

SENATE AMENDMENTS TO SENATE BILL 780

By COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

May 4

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating new provisions;
2 amending ORS 659A.350 and 659A.885;”.

3 Delete lines 4 through 30 and delete pages 2 and 3 and insert:

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

5 **“(1)(a) ‘Covered entity’ means a corporation, partnership or association or any other**
6 **form of legal or business entity that:**

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

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

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

11 **or**

12 **“(D) Employs a health care provider.**

13 **“(b) ‘Covered entity’ does not include:**

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

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

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

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

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

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

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

22 **“(2) ‘Covered provider’ means a health care provider, health maintenance organization,**
23 **hospital or health care entity.**

24 **“(3) ‘COVID-19 emergency period’ means the time in which any declaration of a state of**
25 **emergency issued by the Governor related to COVID-19, and any extension of the declara-**
26 **tion, is in effect.**

27 **“(4) ‘COVID-19 emergency rule’ means an executive order, order of the Public Health**
28 **Director, declaration, directive or other state or federal authorization, policy, statement,**
29 **guidance, rule or regulation that creates a standard or waives, suspends or modifies other-**
30 **wise applicable state or federal law, regulations or standards regarding the rendering of**
31 **health care services, including those regarding the standard of care during the COVID-19**
32 **emergency period and the use of telemedicine during the COVID-19 emergency period.**

33 **“(5)(a) ‘Health care entity’ means a corporation, partnership or association or any other**
34 **form of legal or business entity that renders health care services, including but not limited**
35 **to:**

1 “(A) An ambulatory surgical center as defined in ORS 442.015;
2 “(B) A hospital-affiliated clinic or affiliated clinic as defined in ORS 442.612; or
3 “(C) An outpatient clinic, including a medical clinic, community health clinic, student
4 health center or dental clinic.
5 “(b) ‘Health care entity’ does not include:
6 “(A) A long term care facility as defined in ORS 442.015;
7 “(B) A residential care facility as defined in ORS 443.400;
8 “(C) An establishment furnishing primarily domiciliary care as described in ORS 443.205;
9 “(D) A facility licensed or approved under the rules of the Department of Corrections;
10 “(E) A juvenile detention facility, local correctional facility or lockup, as those terms are
11 defined in ORS 169.005;
12 “(F) A regional correctional facility as defined in ORS 169.620; or
13 “(G) A youth correction facility as defined in ORS 420.005.
14 “(6) ‘Health care provider’ means:
15 “(a) A physician licensed under ORS chapter 677;
16 “(b) An advanced practice registered nurse who meets the requirements of ORS 678.025;
17 “(c) A nurse licensed under ORS 678.040 to 678.101;
18 “(d) A physician assistant licensed under ORS 677.505 to 677.525;
19 “(e) A dentist licensed under ORS 679.060 to 679.180; or
20 “(f) A dental hygienist licensed under ORS 680.010 to 680.205.
21 “(7) ‘Health care services’ means supplies and services, including services provided by
22 telemedicine, that involve the:
23 “(a) Treatment, diagnosis, prevention or mitigation of COVID-19;
24 “(b) Assessment or care of an individual with a confirmed or suspected case of COVID-19;
25 or
26 “(c) Assessment, care or clinically or medically related prevention, diagnostic or treat-
27 ment services of any other individual during the COVID-19 emergency period and during a
28 time when COVID-19 emergency rules are in effect.
29 “(8) ‘Health maintenance organization’ has the meaning given that term in ORS 750.005.
30 “(9) ‘Hospital’ has the meaning given that term in ORS 442.015 and includes hospital
31 satellites and any location where the Oregon Health Authority allows hospital services to be
32 provided during the COVID-19 emergency period, including but not limited to temporarily li-
33 censed additional hospital space on-campus or off-campus and temporary or mobile on-
34 campus locations.
35 “(10) ‘Telemedicine’ means the provision of health care services to a patient by a health
36 care provider from a distance using electronic communications, including synchronous audio
37 and video communication, audio-only telephone communication, store-and-forward technol-
38 ogy or any other form of two-way electronic communication.
39 “SECTION 2. (1) A person may not bring a claim against a covered provider arising from
40 acts or omissions performed:
41 “(a) In the course of rendering health care services; and
42 “(b) In order to comply with the COVID-19 emergency rule or rules applicable to the act
43 or omission that are in effect at the time of the act or omission.
44 “(2) The immunity provided in subsection (1) of this section does not apply to:
45 “(a) Acts or omissions constituting gross negligence;

1 “(b) Reckless, wanton or intentional misconduct;
2 “(c) False claims actions brought by or on behalf of the state;
3 “(d) Fraud;
4 “(e) Deceptive acts or practices;
5 “(f) The delay or cancellation of a nonurgent or elective procedure in response to a
6 COVID-19 emergency rule that puts a patient at risk of irreversible harm based on the
7 medical evidence available at the time of the delay or cancellation. Criteria for determining
8 whether a delay or cancellation puts a patient at risk of irreversible harm based on the
9 medical evidence available at the time of the delay or cancellation include, but are not lim-
10 ited to:
11 “(A) Threat to the patient’s life;
12 “(B) Threat of irreversible harm to the patient’s physical or mental health;
13 “(C) Threat of permanent dysfunction of an extremity or organ;
14 “(D) Risk of cancer metastasis or progression of staging; and
15 “(E) Risk of rapidly worsening condition; or
16 “(g) An act or omission performed by a covered provider at a long term care facility as
17 defined in ORS 442.015, a residential care facility as defined in ORS 443.400, an establishment
18 furnishing primarily domiciliary care as described in ORS 443.205, a facility licensed or ap-
19 proved under the rules of the Department of Corrections, a juvenile detention facility, local
20 correctional facility or lockup, as those terms are defined in ORS 169.005, a regional
21 correctional facility as defined in ORS 169.620 or a youth correction facility as defined in ORS
22 420.005.
23 “(3) A person may not bring a claim against a covered entity arising from acts or omis-
24 sions performed by a covered provider if the covered provider would have immunity under
25 subsection (1) of this section.
26 “(4) This section does not limit the obligation of a covered provider to comply with any
27 other applicable rule, guidance or law.
28 “(5) This section does not limit any other cause of action or remedy available to any
29 person, including any action for whistleblower protections or discrimination.
30 “SECTION 3. (1) A covered provider or covered entity may move at any time to strike a
31 claim in a civil action that is barred by section 2 of this 2021 Act. A motion to strike under
32 this section shall be treated as a motion to dismiss under ORCP 21 A but is not subject to
33 ORCP 21 F. Upon granting a motion under this section, the court shall enter a judgment of
34 dismissal without prejudice. If the court denies a motion under this section, the court shall
35 enter a limited judgment denying the motion.
36 “(2)(a) A covered provider or covered entity that moves to strike a claim under this
37 section has the initial burden of making a prima facie showing that the claim is barred under
38 section 2 of this 2021 Act.
39 “(b) If the covered provider or covered entity meets this burden, the burden shifts to the
40 plaintiff in the action to establish that a genuine issue of material fact exists that the claim
41 is not barred under section 2 of this 2021 Act. If the plaintiff meets the burden under this
42 paragraph, the court shall deny the motion.
43 “(c) The court shall only consider the pleadings and supporting and opposing affidavits
44 in making a determination whether a genuine issue of material fact exists. If the court de-
45 termines that a genuine issue of material fact exists:

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

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

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

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

7 “(a) ‘COVID-19 emergency period’ means the time in which any declaration of a state of
8 emergency issued by the Governor related to COVID-19, and any extension of the declara-
9 tion, is in effect.

10 “(b) ‘Health care provider’ means:

11 “(A) A physician licensed under ORS chapter 677;

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

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

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

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

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

17 “(c) ‘Health maintenance organization’ has the meaning given that term in ORS 750.005.

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

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

27 “(a) Reported to a direct supervisor or a person who has authority within the hospital
28 or health maintenance organization to take corrective action information that the employee
29 reasonably believes is evidence of a violation of a standard of care during the COVID-19
30 emergency period by the hospital or health maintenance organization or by a health care
31 provider employed by the hospital or health maintenance organization; or

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

34 “(3) Subsection (2)(a) of this section applies only to an employee who has sufficient
35 qualifications to evaluate the standard of care during the COVID-19 emergency period. Fac-
36 tors relevant to the determination of whether the employee has sufficient qualifications in-
37 clude, but are not limited to, experience, education and professional licensure.

38 “(4) The remedies provided by this chapter are in addition to any common law remedy
39 or other remedy that may be available to an employee for the conduct constituting a vio-
40 lation of this section.

41 “SECTION 6. ORS 659A.350 is amended to read:

42 “659A.350. (1) An intern is considered to be in an employment relationship with an employer for
43 the purposes of the employee protections provided under ORS 659A.030, 659A.082, 659A.109,
44 659A.112, 659A.136, 659A.142, 659A.199, 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303,
45 659A.306 and 659A.315 and section 5 of this 2021 Act.

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

3 “(3) As used in this section, ‘intern’ means a person who performs work for an employer for the
4 purpose of training if:

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

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

9 “(c) The work performed:

10 “(A) Supplements training given in an educational environment that may enhance the
11 employability of the intern;

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

13 “(C) Does not displace regular employees;

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

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

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

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

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

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

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

34 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
35 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
36 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
37 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
38 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
39 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 5 of**
40 **this 2021 Act;** or

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

42 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
43 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
44 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
45 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 5 of this 2021 Act:**

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

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

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

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

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

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

11 “(b) An employer was previously adjudicated in a proceeding under this section or under ORS
12 659A.850 for a violation of ORS 652.220.

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

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

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

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

30 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
31 tion, compensatory and punitive damages;

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

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

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

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

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

43 “(9) When the commissioner or the Attorney General has reasonable cause to believe that a
44 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
45 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied

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

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

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

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

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

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

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

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

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

25 “**SECTION 8.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
26 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
27 Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

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

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

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

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

42 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
43 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
44 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
45 659A.145, 659A.147, 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, 659A.300, 659A.306,
2 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or sec-**
3 **tion 5 of this 2021 Act;** or

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

5 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
6 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
7 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
8 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or section 5 of this 2021**
9 **Act:**

10 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
11 tion, compensatory damages or \$200, whichever is greater, and punitive damages;

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

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

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

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

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

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

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

25 “(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
26 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
27 of this section, compensatory damages or \$250, whichever is greater.

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

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

39 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
40 tion, compensatory and punitive damages;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 “**SECTION 9.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
35 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
36 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon
37 Laws 2019, is amended to read:

38 “659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
39 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
40 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
41 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
42 court may order back pay in an action under this subsection only for the two-year period imme-
43 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
44 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
45 year period immediately preceding the filing of the action. In any action under this subsection, the

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

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

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

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

7 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
8 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
9 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
10 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
11 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
12 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
13 659A.421 **or section 5 of this 2021 Act**; or

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

15 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
16 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
17 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
18 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
19 659A.421 **or section 5 of this 2021 Act**:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **tion 1 of this 2021 Act.**

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

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

8
