

SB 780-4
(LC 3433)
4/9/21 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 780**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating
2 new provisions; 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 associ-**
6 **ation or any other form of legal or business entity that:**

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

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

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

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

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

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

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

18 **“(C) An establishment furnishing primarily domiciliary care as de-**
19 **scribed in ORS 443.205;**

20 **“(D) A facility licensed or approved under the rules of the Depart-**
21 **ment of Corrections;**

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

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

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

5 **“(2) ‘Covered provider’ means a health care provider, health main-**
6 **tenance organization, hospital or health care entity.**

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

10 **“(4) ‘COVID-19 emergency rule’ means an executive order, order of**
11 **the Public Health Director, declaration, directive or other state or**
12 **federal authorization, policy, statement, guidance, rule or regulation**
13 **that creates a standard or waives, suspends or modifies otherwise ap-**
14 **licable state or federal law, regulations or standards regarding the**
15 **rendering of health care services, including those regarding the**
16 **standard of care during the COVID-19 emergency period and the use**
17 **of telemedicine during the COVID-19 emergency period.**

18 **“(5)(a) ‘Health care entity’ means a corporation, partnership or as-**
19 **sociation or any other form of legal or business entity that renders**
20 **health care services, including but not limited to:**

21 **“(A) An ambulatory surgical center as defined in ORS 442.015;**

22 **“(B) A hospital-affiliated clinic or affiliated clinic as defined in ORS**
23 **442.612; or**

24 **“(C) An outpatient clinic, including a medical clinic, community**
25 **health clinic, student health center or dental clinic.**

26 **“(b) ‘Health care entity’ does not include:**

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

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

29 **“(C) An establishment furnishing primarily domiciliary care as de-**
30 **scribed in ORS 443.205;**

1 **“(D) A facility licensed or approved under the rules of the Depart-**
2 **ment of Corrections;**

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

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

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

7 **“(6) ‘Health care provider’ means:**

8 **“(a) A physician licensed under ORS chapter 677;**

9 **“(b) An advanced practice registered nurse who meets the require-**
10 **ments of ORS 678.025;**

11 **“(c) A nurse licensed under ORS 678.040 to 678.101;**

12 **“(d) A physician assistant licensed under ORS 677.505 to 677.525;**

13 **“(e) A dentist licensed under ORS 679.060 to 679.180; or**

14 **“(f) A dental hygienist licensed under ORS 680.010 to 680.205.**

15 **“(7) ‘Health care services’ means supplies and services, including**
16 **services provided by telemedicine, that involve the:**

17 **“(a) Treatment, diagnosis, prevention or mitigation of COVID-19;**

18 **“(b) Assessment or care of an individual with a confirmed or sus-**
19 **pected case of COVID-19; or**

20 **“(c) Assessment, care or clinically or medically related prevention,**
21 **diagnostic or treatment services of any other individual during the**
22 **COVID-19 emergency period and during a time when COVID-19 emer-**
23 **gency rules are in effect.**

24 **“(8) ‘Health maintenance organization’ has the meaning given that**
25 **term in ORS 750.005.**

26 **“(9) ‘Hospital’ has the meaning given that term in ORS 442.015 and**
27 **includes hospital satellites and any location where the Oregon Health**
28 **Authority allows hospital services to be provided during the COVID-19**
29 **emergency period, including but not limited to temporarily licensed**
30 **additional hospital space on-campus or off-campus and temporary or**

1 mobile on-campus locations.

2 “(10) ‘Telemedicine’ means the provision of health care services to
3 a patient by a health care provider from a distance using electronic
4 communications, including synchronous audio and video communi-
5 cation, audio-only telephone communication, store-and-forward tech-
6 nology or any other form of two-way electronic communication.

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

9 **“(a) In the course of rendering health care services; and**

10 **“(b) In order to comply with the COVID-19 emergency rule or rules
11 applicable to the act or omission that are in effect at the time of the
12 act or omission.**

13 **“(2) The immunity provided in subsection (1) of this section does
14 not apply to:**

15 **“(a) Acts or omissions constituting gross negligence;**

16 **“(b) Reckless, wanton or intentional misconduct;**

17 **“(c) False claims actions brought by or on behalf of the state;**

18 **“(d) Fraud;**

19 **“(e) Deceptive acts or practices;**

20 **“(f) The delay or cancellation of a nonurgent or elective procedure
21 in response to a COVID-19 emergency rule that puts a patient at risk
22 of irreversible harm based on the medical evidence available at the
23 time of the delay or cancellation. Criteria for determining whether a
24 delay or cancellation puts a patient at risk of irreversible harm based
25 on the medical evidence available at the time of the delay or cancel-
26 lation include, but are not limited to:**

27 **“(A) Threat to the patient’s life;**

28 **“(B) Threat of irreversible harm to the patient’s physical or mental
29 health;**

30 **“(C) Threat of permanent dysfunction of an extremity or organ;**

1 **“(D) Risk of cancer metastasis or progression of staging; and**

2 **“(E) Risk of rapidly worsening condition; or**

3 **“(g) An act or omission performed by a covered provider at a long**
4 **term care facility as defined in ORS 442.015, a residential care facility**
5 **as defined in ORS 443.400, an establishment furnishing primarily**
6 **domiciliary care as described in ORS 443.205, a facility licensed or ap-**
7 **proved under the rules of the Department of Corrections, a juvenile**
8 **detention facility, local correctional facility or lockup, as those terms**
9 **are defined in ORS 169.005, a regional correctional facility as defined**
10 **in ORS 169.620 or a youth correction facility as defined in ORS 420.005.**

11 **“(3) A person may not bring a claim against a covered entity arising**
12 **from acts or omissions performed by a covered provider if the covered**
13 **provider would have immunity under subsection (1) of this section.**

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

16 **“(5) This section does not limit any other cause of action or remedy**
17 **available to any person, including any action for whistleblower pro-**
18 **tections or discrimination.**

19 **“SECTION 3. (1) A covered provider or covered entity may move**
20 **at any time to strike a claim in a civil action that is barred by section**
21 **2 of this 2021 Act. A motion to strike under this section shall be**
22 **treated as a motion to dismiss under ORCP 21 A but is not subject to**
23 **ORCP 21 F. Upon granting a motion under this section, the court shall**
24 **enter a judgment of dismissal without prejudice. If the court denies a**
25 **motion under this section, the court shall enter a limited judgment**
26 **denying the motion.**

27 **“(2)(a) A covered provider or covered entity that moves to strike a**
28 **claim under this section has the initial burden of making a prima facie**
29 **showing that the claim is barred under section 2 of this 2021 Act.**

30 **“(b) If the covered provider or covered entity meets this burden, the**

1 **burden shifts to the plaintiff in the action to establish that a genuine**
2 **issue of material fact exists that the claim is not barred under section**
3 **2 of this 2021 Act. If the plaintiff meets the burden under this para-**
4 **graph, the court shall deny the motion.**

5 **“(c) The court shall only consider the pleadings and supporting and**
6 **opposing affidavits in making a determination whether a genuine issue**
7 **of material fact exists. If the court determines that a genuine issue**
8 **of material fact exists:**

9 **“(A) The fact that the determination has been made and the sub-**
10 **stance of the determination may not be admitted in evidence at any**
11 **later stage of the case; and**

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

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

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

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

20 **“(b) ‘Health care provider’ means:**

21 **“(A) A physician licensed under ORS chapter 677;**

22 **“(B) An advanced practice registered nurse who meets the require-**
23 **ments 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**
29 **term in ORS 750.005.**

30 **“(d) ‘Hospital’ has the meaning given that term in ORS 442.015 and**

1 includes hospital satellites and any location where the Oregon Health
2 Authority allows hospital services to be provided during the COVID-19
3 emergency period, including but not limited to temporarily licensed
4 additional hospital space on-campus or off-campus and temporary or
5 mobile on-campus locations.

6 “(2) It is an unlawful employment practice for a hospital or health
7 maintenance organization to discharge, demote, suspend or in any
8 manner discriminate or retaliate against an employee with regard to
9 promotion, compensation or other terms, conditions or privileges of
10 employment for the reason that the employee, in good faith:

11 “(a) Reported to a direct supervisor or a person who has authority
12 within the hospital or health maintenance organization to take cor-
13 rective action information that the employee reasonably believes is
14 evidence of a violation of a standard of care during the COVID-19
15 emergency period by the hospital or health maintenance organization
16 or by a health care provider employed by the hospital or health
17 maintenance organization; or

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

20 “(3) Subsection (2)(a) of this section applies only to an employee
21 who has sufficient qualifications to evaluate the standard of care
22 during the COVID-19 emergency period. Factors relevant to the de-
23 termination of whether the employee has sufficient qualifications in-
24 clude, but are not limited to, experience, education and professional
25 licensure.

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

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

30 “659A.350. (1) An intern is considered to be in an employment relationship

1 with an employer for the purposes of the employee protections provided un-
2 der ORS 659A.030, 659A.082, 659A.109, 659A.112, 659A.136, 659A.142, 659A.199,
3 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303, 659A.306 and
4 659A.315 and section 5 of this 2021 Act.

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

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

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

12 “(b) The employer and the person performing the work agree in writing
13 that the person performing the work is not entitled to wages for the work
14 performed; and

15 “(c) The work performed:

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

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

20 “(C) Does not displace regular employees;

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

22 “(E) Provides no immediate advantage to the employer providing the
23 training and may occasionally impede the operations of the employer.

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

27 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
28 tice specified in subsection (2) of this section may file a civil action in cir-
29 cuit court. In any action under this subsection, the court may order
30 injunctive relief and any other equitable relief that may be appropriate, in-

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

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

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

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

17 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),
18 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
19 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
20 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147,
21 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
22 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290,
23 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343,
24 659A.355, 659A.370 or 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
26 to ORS 653.450.

27 “(3) In any action under subsection (1) of this section alleging a violation
28 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852,
29 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to
30 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,

1 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 5 of**
2 **this 2021 Act:**

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

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

7 “(c) Upon appeal of any judgment finding a violation, the appellate court
8 shall review the judgment pursuant to the standard established by ORS
9 19.415 (1); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 commissioner or the Attorney General may file a civil action on behalf of
2 the aggrieved persons in the same manner as a person or group of persons
3 may file a civil action under this section. In a civil action filed under this
4 subsection, the court may assess against the respondent, in addition to the
5 relief 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 vio-
9 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
10 housing law, when the commissioner is pursuing the action on behalf of an
11 aggrieved complainant, the court shall award reasonable attorney fees to the
12 commissioner if the commissioner prevails in the action. The court may
13 award reasonable attorney fees and expert witness fees incurred by a de-
14 fendant that prevails in the action if the court determines that the commis-
15 sioner had no objectively reasonable basis for asserting the claim or for
16 appealing an adverse decision of the trial court.

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

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

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

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

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

30 **SECTION 8.** ORS 659A.885, as amended by section 10, chapter 197,

1 Oregon Laws 2017, section 6, chapter 139, Oregon Laws 2019, section 8,
2 chapter 343, Oregon Laws 2019, section 8, chapter 463, Oregon Laws 2019, and
3 section 13, chapter 701, Oregon Laws 2019, is amended to read:

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

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

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

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

24 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),
25 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
26 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
27 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147,
28 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
29 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290,
30 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343,

1 659A.355, 659A.357, 659A.370 or 659A.421 **or section 5 of this 2021 Act**; or

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

4 “(3) In any action under subsection (1) of this section alleging a violation
5 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852,
6 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to
7 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**
9 **section 5 of this 2021 Act**:

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

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

14 “(c) Upon appeal of any judgment finding a violation, the appellate court
15 shall review the judgment pursuant to the standard established by ORS
16 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
19 section alleging a violation of ORS 652.220, the court may award punitive
20 damages if:

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

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

26 “(5) In any action under subsection (1) of this section alleging a violation
27 of ORS 653.060 or 659A.147, the court may award, in addition to the relief
28 authorized under subsection (1) of this section, compensatory damages or
29 \$200, whichever is greater.

30 “(6) In any action under subsection (1) of this section alleging a violation

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

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

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

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

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

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

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

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

30 “(f) Upon any appeal of a judgment under this subsection, the appellate

1 court shall review the judgment pursuant to the standard established by ORS
2 19.415 (1).

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

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

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

15 “(10) In any action under subsection (1) of this section alleging a vio-
16 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
17 housing law, when the commissioner is pursuing the action on behalf of an
18 aggrieved complainant, the court shall award reasonable attorney fees to the
19 commissioner if the commissioner prevails in the action. The court may
20 award reasonable attorney fees and expert witness fees incurred by a de-
21 fendant that prevails in the action if the court determines that the commis-
22 sioner 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
25 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
26 ing law:

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

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

30 “(B) Will be injured by an unlawful practice or discriminatory housing

1 practice that is about to occur.

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

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

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

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

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

30 “(2) An action may be brought under subsection (1) of this section alleg-

1 ing a violation of:

2 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),
3 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
4 653.549, 653.601 to 653.661, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
5 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
6 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203,
7 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262,
8 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318,
9 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or section 5 of**
10 **this 2021 Act**; or

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

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

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

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

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

26