one undue hardship**
22 **period exemption in a calendar year. However, the combined total**
23 **duration of the employer’s undue hardship period exemptions may not**
24 **exceed 90 days in a calendar year.**

25 **“(b) To claim an undue hardship period exemption, an employer**
26 **must provide notice of the undue hardship period to the Commissioner**
27 **of the Bureau of Labor and Industries and obtain written consent from**
28 **each employee who the employer will request to work up to 72 hours**
29 **in a workweek during the undue hardship period.**

30 **“(c)(A) The notice the employer sends to the commissioner under**

1 paragraph (b) of this subsection must be in a form prescribed by the
2 commissioner by rule and include a description of the reasons for the
3 undue hardship period, the start and expected end dates of the undue
4 hardship period and any other information required by the commis-
5 sioner.

6 “(B) The employee’s written consent shall be in a form prescribed
7 by the commissioner by rule and include a description of the
8 employer’s reasons for the undue hardship period, the start and ex-
9 pected end dates of the undue hardship period, a statement that the
10 employee consents to working up to 72 hours in a workweek during
11 the undue hardship period, contact information for the Bureau of La-
12 bor and Industries and any other information required by the com-
13 missioner.

14 “(d) An employee’s consent under this subsection to work up to 72
15 hours in one workweek during an undue hardship period is in addition
16 to, and not in lieu of, the employee’s consent under subsection (2)(b)
17 of this section to work more than 55 hours in one workweek.

18 “(e) The commissioner shall adopt rules to implement the pro-
19 visions of this subsection.

20 “(5) An employer may not:

21 “(a) Require any employee employed in a mill, factory or manufac-
22 turing establishment in this state to begin a work shift less than 10
23 hours after the end of the employee’s previous work shift if the
24 employee’s previous work shift totaled eight or more hours, unless the
25 employer requires the employee to work additional hours due to dis-
26 ruptions in business operations caused by a power outage, major
27 equipment breakdown, severe weather or similar emergency outside
28 the employer’s control;

29 “[2] (b) [No employer shall] Require or permit any [person] employee to
30 work in any place [mentioned] described in this section for more hours than

1 the hours provided for in this section during any day of 24 hours[.]; **or**

2 **“(c) [No employer shall permit or suffer] Permit** an overseer, superinten-
3 dent or other agent of the employer to violate this section.

4 **“(d) Coerce an employee into consenting to work more than 55**
5 **hours in one workweek or up to 72 hours in one workweek.**

6 **“[(3)] (6) This section does not apply to:**

7 **“(a) An employee performing work as a member of a logging train**
8 **crew, as a guard or as a boiler operator;**

9 **“(b) An employee engaged in the transportation of workers to and**
10 **from work;**

11 **“(c) [Persons employed] An employee engaged** in the care of quarters
12 or livestock, **the** conducting **of** mess halls, **the** superintendence and direction
13 of work[,], or [to] the loading and removal of [the] finished forest product[.];
14 **or**

15 **“(d) An employee when engaged in making necessary repairs or in**
16 **the case of emergency where life or property is in imminent danger.**

17 **“[(4)] (7) Subsections [(1) and] (2) to (5) of this section do not apply to**
18 employees who are represented by a labor organization for purposes of col-
19 lective bargaining with their employer, provided limits on the required hours
20 of work and overtime payment have been agreed to between the employer and
21 labor organization, or if no agreement is reached, then, for the purposes of
22 this subsection, such limits and payments shall not be deemed to be changed
23 from the previous collective bargaining agreement between the employer and
24 labor organization unless the employees have been locked out, are engaged
25 in a strike or the employer has unilaterally implemented new terms and
26 conditions of employment.

27 **“(8)(a) In addition to any other remedy provided by law, an em-**
28 **ployee has a private cause of action against an employer if the em-**
29 **ployer violates subsection (2) or (3) of this section by requiring the**
30 **employee to work more than:**

1 **“(A) Three hours more than the applicable limit for the maximum**
2 **allowable hours of employment in one day; or**

3 **“(B) The applicable limit for the maximum allowable hours of em-**
4 **ployment in one workweek.**

5 **“(b) If the employee prevails in an action under this section, the**
6 **court shall enter judgment against the employer for:**

7 **“(A) Actual damages or \$3,000 per claim, whichever is greater;**

8 **“(B) Equitable relief; and**

9 **“(C) Liquidated damages in an amount equal to twice the**
10 **employee’s overtime wages earned during the period not allowed under**
11 **subsection (2) or (3) of this section.**

12 **“(c) In an action brought under this subsection, the court may**
13 **award to the prevailing plaintiff costs, disbursements and reasonable**
14 **attorney fees. Any attorney fee agreement is subject to approval by**
15 **the court.**

16 **“(9)(a) Notwithstanding ORS 652.900, in addition to any other pen-**
17 **alty provided by law, the commissioner may assess a civil penalty not**
18 **to exceed \$2,000 per violation against an employer that the commis-**
19 **sioner determines has, in violation of this section, coerced an em-**
20 **ployee into consenting to work more than 55 hours in one workweek**
21 **or up to 72 hours in one workweek. Each violation is a separate and**
22 **distinct offense. In the case of a continuing violation, each week’s**
23 **continuance is a separate and distinct violation.**

24 **“(b) Civil penalties authorized by this subsection shall be imposed**
25 **in the manner provided in ORS 183.745. All sums collected as penalties**
26 **under this subsection shall be applied and paid over as provided in ORS**
27 **652.900.**

28 **“SECTION 2. ORS 652.355 is amended to read:**

29 **“652.355. (1) An employer may not discharge or in any other manner dis-**
30 **criminate against an employee because:**

1 “(a) The employee has made a wage claim or discussed, inquired about
2 or consulted an attorney or agency about a wage claim[.];

3 “(b) The employee has caused to be instituted any proceedings under or
4 related to ORS 652.310 to 652.414[.];

5 “(c) The employee has testified or is about to testify in any such
6 proceedings[.];

7 **“(d) The employee has inquired about the provisions of ORS 652.020
8 or has reported a violation of or filed a complaint related to ORS
9 652.020;**

10 **“(e) The employee has declined to consent to work more than 55
11 hours in a workweek under ORS 652.020 or 653.265; or**

12 **“(f) The employee has declined to consent to work up to 72 hours
13 in a workweek under ORS 652.020 or 653.265.**

14 “(2) A violation of this section is an unlawful employment practice under
15 ORS chapter 659A. A person unlawfully discriminated against under this
16 section may file a complaint under ORS 659A.820 with the Commissioner of
17 the Bureau of Labor and Industries.

18 **“SECTION 3.** ORS 653.060 is amended to read:

19 “653.060. (1) An employer may not discharge or in any other manner dis-
20 criminate against an employee because:

21 “(a) The employee has [*made a complaint that the employee has not been*
22 *paid wages in accordance with*] **inquired about the provisions of ORS
23 653.010 to 653.261 or 653.265 or has reported a violation of or filed a
24 complaint related to ORS 653.010 to 653.261 or 653.265.**

25 “(b) The employee has caused to be instituted or is about to cause to be
26 instituted any proceedings under or related to ORS 653.010 to 653.261 **or
27 653.265.**

28 “(c) The employee has testified or is about to testify in any such pro-
29 ceedings.

30 “(2) A violation of this section is an unlawful employment practice under

1 ORS chapter 659A. A person unlawfully discriminated against under this
2 section may file a complaint under ORS 659A.820 with the Commissioner of
3 the Bureau of Labor and Industries.

4 **“SECTION 4.** ORS 653.256 is amended to read:

5 “653.256. (1) In addition to any other penalty provided by law, the Com-
6 missioner of the Bureau of Labor and Industries may assess a civil penalty
7 not to exceed \$1,000 against any person that willfully violates ORS 653.025,
8 653.030, 653.045, 653.050, 653.060, 653.261, **653.265**, [or] 653.606, 653.611, 653.616,
9 653.621, 653.626, 653.631 [and] **or** 653.636 [and] **or** section 5, chapter 537,
10 Oregon Laws 2015, or any rule adopted thereunder.

11 “(2) In addition to any other penalty provided by law, the commissioner
12 may assess a civil penalty not to exceed \$1,000 against any person that in-
13 tentiously violates ORS 653.077 or any rule adopted thereunder.

14 “(3) Civil penalties authorized by this section shall be imposed in the
15 manner provided in ORS 183.745.

16 “(4)(a) All sums collected as penalties under this section shall be first
17 applied toward reimbursement of costs incurred in determining the vio-
18 lations, conducting hearings under this section and addressing and collecting
19 the penalties.

20 “(b) The remainder, if any, of the sums collected as penalties under sub-
21 section (1) of this section shall be paid over by the commissioner to the De-
22 partment of State Lands for the benefit of the Common School Fund of this
23 state. The department shall issue a receipt for the money to the commis-
24 sioner.

25 “(c) The remainder, if any, of the sums collected as penalties under sub-
26 section (2) of this section shall be paid over by the commissioner to the De-
27 partment of Human Services for the benefit of the Breastfeeding Mother
28 Friendly Employer Project. The department shall issue a receipt for the
29 moneys to the commissioner.

30 **“SECTION 5.** ORS 653.261 is amended to read:

1 “653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries
2 may adopt rules prescribing such minimum conditions of employment, ex-
3 cluding minimum wages, in any occupation as may be necessary for the
4 preservation of the health of employees. The rules may include, but are not
5 limited to, minimum meal periods and rest periods, and maximum hours of
6 work, but not less than eight hours per day or 40 hours per [week]
7 **workweek**; however, after 40 hours of work in one [week] **workweek** over-
8 time may be paid, but in no case at a rate higher than one and one-half times
9 the regular rate of pay of the employees when computed without benefit of
10 commissions, overrides, spiffs and similar benefits.

11 **“(b) As used in this subsection, ‘workweek’ means a fixed period**
12 **of time established by an employer that reflects a regularly recurring**
13 **period of 168 hours or seven consecutive 24-hour periods. A workweek**
14 **may begin on any day of the week and any hour of the day and need**
15 **not coincide with a calendar week. The beginning of the workweek**
16 **may be changed if the change is intended to be permanent and is not**
17 **designed to evade overtime requirements.**

18 “[2) *Nothing contained in ORS 653.010 to 653.261 shall be construed to*
19 *confer authority upon the commissioner to regulate the hours of employment*
20 *of employees engaged in production, harvesting, packing, curing, canning,*
21 *freezing or drying any variety of agricultural crops, livestock, poultry or*
22 *fish.*]

23 “[3) (2) Rules adopted by the commissioner pursuant to subsection (1)
24 of this section do not apply to individuals employed by this state or a poli-
25 tical subdivision or quasi-municipal corporation thereof if other provisions
26 of law or collective bargaining agreements prescribe rules pertaining to
27 conditions of employment referred to in subsection (1) of this section, in-
28 cluding meal periods, rest periods, maximum hours of work and overtime.

29 “[4) (3) Rules adopted by the commissioner pursuant to subsection (1)
30 of this section regarding meal periods and rest periods do not apply to nurses

1 who provide acute care in hospital settings if provisions of collective bar-
2 gaining agreements entered into by the nurses prescribe rules concerning
3 meal periods and rest periods.

4 “[5(a)] (4)(a) The commissioner shall adopt rules regarding meal periods
5 for employees who serve food or beverages, receive tips and report the tips
6 to the employer.

7 “(b) In rules adopted by the commissioner under paragraph (a) of this
8 subsection, the commissioner shall permit an employee to waive a meal pe-
9 riod. However, an employer may not coerce an employee into waiving a meal
10 period.

11 “(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty
12 provided by law, the commissioner may assess a civil penalty not to exceed
13 \$2,000 against an employer that the commissioner finds has coerced an em-
14 ployee into waiving a meal period in violation of this subsection. Each vio-
15 lation is a separate and distinct offense. In the case of a continuing
16 violation, each day’s continuance is a separate and distinct violation.

17 “(d) Civil penalties authorized by this subsection shall be imposed in the
18 manner provided in ORS 183.745. All sums collected as penalties under this
19 subsection shall be applied and paid over as provided in ORS 653.256 (4).

20 **“SECTION 6.** ORS 653.265 is amended to read:

21 “653.265. [*When employed in canneries or driers or packing plants, exclud-*
22 *ing canneries or driers or packing plants located on farms and primarily pro-*
23 *cessing products produced on such farms, employees shall be paid time and a*
24 *half for time over 10 hours per day and piece workers shall be paid one and*
25 *a half the regular prices for all work done during the time they are employed*
26 *over 10 hours per day.]*

27 **“(1) As used in this section:**

28 **“(a) ‘Perishable product’ means any product that may spoil, dete-**
29 **riorate or undergo other material changes that render it unsuitable for**
30 **the use for which it was produced. ‘Perishable product’ includes agri-**

1 **cultural crops, meat and fish.**

2 **“(b) ‘Undue hardship period’ means the period of time during which**
3 **perishable product must be processed after harvesting, slaughter or**
4 **catch.**

5 **“(c) ‘Workweek’ means a fixed period of time established by an**
6 **employer that reflects a regularly recurring period of 168 hours or**
7 **seven consecutive 24-hour periods. A workweek may begin on any day**
8 **of the week and any hour of the day and need not coincide with a**
9 **calendar week. The beginning of the workweek may be changed if the**
10 **change is intended to be permanent and is not designed to evade**
11 **overtime requirements.**

12 **“(2)(a) Except as provided in paragraphs (b) to (e) of this subsection,**
13 **an employer may not require or permit an employee employed in any**
14 **cannery, drier or packing plant in this state to work more than:**

15 **“(A) 10 hours in any one day; or**

16 **“(B) 55 hours in one workweek.**

17 **“(b) Paragraph (a) of this subsection does not apply to an employee**
18 **employed in a cannery, drier or packing plant located on a farm and**
19 **primarily processing products produced on the farm.**

20 **“(c) An employer may permit an employee described in paragraph**
21 **(a) of this subsection to work up to 60 hours in one workweek if the**
22 **employee requests or consents in writing to work more than 55 hours**
23 **in the workweek.**

24 **“(d) An employer may permit an employee described in paragraph**
25 **(a) of this subsection who has consented to work more than 55 hours**
26 **in one workweek under paragraph (c) of this subsection to work up to**
27 **72 hours in one workweek during the period of time that the employer**
28 **is eligible for an undue hardship period exemption under subsection**
29 **(5) of this section.**

30 **“(e) An employer may permit an employee described in paragraph**

1 (a) of this subsection to work more than 10 hours in any one day if the
2 employer compensates the employee as follows:

3 “(A) One and one-half times the employee’s regular rate of pay for
4 each hour the employee works over 10 hours in any one day if the
5 employee is an hourly employee; or

6 “(B) One and one-half times the regular price for all work done
7 during the time the employee is employed over 10 hours per day if the
8 employee is a piece worker.

9 “(3) An employer shall calculate an employee’s overtime on a daily
10 basis under subsection (2)(e) of this section and on a weekly basis un-
11 der ORS 653.261 (1) and pay the greater of the two amounts if, during
12 the same workweek, the employee works more than:

13 “(a) 10 hours in one day as described in subsection (2)(e) of this
14 section; and

15 “(b) 40 hours in one workweek as described in ORS 653.261 (1).

16 “(4) An employer that makes an overtime payment to an employee
17 pursuant to subsection (3) of this section satisfies the overtime com-
18 pensation requirements under this section and ORS 653.261 (1).

19 “(5)(a) An employer is eligible for an undue hardship period ex-
20 emption from the restrictions on work hours under subsection (2)(a)
21 and (c) of this section if the employer, in the ordinary course of its
22 business, processes perishable products. The undue hardship period
23 exemption shall be effective only during an undue hardship period. An
24 employer may be eligible for more than one undue hardship period
25 exemption in a calendar year. However, the combined total duration
26 of the employer’s undue hardship period exemptions may not exceed
27 90 days in a calendar year.

28 “(b) To claim an undue hardship period exemption, an employer
29 must provide notice of the undue hardship period to the Commissioner
30 of the Bureau of Labor and Industries and obtain written consent from

1 each employee who the employer will request to work up to 72 hours
2 in a workweek during the undue hardship period.

3 “(c)(A) The notice the employer sends to the commissioner under
4 paragraph (b) of this subsection must be in a form prescribed by the
5 commissioner by rule and include a description of the reasons for the
6 undue hardship period, the start and expected end dates of the undue
7 hardship period and any other information required by the commis-
8 sioner.

9 “(B) The employee’s written consent shall be in a form prescribed
10 by the commissioner by rule and include a description of the
11 employer’s reasons for the undue hardship period, the start and ex-
12 pected end dates of the undue hardship period, a statement that the
13 employee consents to working up to 72 hours in a workweek during
14 the undue hardship period, contact information for the Bureau of La-
15 bor and Industries and any other information required by the com-
16 missioner.

17 “(d) An employee’s consent under this subsection to work up to 72
18 hours in one workweek during an undue hardship period is in addition
19 to, and not in lieu of, the employee’s consent under subsection (2)(c)
20 of this section to work more than 55 hours in one workweek.

21 “(e) The commissioner shall adopt rules to implement the pro-
22 visions of this subsection.

23 “(6) An employer may not coerce an employee into consenting to
24 work more than 55 hours in one workweek or up to 72 hours in one
25 workweek.

26 “(7)(a) Notwithstanding ORS 653.256, as amended by section 4 of this
27 2017 Act, in addition to any other penalty provided by law, the com-
28 missioner may assess a civil penalty not to exceed \$2,000 per violation
29 against an employer that the commissioner determines has, in vio-
30 lation of this section, coerced an employee into consenting to work

1 more than 55 hours in one workweek or up to 72 hours in one
2 workweek. Each violation is a separate and distinct offense. In the
3 case of a continuing violation, each week's continuance is a separate
4 and distinct violation.

5 “(b) Civil penalties authorized by this subsection shall be imposed
6 in the manner provided in ORS 183.745. All sums collected as penalties
7 under this subsection shall be applied and paid over as provided in ORS
8 653.256.

9 “(8)(a) In addition to any other remedy provided by law, an em-
10 ployee has a private cause of action against an employer if the em-
11 ployer violates subsection (2) of this section by requiring the employee
12 to work more than the applicable limit for the maximum allowable
13 hours of employment in one workweek.

14 “(b) If the employee prevails in an action brought under this sec-
15 tion, the court shall enter judgment against the employer for:

16 “(A) Actual damages or \$3,000 per claim, whichever is greater;

17 “(B) Equitable relief; and

18 “(C) Liquidated damages in an amount equal to twice the
19 employee's overtime wages earned during the period not allowed under
20 subsection (2) of this section.

21 “(c) In an action brought under this section, the court may award
22 to the prevailing plaintiff costs, disbursements and reasonable attor-
23 ney fees. Any attorney fee agreement is subject to approval by the
24 court.

25 “SECTION 7. (1) Any employee asserting a violation of ORS 652.020
26 or 653.265 may file a complaint with the Commissioner of the Bureau
27 of Labor and Industries under ORS 659A.820 or a civil action as pro-
28 vided in ORS 659A.885.

29 “(2) In addition to any other damages provided by law, the com-
30 missioner may assess a civil penalty against the employer in the

1 amount of \$1,000.

2 “(3) The commissioner shall waive 50 percent of the amount of any
3 civil penalty imposed by order under this section if the commissioner
4 determines that the employer paid the full remedy due, not including
5 any civil penalty, within 14 days after the order imposing the remedy
6 became final by operation of law or on appeal.

7 “(4) Civil penalties authorized by this section shall be imposed in
8 the manner provided in ORS 183.745.

9 “(5) An employer may not retaliate or in any way discriminate
10 against an individual with respect to hire or tenure or any other term
11 or condition of employment because the individual has inquired about
12 the provisions of this section or ORS 652.020, 653.261 or 653.265 or has
13 reported a violation to, or filed a complaint with, the Bureau of Labor
14 and Industries.

15 “SECTION 8. ORS 659A.885, as amended by section 5, chapter 73, Oregon
16 Laws 2016, is amended to read:

17 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
18 tice specified in subsection (2) of this section may file a civil action in cir-
19 cuit court. In any action under this subsection, the court may order
20 injunctive relief and any other equitable relief that may be appropriate, in-
21 cluding but not limited to reinstatement or the hiring of employees with or
22 without back pay. A court may order back pay in an action under this sub-
23 section only for the two-year period immediately preceding the filing of a
24 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
25 bor and Industries, or if a complaint was not filed before the action was
26 commenced, the two-year period immediately preceding the filing of the
27 action. In any action under this subsection, the court may allow the pre-
28 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
29 cept as provided in subsection (3) of this section:

30 “(a) The judge shall determine the facts in an action under this sub-

1 section; and

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

5 “(2) An action may be brought under subsection (1) of this section alleg-
6 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
7 (2), 475B.233, 476.574, **652.020**, 652.355, 653.060, **653.265**, 653.601 to 653.661,
8 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082,
9 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199,
10 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to
11 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
12 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

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

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

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

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

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

26 “(4) In any action under subsection (1) of this section alleging a violation
27 of ORS 652.355 or 653.060, the court may award, in addition to the relief
28 authorized under subsection (1) of this section, compensatory damages or
29 \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

30 “(f) Upon any appeal of a judgment under this subsection, the appellate

1 court shall review the judgment pursuant to the standard established by ORS
2 19.415 (1).

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

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

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

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

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

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

28 “(A) Has been injured by an unlawful practice or discriminatory housing
29 practice; or

30 “(B) Will be injured by an unlawful practice or discriminatory housing

1 practice that is about to occur.

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

7 **“SECTION 9.** ORS 652.010 is amended to read:

8 “652.010. (1) It is the public policy of this state that no person shall be
9 hired, nor permitted to work for wages, under any conditions or terms, for
10 longer hours or days of service than is consistent with the person’s health
11 and physical well-being and ability to promote the general welfare by the
12 person’s increasing usefulness as a healthy and intelligent citizen.

13 “(2) It hereby is declared that the working of any person more than 10
14 hours in one day in any mill, factory or manufacturing establishment or the
15 working of any person more than eight hours, exclusive of one hour, more
16 or less, in one day, or more than 48 hours in one [*calendar week*] **workweek,**
17 **as defined in ORS 652.020,** in sawmills, planing mills, shingle mills and
18 logging camps is injurious to the physical health and well-being of such
19 person, and tends to prevent the person from acquiring that degree of intel-
20 ligence that is necessary to make the person a useful and desirable citizen
21 of the state.

22 **“SECTION 10.** ORS 652.990 is amended to read:

23 “652.990. (1) Violation of ORS 652.020 [(2)] **(5)(b) or (c)** is a Class A vio-
24 lation. Every day’s violation is deemed a separate offense.

25 “(2) Any person, body corporate, general manager or employer who vio-
26 lates ORS 652.040 or causes ORS 652.040 to be violated commits a Class C
27 misdemeanor.

28 “(3) Violation of ORS 652.110 or 652.120 is a Class A violation.

29 “(4) Violation of ORS 652.130 by any employer is a Class C misdemeanor.

30 “(5) In addition to the civil damages recoverable under ORS 652.230, vio-

1 lation of ORS 652.210 to 652.230 is a Class A misdemeanor.

2 “(6) The violation of ORS 652.240 is a Class A misdemeanor.

3 “(7) Violation of ORS 652.355 is a Class C misdemeanor.

4 “(8) Violation of ORS 652.610 or 652.620 is a Class D violation.

5 “(9) Willful violation of ORS 652.635 or 652.640 by a producer or agent
6 of the producer is a Class A misdemeanor.

7 “(10) Violation of any of the provisions of ORS 652.710 or 652.720 by any
8 employer is a Class A violation.”.

9
