

A-Engrossed
Senate Bill 780

Ordered by the Senate May 4
Including Senate Amendments dated May 4

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Senator Floyd Prozanski)

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.

Limits liability of **certain** health care **entities and** providers[, *health maintenance organizations and hospitals*] for certain claims arising during COVID-19 emergency period.

Provides that it is unlawful employment practice for hospital or health maintenance organization to take certain action against employee for reason that employee reported violation of standard of care during COVID-19 emergency period or testified or participated in proceeding involving certain claims related to COVID-19.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to civil claims arising during the COVID-19 emergency period; creating new provisions;
3 amending ORS 659A.350 and 659A.885; and declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 3 of this 2021 Act:**

6 **(1)(a) "Covered entity" means a corporation, partnership or association or any other**
7 **form of legal or business entity that:**

8 **(A) Directly, or indirectly through one or more intermediaries, controls, or is controlled**
9 **by, or is under common control with a covered provider;**

10 **(B) Directs the rendering of health care services by a covered provider;**

11 **(C) Owns or operates a hospital, health maintenance organization or health care entity;**

12 **or**

13 **(D) Employs a health care provider.**

14 **(b) "Covered entity" does not include:**

15 **(A) A long term care facility as defined in ORS 442.015;**

16 **(B) A residential care facility as defined in ORS 443.400;**

17 **(C) An establishment furnishing primarily domiciliary care as described in ORS 443.205;**

18 **(D) A facility licensed or approved under the rules of the Department of Corrections;**

19 **(E) A juvenile detention facility, local correctional facility or lockup, as those terms are**
20 **defined in ORS 169.005;**

21 **(F) A regional correctional facility as defined in ORS 169.620; or**

22 **(G) A youth correction facility as defined in ORS 420.005.**

23 **(2) "Covered provider" means a health care provider, health maintenance organization,**
24 **hospital or health care entity.**

25 **(3) "COVID-19 emergency period" means the time in which any declaration of a state of**

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 emergency issued by the Governor related to COVID-19, and any extension of the declara-
2 tion, is in effect.

3 (4) “COVID-19 emergency rule” means an executive order, order of the Public Health
4 Director, declaration, directive or other state or federal authorization, policy, statement,
5 guidance, rule or regulation that creates a standard or waives, suspends or modifies other-
6 wise applicable state or federal law, regulations or standards regarding the rendering of
7 health care services, including those regarding the standard of care during the COVID-19
8 emergency period and the use of telemedicine during the COVID-19 emergency period.

9 (5)(a) “Health care entity” means a corporation, partnership or association or any other
10 form of legal or business entity that renders health care services, including but not limited
11 to:

12 (A) An ambulatory surgical center as defined in ORS 442.015;

13 (B) A hospital-affiliated clinic or affiliated clinic as defined in ORS 442.612; or

14 (C) An outpatient clinic, including a medical clinic, community health clinic, student
15 health center or dental clinic.

16 (b) “Health care entity” does not include:

17 (A) A long term care facility as defined in ORS 442.015;

18 (B) A residential care facility as defined in ORS 443.400;

19 (C) An establishment furnishing primarily domiciliary care as described in ORS 443.205;

20 (D) A facility licensed or approved under the rules of the Department of Corrections;

21 (E) A juvenile detention facility, local correctional facility or lockup, as those terms are
22 defined in ORS 169.005;

23 (F) A regional correctional facility as defined in ORS 169.620; or

24 (G) A youth correction facility as defined in ORS 420.005.

25 (6) “Health care provider” means:

26 (a) A physician licensed under ORS chapter 677;

27 (b) An advanced practice registered nurse who meets the requirements of ORS 678.025;

28 (c) A nurse licensed under ORS 678.040 to 678.101;

29 (d) A physician assistant licensed under ORS 677.505 to 677.525;

30 (e) A dentist licensed under ORS 679.060 to 679.180; or

31 (f) A dental hygienist licensed under ORS 680.010 to 680.205.

32 (7) “Health care services” means supplies and services, including services provided by
33 telemedicine, that involve the:

34 (a) Treatment, diagnosis, prevention or mitigation of COVID-19;

35 (b) Assessment or care of an individual with a confirmed or suspected case of COVID-19;

36 or

37 (c) Assessment, care or clinically or medically related prevention, diagnostic or treat-
38 ment services of any other individual during the COVID-19 emergency period and during a
39 time when COVID-19 emergency rules are in effect.

40 (8) “Health maintenance organization” has the meaning given that term in ORS 750.005.

41 (9) “Hospital” has the meaning given that term in ORS 442.015 and includes hospital
42 satellites and any location where the Oregon Health Authority allows hospital services to be
43 provided during the COVID-19 emergency period, including but not limited to temporarily li-
44 censed additional hospital space on-campus or off-campus and temporary or mobile on-
45 campus locations.

1 (10) "Telemedicine" means the provision of health care services to a patient by a health
2 care provider from a distance using electronic communications, including synchronous audio
3 and video communication, audio-only telephone communication, store-and-forward technol-
4 ogy or any other form of two-way electronic communication.

5 **SECTION 2.** (1) A person may not bring a claim against a covered provider arising from
6 acts or omissions performed:

7 (a) In the course of rendering health care services; and

8 (b) In order to comply with the COVID-19 emergency rule or rules applicable to the act
9 or omission that are in effect at the time of the act or omission.

10 (2) The immunity provided in subsection (1) of this section does not apply to:

11 (a) Acts or omissions constituting gross negligence;

12 (b) Reckless, wanton or intentional misconduct;

13 (c) False claims actions brought by or on behalf of the state;

14 (d) Fraud;

15 (e) Deceptive acts or practices;

16 (f) The delay or cancellation of a nonurgent or elective procedure in response to a
17 COVID-19 emergency rule that puts a patient at risk of irreversible harm based on the
18 medical evidence available at the time of the delay or cancellation. Criteria for determining
19 whether a delay or cancellation puts a patient at risk of irreversible harm based on the
20 medical evidence available at the time of the delay or cancellation include, but are not lim-
21 ited to:

22 (A) Threat to the patient's life;

23 (B) Threat of irreversible harm to the patient's physical or mental health;

24 (C) Threat of permanent dysfunction of an extremity or organ;

25 (D) Risk of cancer metastasis or progression of staging; and

26 (E) Risk of rapidly worsening condition; or

27 (g) An act or omission performed by a covered provider at a long term care facility as
28 defined in ORS 442.015, a residential care facility as defined in ORS 443.400, an establishment
29 furnishing primarily domiciliary care as described in ORS 443.205, a facility licensed or ap-
30 proved under the rules of the Department of Corrections, a juvenile detention facility, local
31 correctional facility or lockup, as those terms are defined in ORS 169.005, a regional
32 correctional facility as defined in ORS 169.620 or a youth correction facility as defined in ORS
33 420.005.

34 (3) A person may not bring a claim against a covered entity arising from acts or omis-
35 sions performed by a covered provider if the covered provider would have immunity under
36 subsection (1) of this section.

37 (4) This section does not limit the obligation of a covered provider to comply with any
38 other applicable rule, guidance or law.

39 (5) This section does not limit any other cause of action or remedy available to any per-
40 son, including any action for whistleblower protections or discrimination.

41 **SECTION 3.** (1) A covered provider or covered entity may move at any time to strike a
42 claim in a civil action that is barred by section 2 of this 2021 Act. A motion to strike under
43 this section shall be treated as a motion to dismiss under ORCP 21 A but is not subject to
44 ORCP 21 F. Upon granting a motion under this section, the court shall enter a judgment of
45 dismissal without prejudice. If the court denies a motion under this section, the court shall

1 enter a limited judgment denying the motion.

2 (2)(a) A covered provider or covered entity that moves to strike a claim under this sec-
3 tion has the initial burden of making a prima facie showing that the claim is barred under
4 section 2 of this 2021 Act.

5 (b) If the covered provider or covered entity meets this burden, the burden shifts to the
6 plaintiff in the action to establish that a genuine issue of material fact exists that the claim
7 is not barred under section 2 of this 2021 Act. If the plaintiff meets the burden under this
8 paragraph, the court shall deny the motion.

9 (c) The court shall only consider the pleadings and supporting and opposing affidavits in
10 making a determination whether a genuine issue of material fact exists. If the court deter-
11 mines that a genuine issue of material fact exists:

12 (A) The fact that the determination has been made and the substance of the determi-
13 nation may not be admitted in evidence at any later stage of the case; and

14 (B) The determination does not affect the burden of proof or standard of proof that is
15 applied in the proceeding.

16 SECTION 4. Section 5 of this 2021 Act is added to and made a part of ORS chapter 659A.

17 SECTION 5. (1) As used in this section:

18 (a) "COVID-19 emergency period" means the time in which any declaration of a state of
19 emergency issued by the Governor related to COVID-19, and any extension of the declara-
20 tion, is in effect.

21 (b) "Health care provider" means:

22 (A) A physician licensed under ORS chapter 677;

23 (B) An advanced practice registered nurse who meets the requirements of ORS 678.025;

24 (C) A nurse licensed under ORS 678.040 to 678.101;

25 (D) A physician assistant licensed under ORS 677.505 to 677.525;

26 (E) A dentist licensed under ORS 679.060 to 679.180; or

27 (F) A dental hygienist licensed under ORS 680.010 to 680.205.

28 (c) "Health maintenance organization" has the meaning given that term in ORS 750.005.

29 (d) "Hospital" has the meaning given that term in ORS 442.015 and includes hospital
30 satellites and any location where the Oregon Health Authority allows hospital services to be
31 provided during the COVID-19 emergency period, including but not limited to temporarily li-
32 censed additional hospital space on-campus or off-campus and temporary or mobile on-
33 campus locations.

34 (2) It is an unlawful employment practice for a hospital or health maintenance organ-
35 ization to discharge, demote, suspend or in any manner discriminate or retaliate against an
36 employee with regard to promotion, compensation or other terms, conditions or privileges
37 of employment for the reason that the employee, in good faith:

38 (a) Reported to a direct supervisor or a person who has authority within the hospital or
39 health maintenance organization to take corrective action information that the employee
40 reasonably believes is evidence of a violation of a standard of care during the COVID-19
41 emergency period by the hospital or health maintenance organization or by a health care
42 provider employed by the hospital or health maintenance organization; or

43 (b) Testified or participated in any proceeding involving a claim for injuries that a party
44 asserts is barred under section 2 of this 2021 Act.

45 (3) Subsection (2)(a) of this section applies only to an employee who has sufficient quali-

1 **fications to evaluate the standard of care during the COVID-19 emergency period. Factors**
2 **relevant to the determination of whether the employee has sufficient qualifications include,**
3 **but are not limited to, experience, education and professional licensure.**

4 **(4) The remedies provided by this chapter are in addition to any common law remedy or**
5 **other remedy that may be available to an employee for the conduct constituting a violation**
6 **of this section.**

7 **SECTION 6.** ORS 659A.350 is amended to read:

8 659A.350. (1) An intern is considered to be in an employment relationship with an employer for
9 the purposes of the employee protections provided under ORS 659A.030, 659A.082, 659A.109,
10 659A.112, 659A.136, 659A.142, 659A.199, 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303,
11 659A.306 and 659A.315 **and section 5 of this 2021 Act.**

12 (2) Nothing in subsection (1) of this section creates an employment relationship between an
13 employer and an intern for the purposes of ORS chapter 652, 653, 654, 656, 657 or 658.

14 (3) As used in this section, "intern" means a person who performs work for an employer for the
15 purpose of training if:

16 (a) The employer is not committed to hire the person performing the work at the conclusion of
17 the training period;

18 (b) The employer and the person performing the work agree in writing that the person per-
19 forming the work is not entitled to wages for the work performed; and

20 (c) The work performed:

21 (A) Supplements training given in an educational environment that may enhance the
22 employability of the intern;

23 (B) Provides experience for the benefit of the person performing the work;

24 (C) Does not displace regular employees;

25 (D) Is performed under the close supervision of existing staff; and

26 (E) Provides no immediate advantage to the employer providing the training and may occa-
27 sionally impede the operations of the employer.

28 **SECTION 7.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, section
29 7, chapter 463, Oregon Laws 2019, and section 12, chapter 701, Oregon Laws 2019, is amended to
30 read:

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

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

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

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

45 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,

1 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
2 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
3 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
4 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
5 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 5 of**
6 **this 2021 Act;** or

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

8 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
9 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
10 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
11 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 5 of this 2021 Act:**

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

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

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

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

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

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

22 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
23 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 **SECTION 8.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
37 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
38 Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

39 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
40 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
41 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
42 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
43 court may order back pay in an action under this subsection only for the two-year period imme-
44 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
45 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-

1 year period immediately preceding the filing of the action. In any action under this subsection, the
2 court may allow the prevailing 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 subsection; and

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

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

8 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
9 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
10 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
11 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
12 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
13 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or sec-**
14 **tion 5 of this 2021 Act;** or

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

16 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
17 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
18 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
19 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or section 5 of this 2021**
20 **Act:**

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

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

24 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
25 ment pursuant to the standard established by ORS 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 section alleging a vi-
28 olation of ORS 652.220, the court may award punitive damages if:

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

31 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
32 659A.850 for a violation of ORS 652.220.

33 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
34 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
35 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 **SECTION 9.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section

1 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
2 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon
3 Laws 2019, is amended to read:

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

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

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

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

18 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
19 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
20 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
21 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
22 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
23 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
24 659A.421 **or section 5 of this 2021 Act**; or

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

26 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
27 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
28 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
29 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
30 659A.421 **or section 5 of this 2021 Act**:

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

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

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

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

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

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

41 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
42 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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

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

45 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145

1 or 659A.421 or discrimination under federal housing law:

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

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

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

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

10 **SECTION 10. (1) Sections 1 to 3 of this 2021 Act apply to claims arising from acts or**
11 **omissions that occur at any time during the COVID-19 emergency period, as defined in sec-**
12 **tion 1 of this 2021 Act.**

13 **(2) Section 5 of this 2021 Act and the amendments to ORS 659A.350 and 659A.885 by**
14 **sections 6 to 9 of this 2021 Act apply to actions taken against employees at any time during**
15 **the COVID-19 emergency period, as defined in section 5 of this 2021 Act.**

16 **SECTION 11. This 2021 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
18 **on its passage.**

19 _____