

SB 478-5  
(LC 1296)  
4/3/19 (DRG/ps)

Requested by SENATE COMMITTEE ON WORKFORCE

**PROPOSED AMENDMENTS TO  
SENATE BILL 478**

1 On page 1 of the printed bill, line 2, delete “260.407” and insert “244.350,  
2 260.407 and 260.995”.

3 On page 2, delete line 5 and insert “workplace harassment. A  
4 nondisclosure agreement made in violation of this subparagraph is void and  
5 may not be enforced by a court of this state.”.

6 Delete line 28 and insert “workplace harassment. A nondisclosure agree-  
7 ment made in violation of this subparagraph is void and may not be enforced  
8 by a court of this state.”.

9 On page 3, delete line 8 and insert “workplace harassment. A  
10 nondisclosure agreement made in violation of this subparagraph is void and  
11 may not be enforced by a court of this state.”.

12 After line 17, insert:

13 “(d) ‘Workplace harassment’ means conduct that constitutes discrimi-  
14 nation prohibited by ORS 659A.030, including conduct that constitutes sexual  
15 assault as defined in ORS 181A.323.”.

16 Delete lines 19 through 24 and insert:

17 **“SECTION 3. (1) A public official or candidate may not:**

18 **“(a) Use public moneys to make payments in connection with a  
19 nondisclosure agreement relating to workplace harassment; or**

20 **“(b) Use moneys received from a third party to make payments in  
21 connection with a nondisclosure agreement relating to workplace**

1 harassment if the alleged harassment occurred when the public official  
2 or candidate was acting as a public official or candidate.

3 “(2) A nondisclosure agreement made in violation of this section is  
4 void and may not be enforced by a court of this state.

5 “(3) As used in this section:

6 “(a) ‘Payments in connection with a nondisclosure agreement’ in-  
7 cludes any form of consideration provided in exchange for the silence  
8 of an individual on issues relating to workplace harassment, including  
9 but not limited to:

10 “(A) Money;

11 “(B) Stock, personal property or other items with a resale value;

12 “(C) Severance pay or benefits for an individual who resigned or  
13 was fired from a place of employment without cause;

14 “(D) The promise of a positive reference or assistance in obtaining  
15 future employment in a position in which the individual’s salary is  
16 paid for with public moneys;

17 “(E) The promise of a bonus payment of moneys in addition to the  
18 individual’s salary;

19 “(F) Alternative work arrangements that have the effect of reduc-  
20 ing the amount of work required to be performed by the individual,  
21 or of removing the individual from the workplace; or

22 “(G) Any agreement that terminates the employment of the indi-  
23 vidual and includes a waiver of past or future claims against the public  
24 official, the public body or any public employee.

25 “(b) ‘Workplace harassment’ means conduct that constitutes dis-  
26 crimination prohibited by ORS 659A.030, including conduct that con-  
27 stitutes sexual assault as defined in ORS 181A.323.

28 “SECTION 4. Section 5 of this 2019 Act is added to and made a part  
29 of ORS chapter 260.

30 “SECTION 5. (1) In addition to the requirements set forth in ORS

1 **260.407, a political committee or petition committee may not provide**  
2 **any form of consideration in connection with a nondisclosure agree-**  
3 **ment relating to workplace harassment.**

4 **“(2) As used in this section:**

5 **“(a) ‘Consideration in connection with a nondisclosure agreement’**  
6 **includes any form of consideration provided in exchange for the si-**  
7 **lence of an individual on issues relating to workplace harassment, in-**  
8 **cluding but not limited to:**

9 **“(A) Money;**

10 **“(B) Stock, personal property or other items with a resale value;**

11 **“(C) Severance pay or benefits for an individual who resigned or**  
12 **was fired from a place of employment without cause;**

13 **“(D) The promise of a positive reference or assistance in obtaining**  
14 **future employment in a position in which the individual’s salary is**  
15 **paid for with public moneys;**

16 **“(E) The promise of a bonus payment of moneys in addition to the**  
17 **individual’s salary;**

18 **“(F) Alternative work arrangements that have the effect of reduc-**  
19 **ing the amount of work required to be performed by the individual,**  
20 **or of removing the individual from the workplace; or**

21 **“(G) Any agreement that terminates the employment of the indi-**  
22 **vidual and includes a waiver of past or future claims against the public**  
23 **official, the public body or any public employee.**

24 **“(b) ‘Workplace harassment’ means conduct that constitutes dis-**  
25 **crimination prohibited by ORS 659A.030, including conduct that con-**  
26 **stitutes sexual assault as defined in ORS 181A.323.**

27 **“SECTION 6. ORS 260.995 is amended to read:**

28 **“260.995. (1) Except as provided in subsection (2) of this section, following**  
29 **an investigation under ORS 260.345, the Secretary of State or Attorney**  
30 **General may impose a civil penalty not to exceed \$1,000 for each violation**

1 of any provision of Oregon Revised Statutes relating to the conduct of any  
2 election, any rule adopted by the secretary under ORS chapters 246 to 260  
3 or any other matter preliminary to or relating to an election, for which a  
4 civil penalty is not otherwise provided.

5 “(2) The secretary or the Attorney General may impose a civil penalty  
6 not to exceed:

7 “(a)(A) **Except as provided in subparagraph (B) of this paragraph,**  
8 \$1,000 plus the amount converted to personal use for each violation of ORS  
9 260.407;

10 “(B) **Two times the amount of the penalty provision for violating a**  
11 **nondisclosure agreement that is contained within each nondisclosure**  
12 **agreement entered into in violation of ORS 260.407 or section 5 of this**  
13 **2019 Act; or**

14 “(b) \$10,000 for each violation of ORS 260.555, 260.558, 260.575, 260.695 (1)  
15 or 260.715 (1) or section 1b, Article IV of the Oregon Constitution.

16 “(3) Except as otherwise provided by this section, civil penalties under  
17 this section shall be imposed as provided in ORS 183.745. In addition to the  
18 requirements of ORS 183.745, the notice shall include:

19 “(a) A statement of the authority and jurisdiction under which the hear-  
20 ing is to be held; and

21 “(b) If the person is an agency, corporation or an unincorporated associ-  
22 ation, a statement that such person must be represented by an attorney li-  
23 censed in Oregon, unless the person is a political committee which may be  
24 represented by any officer identified in the most recent statement of organ-  
25 ization filed with the filing officer.

26 “(4) A hearing on whether to impose a civil penalty and to consider cir-  
27 cumstances in mitigation shall be held by the secretary or Attorney General:

28 “(a) Upon request of the person against whom the penalty may be as-  
29 sessed, if the request is made not later than the 20th day after the date the  
30 person received notice sent under subsection (3) of this section; or

1       “(b) Upon the secretary’s or Attorney General’s own motion.

2       “(5) The person against whom a penalty may be assessed need not appear  
3 in person at a hearing held under this section, but instead may submit  
4 written testimony or other evidence, sworn to before a notary public, to the  
5 secretary or Attorney General for entry in the hearing record. The testimony  
6 or other evidence must be received by the secretary or Attorney General not  
7 later than three business days before the day of the hearing.

8       “(6) All hearings under this section shall be held not later than 45 days  
9 after the deadline for the person against whom the penalty may be assessed  
10 to request a hearing. However, if requested by the person against whom the  
11 penalty may be assessed, a hearing under subsection (4) of this section shall  
12 be held not later than 60 days after the deadline for the person against whom  
13 the penalty may be assessed to request a hearing.

14       “(7) The secretary or Attorney General shall issue an order not later than  
15 90 days after a hearing or after the deadline for requesting a hearing if no  
16 hearing is held.

17       “(8) All penalties recovered under this section shall be paid into the State  
18 Treasury and credited to the General Fund.

19       “(9) In the case of a civil penalty imposed under this section for a vio-  
20 lation of ORS 260.407, the person against whom the penalty is assessed:

21       “(a) Is personally responsible for the payment of the civil penalty;

22       “(b) Shall pay the civil penalty from personal funds of the person; and

23       “(c) May not pay the civil penalty from contributions received by a can-  
24 didate, a candidate’s principal campaign committee, a political committee or  
25 a petition committee.

26       “**SECTION 7.** ORS 244.350 is amended to read:

27       “244.350. (1) The Oregon Government Ethics Commission may impose civil  
28 penalties not to exceed:

29       “(a) Except as provided in paragraphs (b), **(c) and (d)** [*and (c)*] of this  
30 subsection, \$5,000 for violation of any provision of this chapter or any re-

1 solution adopted under ORS 244.160.

2 “(b) \$25,000 for violation of ORS 244.045.

3 “(c) \$10,000 for willfully violating ORS 244.040.

4 **“(d) Two times the amount of the penalty provision for violating a**  
5 **nondisclosure agreement that is contained within each nondisclosure**  
6 **agreement entered into in violation of section 3 of this 2019 Act.**

7 “(2)(a) Except as provided in paragraph (b) of this subsection, the com-  
8 mission may impose civil penalties not to exceed \$1,000 for violation of any  
9 provision of ORS 192.660.

10 “(b) A civil penalty may not be imposed under this subsection if the vio-  
11 lation occurred as a result of the governing body of the public body acting  
12 upon the advice of the public body’s counsel.

13 “(3) The commission may impose civil penalties not to exceed \$250 for  
14 violation of ORS 293.708. A civil penalty imposed under this subsection is in  
15 addition to and not in lieu of a civil penalty that may be imposed under  
16 subsection (1) of this section.

17 “(4)(a) The commission may impose civil penalties on a person who fails  
18 to file the statement required under ORS 244.050 or 244.217. In enforcing this  
19 subsection, the commission is not required to follow the procedures in ORS  
20 244.260 before finding that a violation of ORS 244.050 or 244.217 has occurred.

21 “(b) Failure to file the required statement in timely fashion is prima facie  
22 evidence of a violation of ORS 244.050 or 244.217.

23 “(c) The commission may impose a civil penalty of \$10 for each of the first  
24 14 days the statement is late beyond the date set by law, or by the commis-  
25 sion under ORS 244.050, and \$50 for each day thereafter. The maximum pen-  
26 alty that may be imposed under this subsection is \$5,000.

27 “(5) In lieu of or in conjunction with finding a violation of law or any  
28 resolution or imposing a civil penalty under this section, the commission  
29 may issue a written letter of reprimand, explanation or education.”.

30 In line 25, delete “4” and insert “8”.

