

SB 1026-1
(LC 4292)
4/8/19 (JAS/ps)

Requested by Senator TAYLOR

**PROPOSED AMENDMENTS TO
SENATE BILL 1026**

1 On page 1 of the printed bill, line 2, after the semicolon, delete the rest
2 of the line and insert “amending ORS 652.035, 653.265 and 659A.885; and re-
3 pealing ORS 653.263.”.

4 Delete lines 4 through 31 and delete page 2 and insert:

5 **“SECTION 1.** ORS 653.265 is amended to read:

6 “653.265. (1) As used in this section:

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

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

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

19 “(2)(a) Except as provided in paragraphs (b) to (d) of this subsection, an
20 employer may not require or permit an employee employed in any cannery,
21 drier or packing plant in this state to work more than:

1 “(A) 10 hours in any one day; or

2 “(B) 55 hours in one workweek.

3 “(b) An employer may permit an employee described in paragraph (a) of
4 this subsection to work up to 60 hours in one workweek if the employee re-
5 quests or consents in writing to work more than 55 hours in the workweek.

6 “(c) Notwithstanding paragraph (b) of this subsection, during the period
7 of time that an employer is eligible for an undue hardship period exemption
8 under subsection (5) of this section, an employer may permit an employee
9 described in paragraph (a) of this subsection to work:

10 “(A) Up to 84 hours per workweek for four workweeks; and

11 “(B) Up to 80 hours per workweek for the remainder of the undue hard-
12 ship period.

13 “(d) An employer may permit an employee described in paragraph (a) of
14 this subsection to work more than 10 hours in any one day if the employer
15 compensates the employee as follows:

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

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

22 “(3) An employer shall calculate an employee’s overtime on a daily basis
23 under subsection (2)(d) of this section and on a weekly basis under ORS
24 653.261 (1) and pay the greater of the two amounts if, during the same
25 workweek, the employee works more than:

26 “(a) 10 hours in one day as described in subsection (1) of this section; and

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

28 “(4) An employer that makes an overtime payment to an employee pursu-
29 ant to subsection (3) of this section satisfies the overtime compensation re-
30 quirements under this section and ORS 653.261 (1).

1 “(5)(a) An employer is eligible for an undue hardship period exemption
2 from the restrictions on work hours under subsection (2)(a) of this section
3 if the employer, in the ordinary course of the employer’s business, processes
4 perishable products. The undue hardship period exemption shall be effective
5 only during an undue hardship period. An employer may be eligible for more
6 than one undue hardship period exemption in a calendar year. However, the
7 combined total duration of the employer’s undue hardship period exemptions
8 may not exceed 21 workweeks in a calendar year.

9 “(b) To claim an undue hardship period exemption, an employer must
10 provide notice of the undue hardship period to the Commissioner of the Bu-
11 reau of Labor and Industries and obtain written consent from each employee
12 whom the employer will request to work more than 55 hours in any
13 workweek during the undue hardship period.

14 “(c)(A) The notice the employer sends to the commissioner under para-
15 graph (b) of this subsection must be in a form prescribed by the commissioner
16 by rule and include a description of the reasons for the undue hardship pe-
17 riod, the start and expected end dates of the undue hardship period and any
18 other information required by the commissioner.

19 “(B) The employee’s written consent shall be in a form prescribed by the
20 commissioner by rule and include:

21 “(i) A description of the employer’s reasons for the undue hardship period;

22 “(ii) The start and expected end dates of the undue hardship period;

23 “(iii) A statement that the employer may require the employee to work
24 up to 84 hours per workweek for up to four workweeks during the undue
25 hardship period;

26 “(iv) A statement that the employer may require the employee to work
27 up to 80 hours per workweek for the remainder of the undue hardship period;

28 “(v) A statement that the employee consents to working up to 84 hours
29 per workweek for up to four workweeks during the undue hardship period
30 and up to 80 hours per workweek for the remainder of the undue hardship

1 period;

2 “(vi) Contact information for the Bureau of Labor and Industries; and

3 “(vii) Any other information required by the commissioner.

4 “(6) An employer may not coerce an employee into consenting to work
5 more than 55 hours in a given workweek.

6 “(7) This section does not apply to:

7 “(a) An employee employed in a cannery, drier or packing plant that is
8 located on a farm and primarily processes products produced on the farm;

9 “(b) An employee employed in a cannery, drier or packing plant who is
10 engaged in manufacturing, as that term is defined in ORS 652.020; **or**

11 “[*(c) An employee employed by a seafood processor, as that term is defined*
12 *in ORS 653.263; or*]

13 “[*(d)*] (c) An employee employed in a cannery, drier or packing plant
14 whose principal duties are administrative in nature or who is not otherwise,
15 in the usual course of the employee’s duties, engaged in the direct processing
16 of goods.

17 “(8) Subsections (2) to (6) of this section do not apply to employees who
18 are represented by a labor organization for purposes of collective bargaining
19 with their employer, provided limits on the required hours of work and
20 overtime payment have been agreed to between the employer and labor or-
21 ganization, or if no agreement is reached, then, for the purposes of this
22 subsection, such limits and payments shall not be deemed to be changed from
23 the previous collective bargaining agreement between the employer and labor
24 organization unless the employees have been locked out or are engaged in
25 a strike or the employer has unilaterally implemented new terms and condi-
26 tions of employment.

27 “(9)(a) Notwithstanding ORS 653.256, in addition to any other penalty
28 provided by law, the commissioner may assess the following civil penalties
29 against an employer:

30 “(A) \$2,000 per violation if the commissioner determines the employer

1 coerced an employee into consenting under subsection (2)(b) of this section
2 to work more than 55 hours in any given workweek; and

3 “(B) \$3,000 per violation if the commissioner determines the employer
4 coerced an employee into consenting under subsection (5) of this section to
5 work more than 55 hours per workweek in any given workweek during an
6 undue hardship period.

7 “(b) Each violation described in paragraph (a) of this subsection is a
8 separate and distinct offense. In the case of a continuing violation, each
9 workweek’s continuance is a separate and distinct violation.

10 “(c) Civil penalties authorized by this subsection shall be imposed in the
11 manner provided in ORS 183.745. All sums collected as penalties under this
12 subsection shall be applied and paid over as provided in ORS 653.256.

13 “(10)(a) In addition to any other remedy provided by law, an employee has
14 a private cause of action against an employer if the employer violates sub-
15 section (2) of this section by requiring the employee to work more than the
16 applicable limit for the maximum allowable hours of employment in one
17 workweek.

18 “(b) If the employee prevails in an action brought under this section, the
19 court may enter judgment against the employer for:

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

21 “(B) Equitable relief; and

22 “(C) Liquidated damages in an amount equal to twice the employee’s
23 overtime wages earned during the period not allowed under subsection (2)
24 of this section.

25 “(c) In an action brought under this section, the court may award to the
26 prevailing plaintiff costs, disbursements and reasonable attorney fees. Any
27 attorney fee agreement is subject to approval by the court.

28 **“SECTION 2.** ORS 652.035 is amended to read:

29 “652.035. (1) Any employee asserting a violation of ORS 652.020[, 653.263]
30 or 653.265 may file a complaint with the Commissioner of the Bureau of La-

1 bor and Industries under ORS 659A.820 or a civil action as provided in ORS
2 659A.885.

3 “(2) In addition to any other damages provided by law, the commissioner
4 may assess a civil penalty against the employer in the amount of \$1,000.

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

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

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

17 **“SECTION 3.** ORS 659A.885, as amended by section 9, chapter 197,
18 Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is
19 amended to read:

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

1 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
2 cept as provided in subsection (3) of this section:

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

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

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

10 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
11 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, [653.263,] 653.265, 653.547,
12 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
13 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
14 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
15 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
16 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421; or

17 “(b) ORS 653.470, except an action may not be brought for a claim relating
18 to ORS 653.450.

19 “(3) In any action under subsection (1) of this section alleging a violation
20 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
21 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
22 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
23 659A.318, 659A.355 or 659A.421:

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

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

28 “(c) Upon appeal of any judgment finding a violation, the appellate court
29 shall review the judgment pursuant to the standard established by ORS
30 19.415 (1); and

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

2 “(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this
3 section alleging a violation of ORS 652.220, the court may award punitive
4 damages if:

5 “(a) It is proved by clear and convincing evidence that an employer has
6 engaged in fraud, acted with malice or acted with willful and wanton mis-
7 conduct; or

8 “(b) An employer was previously adjudicated in a proceeding under this
9 section or under ORS 659A.850 for a violation of ORS 652.220.

10 “(5) In any action under subsection (1) of this section alleging a violation
11 of ORS 653.060, the court may award, in addition to the relief authorized
12 under subsection (1) of this section, compensatory damages or \$200, which-
13 ever is greater.

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

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

22 “(8) Any individual against whom any distinction, discrimination or re-
23 striction on account of race, color, religion, sex, sexual orientation, national
24 origin, marital status or age, if the individual is 18 years of age or older,
25 has been made by any place of public accommodation, as defined in ORS
26 659A.400, by any employee or person acting on behalf of the place or by any
27 person aiding or abetting the place or person in violation of ORS 659A.406
28 may bring an action against the operator or manager of the place, the em-
29 ployee or person acting on behalf of the place or the aider or abettor of the
30 place or person. Notwithstanding subsection (1) of this section, in an action

1 under this subsection:

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

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

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

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

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

14 “(f) Upon any appeal of a judgment under this subsection, the appellate
15 court shall review the judgment pursuant to the standard established by ORS
16 19.415 (1).

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

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

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

29 “(10) In any action under subsection (1) of this section alleging a vio-
30 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal

1 housing law, when the commissioner is pursuing the action on behalf of an
2 aggrieved complainant, the court shall award reasonable attorney fees to the
3 commissioner if the commissioner prevails in the action. The court may
4 award reasonable attorney fees and expert witness fees incurred by a de-
5 fendant that prevails in the action if the court determines that the commis-
6 sioner had no objectively reasonable basis for asserting the claim or for
7 appealing an adverse decision of the trial court.

8 “(11) In an action under subsection (1) or (9) of this section alleging a
9 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
10 ing law:

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

12 “(A) Has been injured by an unlawful practice or discriminatory housing
13 practice; or

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

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

21 **“SECTION 4.** ORS 659A.885, as amended by sections 9 and 10, chapter
22 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is
23 amended to read:

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

1 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
2 bor and Industries, or if a complaint was not filed before the action was
3 commenced, the two-year period immediately preceding the filing of the
4 action. In any action under this subsection, the court may allow the pre-
5 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
6 cept as provided in subsection (3) of this section:

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

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

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

14 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
15 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, [653.263,] 653.265, 653.547,
16 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
17 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
18 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
19 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
20 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.357 or
21 659A.421; or

22 “(b) ORS 653.470, except an action may not be brought for a claim relating
23 to ORS 653.450.

24 “(3) In any action under subsection (1) of this section alleging a violation
25 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
26 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
27 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
28 659A.318, 659A.355, 659A.357 or 659A.421:

29 “(a) The court may award, in addition to the relief authorized under
30 subsection (1) of this section, compensatory damages or \$200, whichever is

1 greater, and punitive damages;

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

3 “(c) Upon appeal of any judgment finding a violation, the appellate court
4 shall review the judgment pursuant to the standard established by ORS
5 19.415 (1); and

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

7 “(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this
8 section alleging a violation of ORS 652.220, the court may award punitive
9 damages if:

10 “(a) It is proved by clear and convincing evidence that an employer has
11 engaged in fraud, acted with malice or acted with willful and wanton mis-
12 conduct; or

13 “(b) An employer was previously adjudicated in a proceeding under this
14 section or under ORS 659A.850 for a violation of ORS 652.220.

15 “(5) In any action under subsection (1) of this section alleging a violation
16 of ORS 653.060, the court may award, in addition to the relief authorized
17 under subsection (1) of this section, compensatory damages or \$200, which-
18 ever is greater.

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

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

27 “(8) Any individual against whom any distinction, discrimination or re-
28 striction on account of race, color, religion, sex, sexual orientation, national
29 origin, marital status or age, if the individual is 18 years of age or older,
30 has been made by any place of public accommodation, as defined in ORS

1 659A.400, by any employee or person acting on behalf of the place or by any
2 person aiding or abetting the place or person in violation of ORS 659A.406
3 may bring an action against the operator or manager of the place, the em-
4 ployee or person acting on behalf of the place or the aider or abettor of the
5 place or person. Notwithstanding subsection (1) of this section, in an action
6 under this subsection:

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

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

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

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

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

19 “(f) Upon any appeal of a judgment under this subsection, the appellate
20 court shall review the judgment pursuant to the standard established by ORS
21 19.415 (1).

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

1 relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

13 “(11) In an action under subsection (1) or (9) of this section alleging a
14 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
15 ing law:

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

17 “(A) Has been injured by an unlawful practice or discriminatory housing
18 practice; or

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

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

26 **“SECTION 5. ORS 653.263 is repealed.”**

27