

Requested by Senator OLSEN

**PROPOSED MINORITY REPORT AMENDMENTS TO
SENATE BILL 1567**

1 On page 1 of the printed bill, line 2, after the second semicolon delete the
2 rest of the line and delete line 3 and insert “and amending ORS 243.650,
3 243.656, 243.706 and 659A.885.”.

4 Delete lines 5 through 26 and delete pages 2 through 9 and insert:

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**“ARBITRATION
“(Procedures)**

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

10 “243.706. (1)(a) A public employer may enter into a written agreement
11 with the exclusive representative of an appropriate bargaining unit setting
12 forth a grievance procedure culminating in binding arbitration [*or any other*
13 *dispute resolution process agreed to by the parties*].

14 **“(b) An arbitrator’s decision in a proceeding under this subsection
15 shall be:**

16 **“(A) Made in writing;**

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

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

21 **“(2)(a) For purposes of carrying out the procedure for arbitration**

1 **under subsection (1) of this section, the selection of the arbitrator**
2 **shall be conducted in the manner provided in ORS 243.746 (2).**

3 **“(b) The Employment Relations Board shall adopt rules establishing**
4 **the minimum qualifications necessary for an arbitrator to be consid-**
5 **ered qualified to participate in an arbitration proceeding under this**
6 **section.**

7 **“(c) Nothing in this subsection is intended to prohibit a public em-**
8 **ployer and the exclusive representative from agreeing in writing to a**
9 **permanent selection of an arbitrator or a list of arbitrators provided**
10 **that each arbitrator who is permanently selected meets the minimum**
11 **qualifications established by the board by rule.**

12 **“(3) As a condition of enforceability, any arbitration award issued pur-**
13 **suant to a proceeding under subsection (1) of this section that orders**
14 **the reinstatement of a public employee or otherwise relieves the public em-**
15 **ployee of responsibility for misconduct shall comply with public policy re-**
16 **quirements as clearly defined in statutes or judicial decisions including but**
17 **not limited to policies respecting sexual harassment or sexual misconduct,**
18 **unjustified and egregious use of physical or deadly force and serious criminal**
19 **misconduct, related to work. In addition, with respect to claims that a**
20 **grievant should be reinstated or otherwise relieved of responsibility for**
21 **misconduct based upon the public employer’s alleged previous differential**
22 **treatment of employees for the same or similar conduct, the arbitration**
23 **award must conform to the following principles:**

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

27 **“(b) Public managers have a right to change disciplinary policies at any**
28 **time, notwithstanding prior practices, if such managers give reasonable ad-**
29 **vance notice to affected employees and the change does not otherwise violate**
30 **a collective bargaining agreement.**

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

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

9 **“(a) If the law enforcement agency imposes disciplinary action
10 pursuant to a discipline guide or discipline matrix that is included in
11 the terms of the collective bargaining agreement, the arbitrator may
12 issue an arbitration award imposing disciplinary action that is based
13 on a standard described in section 3 of this 2020 Act and that is con-
14 sistent with the provisions of the discipline guide or discipline matrix.**

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

20 “[3] (6) In an arbitration proceeding under this section, the arbitrators,
21 or a majority of the arbitrators, may:

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

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

26 “(B) Require from either party the production of books, papers and docu-
27 ments the arbitrators find are relevant to the proceeding;

28 “(b) Administer oaths or affirmations to witnesses; and

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

1 “[4] (7) The arbitrators shall promptly provide a copy of a subpoena is-
2 sued under this section to each party to the arbitration proceeding.

3 “[5] (8) The arbitrators issuing a subpoena under this section may rule
4 on objections to the issuance of the subpoena.

5 “[6] (9) If a person fails to comply with a subpoena issued under this
6 section or if a witness refuses to testify on a matter on which the witness
7 may be lawfully questioned, the party who requested the subpoena or seeks
8 the testimony may apply to the arbitrators for an order authorizing the party
9 to apply to the circuit court of any county to enforce the subpoena or compel
10 the testimony. On the application of the attorney of record for the party or
11 on the application of the arbitrators, or a majority of the arbitrators, the
12 court may require the person or witness to show cause why the person or
13 witness should not be punished for contempt of court to the same extent and
14 purpose as if the proceedings were pending before the court.

15 “[7] (10) Witnesses appearing pursuant to subpoena, other than parties
16 or officers or employees of the public employer, shall receive fees and mile-
17 age as prescribed by law for witnesses in ORS 44.415 (2).

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

20 **“(12) Nothing in this section is intended to prohibit a public em-
21 ployer and the exclusive representative from entering into a collective
22 bargaining agreement that provides for an alternative arbitration
23 procedure other than the arbitration procedure described under this
24 section, provided that the agreement:**

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

26 **“(b) Provides for final and binding arbitration;**

27 **“(c) Delineates the scope and authority of the arbitrator in making
28 an arbitration decision and award; and**

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

30 **“(13) As used in this section:**

1 “(a) ‘Discipline guide’ means a grid that is designed to provide pa-
2 rameters for the level of discipline to be imposed for an act of mis-
3 conduct that is categorized by the severity of the misconduct and take
4 into account the presumptive level of discipline for the misconduct and
5 any aggravating or mitigating factors.

6 “(b) ‘Discipline matrix’ means a grid used to determine the level
7 of discipline to be imposed for an act of misconduct that is categorized
8 by the severity of the misconduct, according to the intersection where
9 the category of misconduct and the level of disciplinary action meet.

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

12 “SECTION 3. Standards for imposing discipline. (1) For purposes of
13 determining whether just cause exists to issue an arbitration award
14 imposing disciplinary action in an arbitration proceeding under ORS
15 243.706, an arbitrator shall consider all of the following:

16 “(a) Whether the public employer provided notice to the public
17 employee warning the employee of disciplinary consequences that may
18 occur as a result of the employee’s conduct.

19 “(b) Whether the rules or policies of the public employer are rea-
20 sonably related to the employer’s business efficiency and performance
21 that an employer may expect from an employee.

22 “(c) Whether the employer, prior to taking disciplinary action
23 against the employee, conducted an inquiry or investigation using an
24 impartial and objective method to determine whether the employee
25 engaged in misconduct.

26 “(d) Whether the public employer obtained substantial evidence to
27 support a finding of misconduct.

28 “(e) Whether the employer’s disciplinary action was applied in a
29 consistent and nondiscriminatory manner.

30 “(f) Whether the degree of discipline was reasonably related to the

1 **seriousness of the employee’s misconduct and the employee’s past**
2 **conduct.**

3 **“(2) Notwithstanding ORS 236.360 (4), with regard to public employ-**
4 **ees who are represented under a collective bargaining agreement, an**
5 **arbitrator may issue an arbitration award under ORS 243.706 imposing**
6 **disciplinary action that is based on a standard other than the just**
7 **cause standard described in subsection (1) of this section provided**
8 **that:**

9 **“(a) The standard was agreed to as a result of the collective bar-**
10 **gaining process between a public employer and the exclusive repre-**
11 **sentative;**

12 **“(b) The disciplinary standard is included in the terms of the col-**
13 **lective bargaining agreement; and**

14 **“(c) The standard requires, at a minimum, that the arbitrator con-**
15 **sider the following:**

16 **“(A) Whether the public employer has conducted an inquiry or in-**
17 **vestigation using impartial and objective methods that are consistent**
18 **with constitutional due process principles to determine whether a**
19 **public employee violated the employer’s policy or rules; and**

20 **“(B) Whether the degree of disciplinary action imposed by the pub-**
21 **lic employer was reasonably related and proportionate to the serious-**
22 **ness of the employee’s misconduct and made in consideration of any**
23 **mitigating factors or circumstances and the employee’s past conduct.**

24 **“(3) Every collective bargaining agreement entered into on or after**
25 **January 1, 2021, shall include a provision that requires any arbitrator’s**
26 **decision to impose disciplinary action to be based on a standard de-**
27 **scribed under subsection (1) or (2) of this section.**

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29

“(Prohibited Conduct)

30

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

3 **“(a) ‘Law enforcement agency’ has the meaning given that term in**
4 **ORS 131.930.**

5 **“(b) ‘Law enforcement officer’ has the meaning given that term in**
6 **ORS 131.930.**

7 **“(2) A law enforcement agency that is located in a city with a pop-**
8 **ulation exceeding 100,000 shall submit an annual report to the Legis-**
9 **lative Assembly on or before January 15 of each year in the manner**
10 **provided in ORS 192.245. The report must include:**

11 **“(a) A description of the manner in which the disciplinary policies**
12 **and procedures included in a collective bargaining agreement entered**
13 **into by the law enforcement agency and the exclusive representative**
14 **of the appropriate bargaining unit of law enforcement officers conform**
15 **to the standards for imposing disciplinary action established under**
16 **section 3 of this 2020 Act.**

17 **“(b) A description of how the disciplinary policies and procedures**
18 **in the collective bargaining agreement were applied to arbitration**
19 **awards awarded in the prior calendar year.**

20 **“(c) An accounting of the number of disciplinary actions over the**
21 **prior calendar year that:**

22 **“(A) The law enforcement agency initiated against law enforcement**
23 **officer employees.**

24 **“(B) That were sent to arbitration.**

25 **“(C) That were sustained, reversed in whole or adjusted in part by**
26 **the arbitrator.**

27 **“(d) The total marginal cost of arbitration awards incurred by the**
28 **law enforcement agency over the prior calendar year.**

29

30

“(Miscellaneous)”

1 **“SECTION 7.** ORS 243.650 is amended to read:

2 “243.650. As used in ORS 243.650 to 243.806, unless the context requires
3 otherwise:

4 “(1) ‘Appropriate bargaining unit’ means the unit designated by the Em-
5 ployment Relations Board or voluntarily recognized by the public employer
6 to be appropriate for collective bargaining. However, an appropriate bar-
7 gaining unit may not include both academically licensed and unlicensed or
8 nonacademically licensed school employees. Academically licensed units may
9 include but are not limited to teachers, nurses, counselors, therapists, psy-
10 chologists, child development specialists and similar positions. This limita-
11 tion does not apply to any bargaining unit certified or recognized prior to
12 June 6, 1995, or to any school district with fewer than 50 employees.

13 “(2) ‘Board’ means the Employment Relations Board.

14 “(3) ‘Certification’ means official recognition by the board that a labor
15 organization is the exclusive representative for all of the employees in the
16 appropriate bargaining unit.

17 “(4) ‘Collective bargaining’ means the performance of the mutual obli-
18 gation of a public employer and the representative of its employees to meet
19 at reasonable times and confer in good faith with respect to employment re-
20 lations for the purpose of negotiations concerning mandatory subjects of
21 bargaining, to meet and confer in good faith in accordance with law with
22 respect to any dispute concerning the interpretation or application of a col-
23 lective bargaining agreement, and to execute written contracts incorporating
24 agreements that have been reached on behalf of the public employer and the
25 employees in the bargaining unit covered by such negotiations. The obli-
26 gation to meet and negotiate does not compel either party to agree to a
27 proposal or require the making of a concession. This subsection may not be
28 construed to prohibit a public employer and a certified or recognized repre-
29 sentative of its employees from discussing or executing written agreements
30 regarding matters other than mandatory subjects of bargaining that are not

1 prohibited by law as long as there is mutual agreement of the parties to
2 discuss these matters, which are permissive subjects of bargaining.

3 “(5) ‘Compulsory arbitration’ means the procedure whereby parties in-
4 volved in a labor dispute are required by law to submit their differences to
5 a third party for a final and binding decision.

6 “(6) ‘Confidential employee’ means one who assists and acts in a confi-
7 dential capacity to a person who formulates, determines and effectuates
8 management policies in the area of collective bargaining.

9 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters
10 concerning:

11 “(A) Direct or indirect monetary benefits, hours, vacations[,] **and** sick
12 leave[,];

13 “(B) Labor organization access to and communication with represented
14 employees[,];

15 “(C) **Arbitration and** grievance procedures, **including standards,**
16 **guidelines or procedures for determining disciplinary action imposed**
17 **under an arbitration award;** and

18 “(D) Other conditions of employment.

19 “(b) ‘Employment relations’ does not include subjects determined to be
20 permissive, nonmandatory subjects of bargaining by the Employment Re-
21 lations Board prior to June 6, 1995.

22 “(c) After June 6, 1995, ‘employment relations’ does not include subjects
23 that the Employment Relations Board determines to have a greater impact
24 on management’s prerogative than on employee wages, hours, or other terms
25 and conditions of employment.

26 “(d) ‘Employment relations’ does not include subjects that have an in-
27 substantial or de minimis effect on public employee wages, hours, and other
28 terms and conditions of employment.

29 “(e) For school district bargaining, ‘employment relations’ excludes class
30 size, the school or educational calendar, standards of performance or criteria

1 for evaluation of teachers, the school curriculum, reasonable dress, grooming
2 and at-work personal conduct requirements respecting smoking, gum chewing
3 and similar matters of personal conduct, the standards and procedures for
4 student discipline, the time between student classes, the selection, agendas
5 and decisions of 21st Century Schools Councils established under ORS
6 329.704, requirements for expressing milk under ORS 653.077, and any other
7 subject proposed that is permissive under paragraphs (b), (c) and (d) of this
8 subsection.

9 “(f) For employee bargaining involving employees covered by ORS 243.736
10 and employees of the Department of Corrections who have direct contact
11 with adults in custody, ‘employment relations’ includes safety issues that
12 have an impact on the on-the-job safety of the employees or staffing levels
13 that have a significant impact on the on-the-job safety of the employees.

14 “(g) For all other employee bargaining except school district bargaining
15 and except as provided in paragraph (f) of this subsection, ‘employment re-
16 lations’ excludes staffing levels and safety issues (except those staffing levels
17 and safety issues that have a direct and substantial effect on the on-the-job
18 safety of public employees), scheduling of services provided to the public,
19 determination of the minimum qualifications necessary for any position, cri-
20 teria for evaluation or performance appraisal, assignment of duties, workload
21 when the effect on duties is insubstantial, reasonable dress, grooming, and
22 at-work personal conduct requirements respecting smoking, gum chewing,
23 and similar matters of personal conduct at work, and any other subject pro-
24 posed that is permissive under paragraphs (b), (c) and (d) of this subsection.

25 “(8) ‘Exclusive representative’ means the labor organization that, as a
26 result of certification by the board or recognition by the employer, has the
27 right to be the collective bargaining agent of all employees in an appropriate
28 bargaining unit.

29 “(9) ‘Fact-finding’ means identification of the major issues in a particular
30 labor dispute by one or more impartial individuals who review the positions

1 of the parties, resolve factual differences and make recommendations for
2 settlement of the dispute.

3 “(10) ‘Fair-share agreement’ means an agreement between the public em-
4 ployer and the recognized or certified bargaining representative of public
5 employees whereby employees who are not members of the employee organ-
6 ization are required to make an in-lieu-of-dues payment to an employee or-
7 ganization except as provided in ORS 243.666. Upon the filing with the board
8 of a petition by 30 percent or more of the employees in an appropriate bar-
9 gaining unit covered by such union security agreement declaring they desire
10 that the agreement be rescinded, the board shall take a secret ballot of the
11 employees in the unit and certify the results thereof to the recognized or
12 certified bargaining representative and to the public employer. Unless a
13 majority of the votes cast in an election favor the union security agreement,
14 the board shall certify deauthorization of the agreement. A petition for de-
15 authorization of a union security agreement must be filed not more than 90
16 calendar days after the collective bargaining agreement is executed. Only
17 one such election may be conducted in any appropriate bargaining unit dur-
18 ing the term of a collective bargaining agreement between a public employer
19 and the recognized or certified bargaining representative.

20 “(11) ‘Final offer’ means the proposed contract language and cost sum-
21 mary submitted to the mediator within seven days of the declaration of im-
22 passe.

23 “(12) ‘Labor dispute’ means any controversy concerning employment re-
24 lations or concerning the association or representation of persons in negoti-
25 ating, fixing, maintaining, changing, or seeking to arrange terms or
26 conditions of employment relations, regardless of whether the disputants
27 stand in the proximate relation of employer and employee.

28 “(13) ‘Labor organization’ means any organization that has as one of its
29 purposes representing employees in their employment relations with public
30 employers.

1 “(14) ‘Last best offer package’ means the offer exchanged by parties not
2 less than 14 days prior to the date scheduled for an interest arbitration
3 hearing.

4 “(15) ‘Legislative body’ means the Legislative Assembly, the city council,
5 the county commission and any other board or commission empowered to
6 levy taxes.

7 “(16) ‘Managerial employee’ means an employee of the State of Oregon
8 or a public university listed in ORS 352.002 who possesses authority to for-
9 mulate and carry out management decisions or who represents management’s
10 interest by taking or effectively recommending discretionary actions that
11 control or implement employer policy, and who has discretion in the per-
12 formance of these management responsibilities beyond the routine discharge
13 of duties. A ‘managerial employee’ need not act in a supervisory capacity in
14 relation to other employees. Notwithstanding this subsection, ‘managerial
15 employee’ does not include faculty members at a community college, college
16 or university.

17 “(17) ‘Mediation’ means assistance by an impartial third party in recon-
18 ciling a labor dispute between the public employer and the exclusive repre-
19 sentative regarding employment relations.

20 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for
21 services by the exclusive representative in negotiations and contract admin-
22 istration of all persons in an appropriate bargaining unit who are not mem-
23 bers of the organization serving as exclusive representative of the employees.
24 The payment must be equivalent to regular union dues and assessments, if
25 any, or must be an amount agreed upon by the public employer and the ex-
26 clusive representative of the employees.

27 “(19) ‘Public employee’ means an employee of a public employer but does
28 not include elected officials, persons appointed to serve on boards or com-
29 missions, incarcerated persons working under section 41, Article I of the
30 Oregon Constitution, or persons who are confidential employees, supervisory

1 employees or managerial employees.

2 “(20) ‘Public employer’ means the State of Oregon, and the following
3 political subdivisions: Cities, counties, community colleges, school districts,
4 special districts, mass transit districts, metropolitan service districts, public
5 service corporations or municipal corporations and public and quasi-public
6 corporations.

7 “(21) ‘Public employer representative’ includes any individual or individ-
8 uals specifically designated by the public employer to act in its interests in
9 all matters dealing with employee representation, collective bargaining and
10 related issues.

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

20 “(23)(a) ‘Supervisory employee’ means any individual having authority in
21 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
22 mote, discharge, assign, reward or discipline other employees, or responsibly
23 to direct them, or to adjust their grievances, or effectively to recommend
24 such action, if in connection therewith, the exercise of the authority is not
25 of a merely routine or clerical nature but requires the use of independent
26 judgment. Failure to assert supervisory status in any Employment Relations
27 Board proceeding or in negotiations for any collective bargaining agreement
28 does not thereafter prevent assertion of supervisory status in any subsequent
29 board proceeding or contract negotiation.

30 “(b) ‘Supervisory employee’ includes a faculty member of a public uni-

1 versity listed in ORS 352.002 or the Oregon Health and Science University
2 who:

3 “(A) Is employed as a president, vice president, provost, vice provost,
4 dean, associate dean, assistant dean, head or equivalent position; or

5 “(B) Is employed in an administrative position without a reasonable ex-
6 pectation of teaching, research or other scholarly accomplishments.

7 “(c) ‘Supervisory employee’ does not include:

8 “(A) A nurse, charge nurse or nurse holding a similar position if that
9 position has not traditionally been classified as supervisory;

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

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

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

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

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

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

21 “(24) ‘Unfair labor practice’ means the commission of an act designated
22 an unfair labor practice in ORS 243.672.

23 “(25) ‘Voluntary arbitration’ means the procedure whereby parties in-
24 volved in a labor dispute mutually agree to submit their differences to a
25 third party for a final and binding decision.

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

28 “243.650. As used in ORS 243.650 to 243.806, unless the context requires
29 otherwise:

30 “(1) ‘Appropriate bargaining unit’ means the unit designated by the Em-

1 ployment Relations Board or voluntarily recognized by the public employer
2 to be appropriate for collective bargaining. However, an appropriate bar-
3 gaining unit may not include both academically licensed and unlicensed or
4 nonacademically licensed school employees. Academically licensed units may
5 include but are not limited to teachers, nurses, counselors, therapists, psy-
6 chologists, child development specialists and similar positions. This limita-
7 tion does not apply to any bargaining unit certified or recognized prior to
8 June 6, 1995, or to any school district with fewer than 50 employees.

9 “(2) ‘Board’ means the Employment Relations Board.

10 “(3) ‘Certification’ means official recognition by the board that a labor
11 organization is the exclusive representative for all of the employees in the
12 appropriate bargaining unit.

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

29 “(5) ‘Compulsory arbitration’ means the procedure whereby parties in-
30 volved in a labor dispute are required by law to submit their differences to

1 a third party for a final and binding decision.

2 “(6) ‘Confidential employee’ means one who assists and acts in a confi-
3 dential capacity to a person who formulates, determines and effectuates
4 management policies in the area of collective bargaining.

5 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters
6 concerning:

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

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

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

14 “(D) Other conditions of employment.

15 “(b) ‘Employment relations’ does not include subjects determined to be
16 permissive, nonmandatory subjects of bargaining by the Employment Re-
17 lations Board prior to June 6, 1995.

18 “(c) After June 6, 1995, ‘employment relations’ does not include subjects
19 that the Employment Relations Board determines to have a greater impact
20 on management’s prerogative than on employee wages, hours, or other terms
21 and conditions of employment.

22 “(d) ‘Employment relations’ does not include subjects that have an in-
23 substantial or de minimis effect on public employee wages, hours, and other
24 terms and conditions of employment.

25 “(e) For school district bargaining, ‘employment relations’ excludes class
26 size, the school or educational calendar, standards of performance or criteria
27 for evaluation of teachers, the school curriculum, reasonable dress, grooming
28 and at-work personal conduct requirements respecting smoking, gum chewing
29 and similar matters of personal conduct, the standards and procedures for
30 student discipline, the time between student classes, the selection, agendas

1 and decisions of 21st Century Schools Councils established under ORS
2 329.704, requirements for expressing milk under ORS 653.077, and any other
3 subject proposed that is permissive under paragraphs (b), (c) and (d) of this
4 subsection.

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

10 “(g) For all other employee bargaining except school district bargaining
11 and except as provided in paragraph (f) of this subsection, ‘employment re-
12 lations’ excludes staffing levels and safety issues (except those staffing levels
13 and safety issues that have a direct and substantial effect on the on-the-job
14 safety of public employees), scheduling of services provided to the public,
15 determination of the minimum qualifications necessary for any position, cri-
16 teria for evaluation or performance appraisal, assignment of duties, workload
17 when the effect on duties is insubstantial, reasonable dress, grooming, and
18 at-work personal conduct requirements respecting smoking, gum chewing,
19 and similar matters of personal conduct at work, and any other subject pro-
20 posed that is permissive under paragraphs (b), (c) and (d) of this subsection.

21 “(8) ‘Exclusive representative’ means the labor organization that, as a
22 result of certification by the board or recognition by the employer, has the
23 right to be the collective bargaining agent of all employees in an appropriate
24 bargaining unit.

25 “(9) ‘Fact-finding’ means identification of the major issues in a particular
26 labor dispute by one or more impartial individuals who review the positions
27 of the parties, resolve factual differences and make recommendations for
28 settlement of the dispute.

29 “(10) ‘Fair-share agreement’ means an agreement between the public em-
30 ployer and the recognized or certified bargaining representative of public

1 employees whereby employees who are not members of the employee organ-
2 ization are required to make an in-lieu-of-dues payment to an employee or-
3 ganization except as provided in ORS 243.666. Upon the filing with the board
4 of a petition by 30 percent or more of the employees in an appropriate bar-
5 gaining unit covered by such union security agreement declaring they desire
6 that the agreement be rescinded, the board shall take a secret ballot of the
7 employees in the unit and certify the results thereof to the recognized or
8 certified bargaining representative and to the public employer. Unless a
9 majority of the votes cast in an election favor the union security agreement,
10 the board shall certify deauthorization of the agreement. A petition for de-
11 authorization of a union security agreement must be filed not more than 90
12 calendar days after the collective bargaining agreement is executed. Only
13 one such election may be conducted in any appropriate bargaining unit dur-
14 ing the term of a collective bargaining agreement between a public employer
15 and the recognized or certified bargaining representative.

16 “(11) ‘Final offer’ means the proposed contract language and cost sum-
17 mary submitted to the mediator within seven days of the declaration of im-
18 passe.

19 “(12) ‘Labor dispute’ means any controversy concerning employment re-
20 lations or concerning the association or representation of persons in negoti-
21 ating, fixing, maintaining, changing, or seeking to arrange terms or
22 conditions of employment relations, regardless of whether the disputants
23 stand in the proximate relation of employer and employee.

24 “(13) ‘Labor organization’ means any organization that has as one of its
25 purposes representing employees in their employment relations with public
26 employers.

27 “(14) ‘Last best offer package’ means the offer exchanged by parties not
28 less than 14 days prior to the date scheduled for an interest arbitration
29 hearing.

30 “(15) ‘Legislative body’ means the Legislative Assembly, the city council,

1 the county commission and any other board or commission empowered to
2 levy taxes.

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

13 “(17) ‘Mediation’ means assistance by an impartial third party in recon-
14 ciling a labor dispute between the public employer and the exclusive repre-
15 sentative regarding employment relations.

16 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for
17 services by the exclusive representative in negotiations and contract admin-
18 istration of all persons in an appropriate bargaining unit who are not mem-
19 bers of the organization serving as exclusive representative of the employees.
20 The payment must be equivalent to regular union dues and assessments, if
21 any, or must be an amount agreed upon by the public employer and the ex-
22 clusive representative of the employees.

23 “(19) ‘Public employee’ means an employee of a public employer but does
24 not include elected officials, persons appointed to serve on boards or com-
25 missions, incarcerated persons working under section 41, Article I of the
26 Oregon Constitution, or persons who are confidential employees, supervisory
27 employees or managerial employees.

28 “(20) ‘Public employer’ means the State of Oregon, and the following
29 political subdivisions: Cities, counties, community colleges, school districts,
30 special districts, mass transit districts, metropolitan service districts, public

1 service corporations or municipal corporations and public and quasi-public
2 corporations.

3 “(21) ‘Public employer representative’ includes any individual or individ-
4 uals specifically designated by the public employer to act in its interests in
5 all matters dealing with employee representation, collective bargaining and
6 related issues.

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

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

26 “(b) ‘Supervisory employee’ includes a faculty member of a public uni-
27 versity listed in ORS 352.002 or the Oregon Health and Science University
28 who:

29 “(A) Is employed as a president, vice president, provost, vice provost,
30 dean, associate dean, assistant dean, head or equivalent position; or

1 “(B) Is employed in an administrative position without a reasonable ex-
2 pectation of teaching, research or other scholarly accomplishments.

3 “(c) ‘Supervisory employee’ does not include:

4 “(A) A nurse, charge nurse or nurse holding a similar position if that
5 position has not traditionally been classified as supervisory;

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

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

13 “(24) ‘Unfair labor practice’ means the commission of an act designated
14 an unfair labor practice in ORS 243.672.

15 “(25) ‘Voluntary arbitration’ means the procedure whereby parties in-
16 volved in a labor dispute mutually agree to submit their differences to a
17 third party for a final and binding decision.

18 “**SECTION 9.** ORS 243.656 is amended to read:

19 “243.656. The Legislative Assembly finds and declares that:

20 “**(1) Public employees have the right to decide by their free will and**
21 **desire to collectively bargain the terms of their employment. This**
22 **right is protected by the Oregon Constitution, Oregon laws and the**
23 **natural principle that employers and employees each have an ability**
24 **to capitalize their respective efforts;**

25 “[1] **(2)** The people of this state have a fundamental interest in the de-
26 velopment of harmonious and cooperative relationships between government
27 and its employees;

28 “[2] **(3)** Recognition by public employers of the right of public employees
29 to organize and full acceptance of the principle and procedure of collective
30 negotiation between public employers and public employee organizations can

1 alleviate various forms of strife and unrest. **A comprehensive and fair**
2 **collective bargaining process includes a consideration of terms re-**
3 **garding arbitrating employer discipline.** Experience in the private and
4 public sectors of our economy has proved that unresolved disputes in the
5 public service are injurious to the public, the governmental agencies, and
6 public employees;

7 “[3] (4) Experience in private and public employment has also proved
8 that protection by law of the right of employees to organize and negotiate
9 collectively safeguards employees and the public from injury, impairment and
10 interruptions of necessary services, and removes certain recognized sources
11 of strife and unrest, by encouraging practices fundamental to the peaceful
12 adjustment of disputes arising out of differences as to wages, hours, terms
13 and other working conditions, and by establishing greater equality of bar-
14 gaining power between public employers and public employees;

15 “(5) **Collective bargaining must be a fair process without undue in-**
16 **terference from the Legislative Assembly. Employers and employees**
17 **must be able to bargain based on their individual local needs;**

18 “[4] (6) The state has a basic obligation to protect the public by at-
19 tempting to assure the orderly and uninterrupted operations and functions
20 of government. **Fair and objective disciplinary standards that minimize**
21 **public employers’ personal discretion are vital to maintaining a fair,**
22 **productive and well-regulated public employee workforce;**

23 “[5] (7) It is in the public interest to ensure that exclusive represen-
24 tatives of public employees are able to effectively carry out their statutory
25 duties by having direct access to represented employees, including commu-
26 nicating 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
28 employers, public employees and their representatives to enter into collective
29 negotiations with willingness to resolve grievances and disputes relating to
30 employment relations and to enter into written and signed contracts evi-

1 dencing agreements resulting from such negotiations. It is also the purpose
2 of ORS 243.650 to 243.806 to promote the improvement of employer-employee
3 relations within the various public employers by providing a uniform basis
4 for recognizing the right of public employees to join organizations of their
5 own choice, and to be represented by such organizations in their employment
6 relations with public employers; and

7 “[7] (9) Ensuring meaningful communication between labor organiza-
8 tions and employees increases the effectiveness of public employees’ work
9 performance.

10

11

“PUBLIC RECORDS PROVISIONS

12

13 **“SECTION 10. For purposes of the conditional exemption described**
14 **in ORS 192.345 (12), materials and documents include the personal in-**
15 **formation of an arbitrator that has heard a claim arising out of a**
16 **personnel discipline action, including but not limited to the**
17 **arbitrator’s residential address, residential telephone number, personal**
18 **cellular telephone number or personal electronic mail address.**

19 **“SECTION 11. Section 10 of this 2020 Act applies to public records**
20 **requests made on or after July 1, 2021.**

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

23 **“SECTION 13. Personally identifiable information collected during**
24 **the preparation of the annual report required under section 6 of this**
25 **2020 Act is exempt from disclosure under ORS 192.311 to 192.478 unless**
26 **the public interest requires disclosure in the particular instance, in the**
27 **same manner as described in ORS 192.345.**

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

30 **“SECTION 15. Sections 13 and 14 of this 2020 Act are repealed on**

1 **January 1, 2022.**

2
3 **“PENALTIES**

4
5 **“SECTION 16.** ORS 659A.885 is amended to read:

6 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
7 tice specified in subsection (2) of this section may file a civil action in cir-
8 cuit court. In any action under this subsection, the court may order
9 injunctive relief and any other equitable relief that may be appropriate, in-
10 cluding but not limited to reinstatement or the hiring of employees with or
11 without back pay. A court may order back pay in an action under this sub-
12 section only for the two-year period immediately preceding the filing of a
13 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
14 bor and Industries, or if a complaint was not filed before the action was
15 commenced, the two-year period immediately preceding the filing of the
16 action. In any action under this subsection, the court may allow the pre-
17 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
18 cept as provided in subsection (3) of this section:

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

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

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

26 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
27 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
28 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
29 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147,
30 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,

1 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290,
2 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or
3 659A.421; [or]

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

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

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

9 “(3) In any action under subsection (1) of this section alleging a violation
10 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
11 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
12 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
13 659A.318, 659A.355 or 659A.421, **a violation of section 4 of this 2020 Act**
14 **that arises on or after January 1, 2022, or a violation of section 5 of**
15 **this 2020 Act that arises on or after July 1, 2022:**

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

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

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

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

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

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

30 “(b) An employer was previously adjudicated in a proceeding under this

1 section or under ORS 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

30 “(d) The court shall award reasonable attorney fees to a prevailing

1 plaintiff;

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

6 “(f) Upon any appeal of a judgment under this subsection, the appellate
7 court shall review the judgment pursuant to the standard established by ORS
8 19.415 (1).

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

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

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

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

30 “(11) In an action under subsection (1) or (9) of this section alleging a

1 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
2 ing law:

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

4 “(A) Has been injured by an unlawful practice or discriminatory housing
5 practice; or

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

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

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

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

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

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

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

6 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),
7 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
8 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
9 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147,
10 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
11 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290,
12 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.370
13 or 659A.421; [or]

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

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

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

19 “(3) In any action under subsection (1) of this section alleging a violation
20 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852,
21 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to
22 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
23 659A.290, 659A.318, 659A.355, 659A.370 or 659A.421, **a violation of section**
24 **4 of this 2020 Act that arises on or after January 1, 2022, or a violation**
25 **of section 5 of this 2020 Act that arises on or after July 1, 2022:**

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

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

30 “(c) Upon appeal of any judgment finding a violation, the appellate court

1 shall review the judgment pursuant to the standard established by ORS
2 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
5 section alleging a violation of ORS 652.220, the court may award punitive
6 damages if:

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

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

12 “(5) In any action under subsection (1) of this section alleging a violation
13 of ORS 653.060 or 659A.147, the court may award, in addition to the relief
14 authorized under subsection (1) of this section, compensatory damages or
15 \$200, whichever is greater.

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

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

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

1 ployee or person acting on behalf of the place or the aider or abettor of the
2 place or person. Notwithstanding subsection (1) of this section, in an action
3 under this subsection:

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

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

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

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

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

16 “(f) Upon any appeal of a judgment under this subsection, the appellate
17 court shall review the judgment pursuant to the standard established by ORS
18 19.415 (1).

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

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

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

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

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

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

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

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

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

23 **“SECTION 18.** ORS 659A.885, as amended by section 7, chapter 343,
24 Oregon Laws 2019, section 7, chapter 463, Oregon Laws 2019, and section 12,
25 chapter 701, Oregon Laws 2019, is amended to read:

26 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
27 tice specified in subsection (2) of this section may file a civil action in cir-
28 cuit court. In any action under this subsection, the court may order
29 injunctive relief and any other equitable relief that may be appropriate, in-
30 cluding but not limited to reinstatement or the hiring of employees with or

1 without back pay. A court may order back pay in an action under this sub-
2 section only for the two-year period immediately preceding the filing of a
3 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
4 bor and Industries, or if a complaint was not filed before the action was
5 commenced, the two-year period immediately preceding the filing of the
6 action. In any action under this subsection, the court may allow the pre-
7 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
8 cept as provided in subsection (3) of this section:

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

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

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

16 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),
17 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
18 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
19 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147,
20 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
21 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290,
22 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343,
23 659A.355, 659A.370 or 659A.421; [or]

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

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

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

29 “(3) In any action under subsection (1) of this section alleging a violation
30 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852,

1 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to
2 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
3 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421, **a violation of**
4 **section 4 of this 2020 Act that arises on or after January 1, 2022, or a**
5 **violation of section 5 of this 2020 Act that arises on or after July 1,**
6 **2022:**

7 “(a) The court may award, in addition to the relief authorized under
8 subsection (1) of this section, compensatory damages or \$200, whichever is
9 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
12 shall review the judgment pursuant to the standard established by ORS
13 19.415 (1); and

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

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

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

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

23 “(5) In any action under subsection (1) of this section alleging a violation
24 of ORS 653.060 or 659A.147, the court may award, in addition to the relief
25 authorized under subsection (1) of this section, compensatory damages or
26 \$200, whichever is greater.

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

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

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

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

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

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

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

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

27 “(f) Upon any appeal of a judgment under this subsection, the appellate
28 court shall review the judgment pursuant to the standard established by ORS
29 19.415 (1).

30 “(9) When the commissioner or the Attorney General has reasonable cause

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

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

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

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

21 “(11) In an action under subsection (1) or (9) of this section alleging a
22 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
23 ing 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
26 practice; or

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

29 “(b) An aggrieved person in regard to issues to be determined in an action
30 may intervene as of right in the action. The Attorney General may intervene

1 in the action if the Attorney General certifies that the case is of general
2 public importance. The court may allow an intervenor prevailing party costs
3 and reasonable attorney fees at trial and on appeal.

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

8 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
9 tice specified in subsection (2) of this section may file a civil action in cir-
10 cuit court. In any action under this subsection, the court may order
11 injunctive relief and any other equitable relief that may be appropriate, in-
12 cluding but not limited to reinstatement or the hiring of employees with or
13 without back pay. A court may order back pay in an action under this sub-
14 section only for the two-year period immediately preceding the filing of a
15 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
16 bor and Industries, or if a complaint was not filed before the action was
17 commenced, the two-year period immediately preceding the filing of the
18 action. In any action under this subsection, the court may allow the pre-
19 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
20 cept as provided in subsection (3) of this section:

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

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

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

28 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),
29 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
30 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,

1 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147,
2 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
3 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290,
4 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343,
5 659A.355, 659A.357, 659A.370 or 659A.421; [or]

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

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

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

11 “(3) In any action under subsection (1) of this section alleging a violation
12 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852,
13 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to
14 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
15 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421, a vi-
16 **olation of section 4 of this 2020 Act that arises on or after January 1,**
17 **2022, or a violation of section 5 of this 2020 Act that arises on or after**
18 **July 1, 2022:**

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

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

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

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

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

30 “(a) It is proved by clear and convincing evidence that an employer has

1 engaged in fraud, acted with malice or acted with willful and wanton mis-
2 conduct; or

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

5 “(5) In any action under subsection (1) of this section alleging a violation
6 of ORS 653.060 or 659A.147, the court may award, in addition to the relief
7 authorized under subsection (1) of this section, compensatory damages or
8 \$200, whichever is greater.

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

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

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

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

29 “(b) The operator or manager of the place of public accommodation, the
30 employee or person acting on behalf of the place, and any aider or abettor

1 shall be jointly and severally liable for all damages awarded in the action;

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

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

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

9 “(f) Upon any appeal of a judgment under this subsection, the appellate
10 court shall review the judgment pursuant to the standard established by ORS
11 19.415 (1).

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

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

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

24 “(10) In any action under subsection (1) of this section alleging a vio-
25 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
26 housing law, when the commissioner is pursuing the action on behalf of an
27 aggrieved complainant, the court shall award reasonable attorney fees to the
28 commissioner if the commissioner prevails in the action. The court may
29 award reasonable attorney fees and expert witness fees incurred by a de-
30 fendant that prevails in the action if the court determines that the commis-

1 sioner had no objectively reasonable basis for asserting the claim or for
2 appealing an adverse decision of the trial court.

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

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

7 “(A) Has been injured by an unlawful practice or discriminatory housing
8 practice; or

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

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

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

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

1 action. In any action under this subsection, the court may allow the pre-
2 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
3 cept as provided in subsection (3) of this section:

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

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

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

11 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),
12 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
13 653.549, 653.601 to 653.661, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
14 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
15 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203,
16 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262,
17 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318,
18 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421; [or]

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

21 **“(c) Section 4 of this 2020 Act that arises on or after January 1, 2021;**
22 **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
25 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and
26 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082,
27 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to
28 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
29 659A.421, **a violation of section 4 of this 2020 Act that arises on or after**
30 **January 1, 2022, or a violation of section 5 of this 2020 Act that arises**

1 **on or after July 1, 2022:**

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

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

6 “(c) Upon appeal of any judgment finding a violation, the appellate court
7 shall review the judgment pursuant to the standard established by ORS
8 19.415 (1); and

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

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

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

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

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

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

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

30 “(8) Any individual against whom any distinction, discrimination or re-

1 restriction on account of race, color, religion, sex, sexual orientation, national
2 origin, marital status or age, if the individual is 18 years of age or older,
3 has been made by any place of public accommodation, as defined in ORS
4 659A.400, by any employee or person acting on behalf of the place or by any
5 person aiding or abetting the place or person in violation of ORS 659A.406
6 may bring an action against the operator or manager of the place, the em-
7 ployee or person acting on behalf of the place or the aider or abettor of the
8 place or person. Notwithstanding subsection (1) of this section, in an action
9 under this subsection:

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

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

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

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

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

22 “(f) Upon any appeal of a judgment under this subsection, the appellate
23 court shall review the judgment pursuant to the standard established by ORS
24 19.415 (1).

25 “(9) When the commissioner or the Attorney General has reasonable cause
26 to believe that a person or group of persons is engaged in a pattern or
27 practice of resistance to the rights protected by ORS 659A.145 or 659A.421
28 or federal housing law, or that a group of persons has been denied any of the
29 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
30 commissioner or the Attorney General may file a civil action on behalf of

1 the aggrieved persons in the same manner as a person or group of persons
2 may file a civil action under this section. In a civil action filed under this
3 subsection, the court may assess against the respondent, in addition to the
4 relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

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

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

20 “(A) Has been injured by an unlawful practice or discriminatory housing
21 practice; or

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

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

29

30

“CAPTIONS

1 **SECTION 21. The unit and section captions used in this 2020 Act**
2 **are provided only for the convenience of the reader and do not become**
3 **part of the statutory law of this state or express any legislative intent**
4 **in the enactment of this 2020 Act.”.**

5
