

Requested by SENATE COMMITTEE ON LABOR AND BUSINESS

**PROPOSED AMENDMENTS TO
SENATE BILL 907**

1 On page 1 of the printed bill, line 2, after “assignments;” delete the rest
2 of the line and delete line 3 and insert “amending ORS 654.062.”.

3 Delete lines 5 through 29.

4 Delete pages 2 through 4 and insert:

5 **“SECTION 1.** ORS 654.062 is amended to read:

6 “654.062. (1) Every employee should notify the employer of any violation
7 of law, regulation or standard pertaining to safety and health in the place
8 of employment when the violation comes to the knowledge of the employee.

9 “(2) However, any employee or representative of the employee may com-
10 plain to the Director of the Department of Consumer and Business Services
11 or any authorized representatives of the director of any violation of law,
12 regulation or standard pertaining to safety and health in the place of em-
13 ployment, whether or not the employee also notifies the employer.

14 “(3) Upon receiving any employee complaint, the director shall make in-
15 quiries, inspections and investigations that the director considers reasonable
16 and appropriate. When an employee or representative of the employee has
17 complained in writing of an alleged violation and no resulting citation is
18 issued to the employer, the director shall furnish to the employee or repre-
19 sentative of the employee, upon written request, a statement of reasons for
20 the decision.

21 “(4) The director shall establish procedures for keeping confidential the

1 identity of any employee who requests protection in writing. When a request
2 has been made, neither a written complaint from an employee, or represen-
3 tative of the employee, nor a memorandum containing the identity of a
4 complainant may be disclosed under ORS 192.311 to 192.478.

5 “(5) It is an unlawful employment practice for any person to bar or dis-
6 charge from employment or otherwise discriminate against any employee or
7 prospective employee because the employee or prospective employee has:

8 “(a) Opposed any practice forbidden by ORS 654.001 to 654.295, 654.412 to
9 654.423 and 654.750 to 654.780;

10 “(b) Made any complaint or instituted or caused to be instituted any
11 proceeding under or related to ORS 654.001 to 654.295, 654.412 to 654.423 and
12 654.750 to 654.780, or has testified or is about to testify in any such pro-
13 ceeding;

14 “(c) Exercised on behalf of the employee, prospective employee or others
15 any right afforded by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750
16 to 654.780; [*or*]

17 “(d) In good faith reported an assault that occurred on the premises of a
18 health care employer as defined in ORS 654.412 or in the home of a patient
19 receiving home health care services[.]; **or**

20 “(e) **With no reasonable alternative and in good faith, refused to**
21 **expose the employee or prospective employee to serious injury or death**
22 **arising from a hazardous condition at a place of employment.**

23 “(6)(a) Any employee or prospective employee alleging to have been
24 barred or discharged from employment or otherwise discriminated against in
25 compensation, or in terms, conditions or privileges of employment, in vio-
26 lation of subsection (5) of this section may, within one year after the em-
27 ployee or prospective employee has reasonable cause to believe that the
28 violation has occurred, file a complaint with the Commissioner of the Bureau
29 of Labor and Industries alleging discrimination under the provisions of ORS
30 659A.820. Upon receipt of the complaint the commissioner shall process the

1 complaint under the procedures, policies and remedies established by ORS
2 chapter 659A and the policies established by ORS 654.001 to 654.295, 654.412
3 to 654.423 and 654.750 to 654.780 in the same way and to the same extent that
4 the complaint would be processed if the complaint involved allegations of
5 unlawful employment practices under ORS 659A.030 (1)(f).

6 “(b) Within 90 days after receipt of a complaint filed under this sub-
7 section, the commissioner shall notify the complainant of the commissioner’s
8 determination.

9 “(c) The affected employee or prospective employee may bring a civil
10 action in any circuit court of the State of Oregon against any person alleged
11 to have violated subsection (5) of this section. The civil action must be
12 commenced within one year after the employee or prospective employee has
13 reasonable cause to believe a violation has occurred, unless a complaint has
14 been timely filed under ORS 659A.820.

15 “(d) The commissioner or the circuit court may order all appropriate re-
16 lief including rehiring or reinstatement to the employee’s former position
17 with back pay.

18 “(7)(a) In any action brought under subsection (6) of this section, there
19 is a rebuttable presumption that a violation of subsection (5) of this section
20 has occurred if a person bars or discharges an employee or prospective em-
21 ployee from employment or otherwise discriminates against an employee or
22 prospective employee within 60 days after the employee or prospective em-
23 ployee has engaged in any of the protected activities described in subsection
24 (5)(a) to [(d)] (e) of this section. The person may rebut the presumption that
25 a violation of subsection (5) of this section has occurred by a demonstration
26 of a preponderance of the evidence.

27 “(b) If a person bars or discharges an employee or prospective employee
28 from employment or otherwise discriminates against the employee or pro-
29 spective employee more than 60 days after the employee or prospective em-
30 ployee has engaged in any of the protected activities described under

1 subsection (5)(a) to [(d)] (e) of this section, such action does not create a
2 presumption in favor of or against finding that a violation of subsection (5)
3 of this section has occurred. Where such action has occurred more than 60
4 days after the protected activity, this subsection does not modify any existing
5 rule of case law relating to the proximity of time between a protected ac-
6 tivity and an adverse employment action. The burden of proof shall be on the
7 employee or prospective employee to demonstrate by a preponderance of the
8 evidence that a violation occurred.

9 **“(8) The director shall adopt rules necessary for the administration**
10 **of subsection (5)(e) of this section that are in accordance with the**
11 **federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et**
12 **seq.).”**

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