

Minority Report
A-Engrossed
Senate Bill 1567

Ordered by the Senate February 18
Including Senate Minority Report Amendments dated February 18

Sponsored by nonconcurring members of the Senate Committee on Judiciary: Senators LINTHICUM, OLSEN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Restricts arbitration award from ordering disciplinary action that differs from disciplinary action imposed by law enforcement agency if arbitrator makes finding that misconduct occurred consistent with agency's finding of misconduct, and disciplinary action imposed by agency is consistent with provisions of discipline guide or discipline matrix adopted by agency as result of collective bargaining and incorporated into agency's disciplinary policies.]

[Specifies that for purposes of collective bargaining involving sworn employees of law enforcement agency, "employment relations" includes development of discipline guide or discipline matrix.]

[Declares emergency, effective on passage.]

Specifies requirements for arbitration proceeding agreed to by written agreement between public employer and exclusive representative. Permits public employer and exclusive representative to enter into collective bargaining agreement that provides for alternative arbitration procedure, provided that procedure meets certain minimum requirements. Requires Employment Relations Board to adopt rules establishing minimum qualifications for qualified arbitrator. Includes arbitration procedures, including standards, guidelines or procedures for determining disciplinary action, as mandatory subject of bargaining.

Permits arbitrator in proceeding involving alleged misconduct by law enforcement officer to modify disciplinary action imposed by law enforcement agency in certain circumstances.

Establishes standards for justifying disciplinary action taken against public employees. Requires every collective bargaining agreement entered into on or after specified date to include provision that requires arbitrator's disciplinary decision to be based on such standards.

Makes it unlawful employment practice for public employer to deny opportunities for person to be selected as arbitrator because person previously issued arbitration award in accordance with requirements for conducting arbitration proceeding. Makes it unlawful employment practice for public employer to deny public employee fair and impartial arbitration process or to discriminate or retaliate against employee for participating in arbitration process. Allows person to file complaint with Commissioner of Bureau of Labor and Industries and bring civil action alleging unlawful practice. Specifies remedies available for action arising on or after specified date.

Requires certain law enforcement agencies to submit annual report to Legislative Assembly that includes information regarding disciplinary action imposed by agency and under arbitration awards. Makes certain personally identifiable information collected during preparation of report and certain materials and documents that include personal information of arbitrator exempt from public records requests made on or after specified date.

A BILL FOR AN ACT

Relating to arbitration awards; creating new provisions; and amending ORS 243.650, 243.656, 243.706 and 659A.885.

Be It Enacted by the People of the State of Oregon:

ARBITRATION

(Procedures)

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 1.** ORS 243.706 is amended to read:

2 243.706. (1)(a) A public employer may enter into a written agreement with the exclusive repre-
3 sentative of an appropriate bargaining unit setting forth a grievance procedure culminating in
4 binding arbitration [*or any other dispute resolution process agreed to by the parties*].

5 **(b) An arbitrator's decision in a proceeding under this subsection shall be:**

6 **(A) Made in writing;**

7 **(B) Based on a standard described in section 3 of this 2020 Act if the arbitrator's decision**
8 **is to impose disciplinary action; and**

9 **(C) Final and binding upon the parties if the decision is made within the scope and terms**
10 **of the collective bargaining agreement.**

11 **(2)(a) For purposes of carrying out the procedure for arbitration under subsection (1) of**
12 **this section, the selection of the arbitrator shall be conducted in the manner provided in ORS**
13 **243.746 (2).**

14 **(b) The Employment Relations Board shall adopt rules establishing the minimum quali-**
15 **fications necessary for an arbitrator to be considered qualified to participate in an arbi-**
16 **tration proceeding under this section.**

17 **(c) Nothing in this subsection is intended to prohibit a public employer and the exclusive**
18 **representative from agreeing in writing to a permanent selection of an arbitrator or a list**
19 **of arbitrators provided that each arbitrator who is permanently selected meets the minimum**
20 **qualifications established by the board by rule.**

21 **(3) As a condition of enforceability, any arbitration award issued pursuant to a proceeding**
22 **under subsection (1) of this section that orders the reinstatement of a public employee or other-**
23 **wise relieves the public employee of responsibility for misconduct shall comply with public policy**
24 **requirements as clearly defined in statutes or judicial decisions including but not limited to policies**
25 **respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or**
26 **deadly force and serious criminal misconduct, related to work. In addition, with respect to claims**
27 **that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based**
28 **upon the public employer's alleged previous differential treatment of employees for the same or**
29 **similar conduct, the arbitration award must conform to the following principles:**

30 **(a) Some misconduct is so egregious that no employee can reasonably rely on past treatment for**
31 **similar offenses as a justification or defense to discharge or other discipline.**

32 **(b) Public managers have a right to change disciplinary policies at any time, notwithstanding**
33 **prior practices, if such managers give reasonable advance notice to affected employees and the**
34 **change does not otherwise violate a collective bargaining agreement.**

35 **[(2)] (4) In addition to subsection (1) of this section, a public employer may enter into a written**
36 **agreement with the exclusive representative of its employees providing that a labor dispute over**
37 **conditions and terms of a contract may be resolved through binding arbitration.**

38 **(5) When an arbitration proceeding involves alleged misconduct by a law enforcement**
39 **officer of any law enforcement agency, as those terms are defined in ORS 131.930, the**
40 **arbitrator may modify the employer's disciplinary action as follows:**

41 **(a) If the law enforcement agency imposes disciplinary action pursuant to a discipline**
42 **guide or discipline matrix that is included in the terms of the collective bargaining agree-**
43 **ment, the arbitrator may issue an arbitration award imposing disciplinary action that is**
44 **based on a standard described in section 3 of this 2020 Act and that is consistent with the**
45 **provisions of the discipline guide or discipline matrix.**

1 **(b) If the law enforcement agency imposes a disciplinary action and the terms of the**
2 **collective bargaining agreement do not include a discipline guide or a discipline matrix, the**
3 **arbitrator shall apply a standard described in section 3 of this 2020 Act in issuing an arbi-**
4 **tration award imposing disciplinary action.**

5 [(3)] **(6)** In an arbitration proceeding under this section, the arbitrators, or a majority of the
6 arbitrators, may:

7 (a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

8 (A) Compel the attendance of a witness properly served by either party; and

9 (B) Require from either party the production of books, papers and documents the arbitrators find
10 are relevant to the proceeding;

11 (b) Administer oaths or affirmations to witnesses; and

12 (c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

13 [(4)] **(7)** The arbitrators shall promptly provide a copy of a subpoena issued under this section
14 to each party to the arbitration proceeding.

15 [(5)] **(8)** The arbitrators issuing a subpoena under this section may rule on objections to the is-
16 suance of the subpoena.

17 [(6)] **(9)** If a person fails to comply with a subpoena issued under this section or if a witness
18 refuses to testify on a matter on which the witness may be lawfully questioned, the party who re-
19 quested the subpoena or seeks the testimony may apply to the arbitrators for an order authorizing
20 the party to apply to the circuit court of any county to enforce the subpoena or compel the testi-
21 mony. On the application of the attorney of record for the party or on the application of the
22 arbitrators, or a majority of the arbitrators, the court may require the person or witness to show
23 cause why the person or witness should not be punished for contempt of court to the same extent
24 and purpose as if the proceedings were pending before the court.

25 [(7)] **(10)** Witnesses appearing pursuant to subpoena, other than parties or officers or employees
26 of the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS
27 44.415 (2).

28 **(11) The cost of representation in a proceeding under this section shall be borne equally**
29 **by the parties involved in the proceeding.**

30 **(12) Nothing in this section is intended to prohibit a public employer and the exclusive**
31 **representative from entering into a collective bargaining agreement that provides for an al-**
32 **ternative arbitration procedure other than the arbitration procedure described under this**
33 **section, provided that the agreement:**

34 (a) **Includes standards for the selection of a qualified arbitrator;**

35 (b) **Provides for final and binding arbitration;**

36 (c) **Delineates the scope and authority of the arbitrator in making an arbitration decision**
37 **and award; and**

38 (d) **Specifies how the costs of arbitration shall be borne.**

39 **(13) As used in this section:**

40 (a) **“Discipline guide” means a grid that is designed to provide parameters for the level**
41 **of discipline to be imposed for an act of misconduct that is categorized by the severity of the**
42 **misconduct and take into account the presumptive level of discipline for the misconduct and**
43 **any aggravating or mitigating factors.**

44 (b) **“Discipline matrix” means a grid used to determine the level of discipline to be im-**
45 **posed for an act of misconduct that is categorized by the severity of the misconduct, ac-**

1 cording to the intersection where the category of misconduct and the level of disciplinary
2 action meet.

3 **SECTION 2.** Sections 3 to 6 of this 2020 Act are added to and made a part of ORS 243.650
4 to 243.806.

5 **SECTION 3. Standards for imposing discipline.** (1) For purposes of determining whether
6 just cause exists to issue an arbitration award imposing disciplinary action in an arbitration
7 proceeding under ORS 243.706, an arbitrator shall consider all of the following:

8 (a) Whether the public employer provided notice to the public employee warning the
9 employee of disciplinary consequences that may occur as a result of the employee's conduct.

10 (b) Whether the rules or policies of the public employer are reasonably related to the
11 employer's business efficiency and performance that an employer may expect from an em-
12 ployee.

13 (c) Whether the employer, prior to taking disciplinary action against the employee, con-
14 ducted an inquiry or investigation using an impartial and objective method to determine
15 whether the employee engaged in misconduct.

16 (d) Whether the public employer obtained substantial evidence to support a finding of
17 misconduct.

18 (e) Whether the employer's disciplinary action was applied in a consistent and
19 nondiscriminatory manner.

20 (f) Whether the degree of discipline was reasonably related to the seriousness of the
21 employee's misconduct and the employee's past conduct.

22 (2) Notwithstanding ORS 236.360 (4), with regard to public employees who are represented
23 under a collective bargaining agreement, an arbitrator may issue an arbitration award under
24 ORS 243.706 imposing disciplinary action that is based on a standard other than the just
25 cause standard described in subsection (1) of this section provided that:

26 (a) The standard was agreed to as a result of the collective bargaining process between
27 a public employer and the exclusive representative;

28 (b) The disciplinary standard is included in the terms of the collective bargaining agree-
29 ment; and

30 (c) The standard requires, at a minimum, that the arbitrator consider the following:

31 (A) Whether the public employer has conducted an inquiry or investigation using impar-
32 tial and objective methods that are consistent with constitutional due process principles to
33 determine whether a public employee violated the employer's policy or rules; and

34 (B) Whether the degree of disciplinary action imposed by the public employer was rea-
35 sonably related and proportionate to the seriousness of the employee's misconduct and made
36 in consideration of any mitigating factors or circumstances and the employee's past conduct.

37 (3) Every collective bargaining agreement entered into on or after January 1, 2021, shall
38 include a provision that requires any arbitrator's decision to impose disciplinary action to
39 be based on a standard described under subsection (1) or (2) of this section.

40
41 (Prohibited Conduct)

42
43 **SECTION 4. Prohibited discrimination against arbitrator.** (1) It is an unlawful employ-
44 ment practice for a public employer to deny future opportunities for a person to be selected
45 as an arbitrator under ORS 243.706 or in any manner discriminate against the person because

1 the person previously issued an arbitration award in accordance with the arbitration proce-
2 dures authorized in ORS 243.706.

3 (2)(a) Except as provided in paragraph (b) of this subsection, a person may file a com-
4 plaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 for
5 a violation of this section and may bring a civil action under ORS 659A.885.

6 (b) The filing of a complaint with the Employment Relations Board by a person alleging
7 an unfair labor practice based on the conduct prohibited under subsection (1) of this section
8 precludes the filing of a complaint under ORS 659A.820.

9 **SECTION 5. Prohibited discrimination against employee.** (1) It is an unlawful employment
10 practice under ORS chapter 659A for a public employer to deny an employee a fair and im-
11 partial arbitration process or to discriminate or retaliate against the employee in any way
12 for the employee's participation in an arbitration proceeding under ORS 243.706.

13 (2)(a) Except as provided under paragraph (b) of this subsection, an employee may file a
14 complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820
15 for a violation of this section and may bring a civil action under ORS 659A.885.

16 (b) The filing of a complaint with the Employment Relations Board by a person alleging
17 an unfair labor practice based on the conduct prohibited under subsection (1) of this section
18 precludes the filing of a complaint under ORS 659A.820.

19
20 (Reporting)

21
22 **SECTION 6. Law enforcement agency reporting.** (1) As used in this section:

23 (a) "Law enforcement agency" has the meaning given that term in ORS 131.930.

24 (b) "Law enforcement officer" has the meaning given that term in ORS 131.930.

25 (2) A law enforcement agency that is located in a city with a population exceeding 100,000
26 shall submit an annual report to the Legislative Assembly on or before January 15 of each
27 year in the manner provided in ORS 192.245. The report must include:

28 (a) A description of the manner in which the disciplinary policies and procedures included
29 in a collective bargaining agreement entered into by the law enforcement agency and the
30 exclusive representative of the appropriate bargaining unit of law enforcement officers con-
31 form to the standards for imposing disciplinary action established under section 3 of this 2020
32 Act.

33 (b) A description of how the disciplinary policies and procedures in the collective bar-
34 gaining agreement were applied to arbitration awards awarded in the prior calendar year.

35 (c) An accounting of the number of disciplinary actions over the prior calendar year that:

36 (A) The law enforcement agency initiated against law enforcement officer employees.

37 (B) That were sent to arbitration.

38 (C) That were sustained, reversed in whole or adjusted in part by the arbitrator.

39 (d) The total marginal cost of arbitration awards incurred by the law enforcement agency
40 over the prior calendar year.

41
42 (Miscellaneous)

43
44 **SECTION 7.** ORS 243.650 is amended to read:

45 243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

1 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board
2 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
3 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
4 nonacademically licensed school employees. Academically licensed units may include but are not
5 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
6 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
7 to June 6, 1995, or to any school district with fewer than 50 employees.

8 (2) "Board" means the Employment Relations Board.

9 (3) "Certification" means official recognition by the board that a labor organization is the ex-
10 clusive representative for all of the employees in the appropriate bargaining unit.

11 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
12 and the representative of its employees to meet at reasonable times and confer in good faith with
13 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
14 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
15 concerning the interpretation or application of a collective bargaining agreement, and to execute
16 written contracts incorporating agreements that have been reached on behalf of the public employer
17 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
18 negotiate does not compel either party to agree to a proposal or require the making of a concession.
19 This subsection may not be construed to prohibit a public employer and a certified or recognized
20 representative of its employees from discussing or executing written agreements regarding matters
21 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
22 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

23 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute
24 are required by law to submit their differences to a third party for a final and binding decision.

25 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-
26 son who formulates, determines and effectuates management policies in the area of collective bar-
27 gaining.

28 (7)(a) "Employment relations" includes, but is not limited to, matters concerning:

29 (A) Direct or indirect monetary benefits, hours, vacations[,] and sick leave[.];

30 (B) Labor organization access to and communication with represented employees[.];

31 (C) **Arbitration and grievance procedures, including standards, guidelines or procedures for**
32 **determining disciplinary action imposed under an arbitration award;** and

33 (D) Other conditions of employment.

34 (b) "Employment relations" does not include subjects determined to be permissive, nonmanda-
35 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

36 (c) After June 6, 1995, "employment relations" does not include subjects that the Employment
37 Relations Board determines to have a greater impact on management's prerogative than on employee
38 wages, hours, or other terms and conditions of employment.

39 (d) "Employment relations" does not include subjects that have an insubstantial or de minimis
40 effect on public employee wages, hours, and other terms and conditions of employment.

41 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
42 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
43 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
44 gum chewing and similar matters of personal conduct, the standards and procedures for student
45 discipline, the time between student classes, the selection, agendas and decisions of 21st Century

1 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
2 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
3 subsection.

4 (f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
5 Department of Corrections who have direct contact with adults in custody, "employment relations"
6 includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels
7 that have a significant impact on the on-the-job safety of the employees.

8 (g) For all other employee bargaining except school district bargaining and except as provided
9 in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues
10 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
11 the-job safety of public employees), scheduling of services provided to the public, determination of
12 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
13 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
14 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
15 matters of personal conduct at work, and any other subject proposed that is permissive under par-
16 agraphs (b), (c) and (d) of this subsection.

17 (8) "Exclusive representative" means the labor organization that, as a result of certification by
18 the board or recognition by the employer, has the right to be the collective bargaining agent of all
19 employees in an appropriate bargaining unit.

20 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one
21 or more impartial individuals who review the positions of the parties, resolve factual differences and
22 make recommendations for settlement of the dispute.

23 (10) "Fair-share agreement" means an agreement between the public employer and the recog-
24 nized or certified bargaining representative of public employees whereby employees who are not
25 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
26 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
27 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
28 security agreement declaring they desire that the agreement be rescinded, the board shall take a
29 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
30 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
31 election favor the union security agreement, the board shall certify deauthorization of the agree-
32 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
33 calendar days after the collective bargaining agreement is executed. Only one such election may be
34 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
35 between a public employer and the recognized or certified bargaining representative.

36 (11) "Final offer" means the proposed contract language and cost summary submitted to the
37 mediator within seven days of the declaration of impasse.

38 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
39 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
40 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
41 the proximate relation of employer and employee.

42 (13) "Labor organization" means any organization that has as one of its purposes representing
43 employees in their employment relations with public employers.

44 (14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior
45 to the date scheduled for an interest arbitration hearing.

1 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission
2 and any other board or commission empowered to levy taxes.

3 (16) "Managerial employee" means an employee of the State of Oregon or a public university
4 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
5 who represents management's interest by taking or effectively recommending discretionary actions
6 that control or implement employer policy, and who has discretion in the performance of these
7 management responsibilities beyond the routine discharge of duties. A "managerial employee" need
8 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
9 "managerial employee" does not include faculty members at a community college, college or uni-
10 versity.

11 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
12 between the public employer and the exclusive representative regarding employment relations.

13 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-
14 sive representative in negotiations and contract administration of all persons in an appropriate
15 bargaining unit who are not members of the organization serving as exclusive representative of the
16 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
17 be an amount agreed upon by the public employer and the exclusive representative of the employees.

18 (19) "Public employee" means an employee of a public employer but does not include elected
19 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
20 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-
21 visory employees or managerial employees.

22 (20) "Public employer" means the State of Oregon, and the following political subdivisions:
23 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
24 politan service districts, public service corporations or municipal corporations and public and
25 quasi-public corporations.

26 (21) "Public employer representative" includes any individual or individuals specifically desig-
27 nated by the public employer to act in its interests in all matters dealing with employee represen-
28 tation, collective bargaining and related issues.

29 (22) "Strike" means a public employee's refusal in concerted action with others to report for
30 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
31 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
32 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
33 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
34 or impair the right of any public employee to lawfully express or communicate a complaint or
35 opinion on any matter related to the conditions of employment.

36 (23)(a) "Supervisory employee" means any individual having authority in the interest of the
37 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
38 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
39 commend such action, if in connection therewith, the exercise of the authority is not of a merely
40 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
41 sory status in any Employment Relations Board proceeding or in negotiations for any collective
42 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
43 board proceeding or contract negotiation.

44 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
45 352.002 or the Oregon Health and Science University who:

1 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
2 sistant dean, head or equivalent position; or

3 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-
4 search or other scholarly accomplishments.

5 (c) "Supervisory employee" does not include:

6 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
7 tionally been classified as supervisory;

8 (B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the
9 work of other employees but does not have the authority to hire, discharge or impose economic
10 discipline on those employees;

11 (C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
12 Science University who is not a faculty member described in paragraph (b) of this subsection; or

13 (D) An employee of the Oregon State Police who:

14 (i) Serves in a rank equivalent to or below the rank of sergeant;

15 (ii) Is prohibited from striking by ORS 243.736; and

16 (iii) Assigns, transfers or directs the work of other employees but does not hire, discharge or
17 impose economic discipline on those employees.

18 (24) "Unfair labor practice" means the commission of an act designated an unfair labor practice
19 in ORS 243.672.

20 (25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute
21 mutually agree to submit their differences to a third party for a final and binding decision.

22 **SECTION 8.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, is amended
23 to read:

24 243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

25 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board
26 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
27 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
28 nonacademically licensed school employees. Academically licensed units may include but are not
29 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
30 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
31 to June 6, 1995, or to any school district with fewer than 50 employees.

32 (2) "Board" means the Employment Relations Board.

33 (3) "Certification" means official recognition by the board that a labor organization is the ex-
34 clusive representative for all of the employees in the appropriate bargaining unit.

35 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
36 and the representative of its employees to meet at reasonable times and confer in good faith with
37 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
38 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
39 concerning the interpretation or application of a collective bargaining agreement, and to execute
40 written contracts incorporating agreements that have been reached on behalf of the public employer
41 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
42 negotiate does not compel either party to agree to a proposal or require the making of a concession.
43 This subsection may not be construed to prohibit a public employer and a certified or recognized
44 representative of its employees from discussing or executing written agreements regarding matters
45 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-

1 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

2 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute
3 are required by law to submit their differences to a third party for a final and binding decision.

4 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-
5 son who formulates, determines and effectuates management policies in the area of collective bar-
6 gaining.

7 (7)(a) "Employment relations" includes, but is not limited to, matters concerning:

8 (A) Direct or indirect monetary benefits, hours, vacations[,] and sick leave[.];

9 (B) Labor organization access to and communication with represented employees[.];

10 (C) **Arbitration and grievance procedures, including standards, guidelines or procedures for**
11 **determining disciplinary action imposed under an arbitration award;** and

12 (D) Other conditions of employment.

13 (b) "Employment relations" does not include subjects determined to be permissive, nonmanda-
14 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

15 (c) After June 6, 1995, "employment relations" does not include subjects that the Employment
16 Relations Board determines to have a greater impact on management's prerogative than on employee
17 wages, hours, or other terms and conditions of employment.

18 (d) "Employment relations" does not include subjects that have an insubstantial or de minimis
19 effect on public employee wages, hours, and other terms and conditions of employment.

20 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
21 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
22 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
23 gum chewing and similar matters of personal conduct, the standards and procedures for student
24 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
25 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
26 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
27 subsection.

28 (f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
29 Department of Corrections who have direct contact with adults in custody, "employment relations"
30 includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels
31 that have a significant impact on the on-the-job safety of the employees.

32 (g) For all other employee bargaining except school district bargaining and except as provided
33 in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues
34 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
35 the-job safety of public employees), scheduling of services provided to the public, determination of
36 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
37 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
38 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
39 matters of personal conduct at work, and any other subject proposed that is permissive under par-
40 agraphs (b), (c) and (d) of this subsection.

41 (8) "Exclusive representative" means the labor organization that, as a result of certification by
42 the board or recognition by the employer, has the right to be the collective bargaining agent of all
43 employees in an appropriate bargaining unit.

44 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one
45 or more impartial individuals who review the positions of the parties, resolve factual differences and

1 make recommendations for settlement of the dispute.

2 (10) "Fair-share agreement" means an agreement between the public employer and the recog-
3 nized or certified bargaining representative of public employees whereby employees who are not
4 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
5 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
6 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
7 security agreement declaring they desire that the agreement be rescinded, the board shall take a
8 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
9 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
10 election favor the union security agreement, the board shall certify deauthorization of the agree-
11 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
12 calendar days after the collective bargaining agreement is executed. Only one such election may be
13 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
14 between a public employer and the recognized or certified bargaining representative.

15 (11) "Final offer" means the proposed contract language and cost summary submitted to the
16 mediator within seven days of the declaration of impasse.

17 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
18 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
19 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
20 the proximate relation of employer and employee.

21 (13) "Labor organization" means any organization that has as one of its purposes representing
22 employees in their employment relations with public employers.

23 (14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior
24 to the date scheduled for an interest arbitration hearing.

25 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission
26 and any other board or commission empowered to levy taxes.

27 (16) "Managerial employee" means an employee of the State of Oregon or a public university
28 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
29 who represents management's interest by taking or effectively recommending discretionary actions
30 that control or implement employer policy, and who has discretion in the performance of these
31 management responsibilities beyond the routine discharge of duties. A "managerial employee" need
32 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
33 "managerial employee" does not include faculty members at a community college, college or uni-
34 versity.

35 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
36 between the public employer and the exclusive representative regarding employment relations.

37 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-
38 sive representative in negotiations and contract administration of all persons in an appropriate
39 bargaining unit who are not members of the organization serving as exclusive representative of the
40 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
41 be an amount agreed upon by the public employer and the exclusive representative of the employees.

42 (19) "Public employee" means an employee of a public employer but does not include elected
43 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
44 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-
45 visory employees or managerial employees.

1 (20) "Public employer" means the State of Oregon, and the following political subdivisions:
2 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
3 politan service districts, public service corporations or municipal corporations and public and
4 quasi-public corporations.

5 (21) "Public employer representative" includes any individual or individuals specifically desig-
6 nated by the public employer to act in its interests in all matters dealing with employee represen-
7 tation, collective bargaining and related issues.

8 (22) "Strike" means a public employee's refusal in concerted action with others to report for
9 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
10 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
11 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
12 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
13 or impair the right of any public employee to lawfully express or communicate a complaint or
14 opinion on any matter related to the conditions of employment.

15 (23)(a) "Supervisory employee" means any individual having authority in the interest of the
16 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
17 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
18 commend such action, if in connection therewith, the exercise of the authority is not of a merely
19 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
20 sory status in any Employment Relations Board proceeding or in negotiations for any collective
21 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
22 board proceeding or contract negotiation.

23 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
24 352.002 or the Oregon Health and Science University who:

25 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
26 sistant dean, head or equivalent position; or

27 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-
28 search or other scholarly accomplishments.

29 (c) "Supervisory employee" does not include:

30 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
31 tionally been classified as supervisory;

32 (B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the
33 work of other employees but does not have the authority to hire, discharge or impose economic
34 discipline on those employees; or

35 (C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
36 Science University who is not a faculty member described in paragraph (b) of this subsection.

37 (24) "Unfair labor practice" means the commission of an act designated an unfair labor practice
38 in ORS 243.672.

39 (25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute
40 mutually agree to submit their differences to a third party for a final and binding decision.

41 **SECTION 9.** ORS 243.656 is amended to read:

42 243.656. The Legislative Assembly finds and declares that:

43 (1) **Public employees have the right to decide by their free will and desire to collectively**
44 **bargain the terms of their employment. This right is protected by the Oregon Constitution,**
45 **Oregon laws and the natural principle that employers and employees each have an ability to**

1 **capitalize their respective efforts;**

2 [(1)] (2) The people of this state have a fundamental interest in the development of harmonious
3 and cooperative relationships between government and its employees;

4 [(2)] (3) Recognition by public employers of the right of public employees to organize and full
5 acceptance of the principle and procedure of collective negotiation between public employers and
6 public employee organizations can alleviate various forms of strife and unrest. **A comprehensive
7 and fair collective bargaining process includes a consideration of terms regarding arbitrating
8 employer discipline.** Experience in the private and public sectors of our economy has proved that
9 unresolved disputes in the public service are injurious to the public, the governmental agencies, and
10 public employees;

11 [(3)] (4) Experience in private and public employment has also proved that protection by law of
12 the right of employees to organize and negotiate collectively safeguards employees and the public
13 from injury, impairment and interruptions of necessary services, and removes certain recognized
14 sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of
15 disputes arising out of differences as to wages, hours, terms and other working conditions, and by
16 establishing greater equality of bargaining power between public employers and public employees;

17 **(5) Collective bargaining must be a fair process without undue interference from the
18 Legislative Assembly. Employers and employees must be able to bargain based on their in-
19 dividual local needs;**

20 [(4)] (6) The state has a basic obligation to protect the public by attempting to assure the or-
21 derly and uninterrupted operations and functions of government. **Fair and objective disciplinary
22 standards that minimize public employers' personal discretion are vital to maintaining a fair,
23 productive and well-regulated public employee workforce;**

24 [(5)] (7) It is in the public interest to ensure that exclusive representatives of public employees
25 are able to effectively carry out their statutory duties by having direct access to represented em-
26 ployees, including communicating with the employees at the workplace or otherwise;

27 [(6)] (8) It is the purpose of ORS 243.650 to 243.806 to obligate public employers, public em-
28 ployees and their representatives to enter into collective negotiations with willingness to resolve
29 grievances and disputes relating to employment relations and to enter into written and signed con-
30 tracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650
31 to 243.806 to promote the improvement of employer-employee relations within the various public
32 employers by providing a uniform basis for recognizing the right of public employees to join organ-
33 izations of their own choice, and to be represented by such organizations in their employment re-
34 lations with public employers; and

35 [(7)] (9) Ensuring meaningful communication between labor organizations and employees in-
36 creases the effectiveness of public employees' work performance.

37
38 **PUBLIC RECORDS PROVISIONS**
39

40 **SECTION 10. For purposes of the conditional exemption described in ORS 192.345 (12),
41 materials and documents include the personal information of an arbitrator that has heard a
42 claim arising out of a personnel discipline action, including but not limited to the arbitrator's
43 residential address, residential telephone number, personal cellular telephone number or
44 personal electronic mail address.**

45 **SECTION 11. Section 10 of this 2020 Act applies to public records requests made on or**

1 after July 1, 2021.

2 **SECTION 12.** Sections 10 and 11 of this 2020 Act are repealed on July 1, 2022.

3 **SECTION 13.** Personally identifiable information collected during the preparation of the
4 annual report required under section 6 of this 2020 Act is exempt from disclosure under ORS
5 192.311 to 192.478 unless the public interest requires disclosure in the particular instance, in
6 the same manner as described in ORS 192.345.

7 **SECTION 14.** Section 13 of this 2020 Act applies to public records requests made on or
8 after January 1, 2021.

9 **SECTION 15.** Sections 13 and 14 of this 2020 Act are repealed on January 1, 2022.

10
11 **PENALTIES**

12
13 **SECTION 16.** ORS 659A.885 is amended to read:

14 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
15 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
16 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
17 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
18 court may order back pay in an action under this subsection only for the two-year period imme-
19 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
20 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
21 year period immediately preceding the filing of the action. In any action under this subsection, the
22 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
23 cept as provided in subsection (3) of this section:

24 (a) The judge shall determine the facts in an action under this subsection; and

25 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
26 review the judgment pursuant to the standard established by ORS 19.415 (3).

27 (2) An action may be brought under subsection (1) of this section alleging a violation of:

28 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
29 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
30 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
31 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
32 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309,
33 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421; [or]

34 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

35 (c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

36 (d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**

37 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
38 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
39 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
40 659A.290, 659A.318, 659A.355 or 659A.421, **a violation of section 4 of this 2020 Act that arises**
41 **on or after January 1, 2022, or a violation of section 5 of this 2020 Act that arises on or after**
42 **July 1, 2022:**

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

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

1 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
2 ment pursuant to the standard established by ORS 19.415 (1); and

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

4 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
5 olation of ORS 652.220, the court may award punitive damages if:

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

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

10 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
11 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
12 tion, compensatory damages or \$200, whichever is greater.

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

16 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
17 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
18 penalty in the amount of \$720.

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

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

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

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

33 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

34 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
35 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
36 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
37 and

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

40 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
41 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
42 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
43 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
44 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
45 manner as a person or group of persons may file a civil action under this section. In a civil action

1 filed under this subsection, the court may assess against the respondent, in addition to the relief
2 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

12 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
13 or 659A.421 or discrimination under federal housing law:

14 (a) "Aggrieved person" includes a person who believes that the person:

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

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

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

22 **SECTION 17.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, and
23 section 7, chapter 463, Oregon Laws 2019, is amended to read:

24 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
25 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
26 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
27 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
28 court may order back pay in an action under this subsection only for the two-year period imme-
29 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
30 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
31 year period immediately preceding the filing of the action. In any action under this subsection, the
32 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
33 cept as provided in subsection (3) of this section:

34 (a) The judge shall determine the facts in an action under this subsection; and

35 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
36 review the judgment pursuant to the standard established by ORS 19.415 (3).

37 (2) An action may be brought under subsection (1) of this section alleging a violation of:

38 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
39 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
40 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
41 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
42 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
43 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.370 or 659A.421; [or]

44 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

45 (c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

1 **(d) Section 5 of this 2020 Act that arises on or after July 1, 2021.**

2 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
3 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
4 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
5 659A.290, 659A.318, 659A.355, 659A.370 or 659A.421, **a violation of section 4 of this 2020 Act that**
6 **arises on or after January 1, 2022, or a violation of section 5 of this 2020 Act that arises on**
7 **or after July 1, 2022:**

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

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

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

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

14 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
15 olation of ORS 652.220, the court may award punitive damages if:

16 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
17 with malice or acted with willful and wanton misconduct; or

18 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
19 659A.850 for a violation of ORS 652.220.

20 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
21 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
22 tion, compensatory damages or \$200, whichever is greater.

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

26 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
27 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
28 penalty in the amount of \$720.

29 (8) Any individual against whom any distinction, discrimination or restriction on account of
30 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
31 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
32 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
33 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
34 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
35 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
36 section:

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

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

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

43 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

44 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
45 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable

1 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
2 and

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

5 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
6 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
7 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
8 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
9 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
10 manner as a person or group of persons may file a civil action under this section. In a civil action
11 filed under this subsection, the court may assess against the respondent, in addition to the relief
12 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 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
16 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
17 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
18 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
19 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
20 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
21 appealing an adverse decision of the trial court.

22 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
23 or 659A.421 or discrimination under federal housing law:

24 (a) "Aggrieved person" includes a person who believes that the person:

25 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

26 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
27 occur.

28 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
29 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
30 tifies that the case is of general public importance. The court may allow an intervenor prevailing
31 party costs and reasonable attorney fees at trial and on appeal.

32 **SECTION 18.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, section
33 7, chapter 463, Oregon Laws 2019, and section 12, chapter 701, Oregon Laws 2019, is amended to
34 read:

35 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
36 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
37 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
38 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
39 court may order back pay in an action under this subsection only for the two-year period imme-
40 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
41 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
42 year period immediately preceding the filing of the action. In any action under this subsection, the
43 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
44 cept as provided in subsection (3) of this section:

45 (a) The judge shall determine the facts in an action under this subsection; and

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

3 (2) An action may be brought under subsection (1) of this section alleging a violation of:

4 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
5 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
6 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
7 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
8 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
9 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421; [or]

10 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

11 (c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

12 (d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**

13 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
14 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
15 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
16 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421, **a violation of section 4 of this 2020**
17 **Act that arises on or after January 1, 2022, or a violation of section 5 of this 2020 Act that**
18 **arises on or after July 1, 2022:**

19 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
20 compensatory damages or \$200, whichever is 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 shall review the judg-
23 ment pursuant to the standard established by ORS 19.415 (1); and

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

25 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
26 olation of ORS 652.220, the court may award punitive damages if:

27 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
28 with malice or acted with willful and wanton misconduct; or

29 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
30 659A.850 for a violation of ORS 652.220.

31 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
32 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
33 tion, compensatory damages or \$200, whichever is greater.

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

37 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
38 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
39 penalty in the amount of \$720.

40 (8) Any individual against whom any distinction, discrimination or restriction on account of
41 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
42 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
43 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
44 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
45 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor

1 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
2 section:

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

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

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

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

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

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

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

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

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

26 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
27 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
28 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
29 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
30 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
31 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
32 appealing an adverse decision of the trial court.

33 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
34 or 659A.421 or discrimination under federal housing law:

35 (a) "Aggrieved person" includes a person who believes that the person:

36 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

37 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
38 occur.

39 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
40 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
41 tifies that the case is of general public importance. The court may allow an intervenor prevailing
42 party costs and reasonable attorney fees at trial and on appeal.

43 **SECTION 19.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
44 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
45 Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

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

11 (a) The judge shall determine the facts in an action under this subsection; and

12 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
13 review the judgment pursuant to the standard established by ORS 19.415 (3).

14 (2) An action may be brought under subsection (1) of this section alleging a violation of:

15 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
16 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
17 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
18 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
19 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
20 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421; [or]

21 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

22 (c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

23 (d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**

24 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
25 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
26 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
27 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421, **a violation of section 4**
28 **of this 2020 Act that arises on or after January 1, 2022, or a violation of section 5 of this 2020**
29 **Act that arises on or after July 1, 2022:**

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

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

33 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
34 ment pursuant to the standard established by ORS 19.415 (1); and

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

36 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
37 olation of ORS 652.220, the court may award punitive damages if:

38 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
39 with malice or acted with willful and wanton misconduct; or

40 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
41 659A.850 for a violation of ORS 652.220.

42 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
43 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
44 tion, compensatory damages or \$200, whichever is greater.

45 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574

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

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

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

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

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

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

20 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

21 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
22 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
23 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
24 and

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

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

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

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

37 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
38 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
39 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
40 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
41 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
42 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
43 appealing an adverse decision of the trial court.

44 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
45 or 659A.421 or discrimination under federal housing law:

1 (a) "Aggrieved person" includes a person who believes that the person:

2 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

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

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

9 **SECTION 20.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
10 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
11 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon
12 Laws 2019, is amended to read:

13 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
14 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
15 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
16 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
17 court may order back pay in an action under this subsection only for the two-year period imme-
18 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
19 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
20 year period immediately preceding the filing of the action. In any action under this subsection, the
21 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
22 cept as provided in subsection (3) of this section:

23 (a) The judge shall determine the facts in an action under this subsection; and

24 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
25 review the judgment pursuant to the standard established by ORS 19.415 (3).

26 (2) An action may be brought under subsection (1) of this section alleging a violation of:

27 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
28 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
29 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
30 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
31 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
32 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
33 659A.421; [or]

34 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

35 (c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

36 (d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**

37 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
38 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
39 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
40 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
41 659A.421, **a violation of section 4 of this 2020 Act that arises on or after January 1, 2022, or**
42 **a violation of section 5 of this 2020 Act that arises on or after July 1, 2022:**

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

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

1 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
2 ment pursuant to the standard established by ORS 19.415 (1); and

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

4 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
5 olation of ORS 652.220, the court may award punitive damages if:

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

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

10 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
11 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
12 tion, compensatory damages or \$200, whichever is greater.

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

16 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
17 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
18 penalty in the amount of \$720.

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

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

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

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

33 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

34 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
35 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
36 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
37 and

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

40 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
41 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
42 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
43 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
44 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
45 manner as a person or group of persons may file a civil action under this section. In a civil action

1 filed under this subsection, the court may assess against the respondent, in addition to the relief
2 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

12 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
13 or 659A.421 or discrimination under federal housing law:

14 (a) "Aggrieved person" includes a person who believes that the person:

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

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

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

22
23 **CAPTIONS**

24
25 **SECTION 21. The unit and section captions used in this 2020 Act are provided only for**
26 **the convenience of the reader and do not become part of the statutory law of this state or**
27 **express any legislative intent in the enactment of this 2020 Act.**