

House Bill 4105

Sponsored by Representatives MALSTROM, SALINAS, Senator STEINER HAYWARD; Representatives ALONSO LEON, DOHERTY, EVANS, GREENLICK, HOLVEY, KENY-GUYER, LIVELY, NOSSE, POWER, RAYFIELD, SMITH WARNER (Pre-session filed.)

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 **as introduced**.

Establishes penalty to be imposed by Department of Consumer and Business Services on employers that offer health insurance coverage to employees but that have employees working at least 30 hours per week who receive health care coverage through medical assistance program. Appropriates penalties collected by department to Oregon Health Authority for specified purposes.

Establishes remedy for employee who is retaliated against by employer for applying for or receiving medical assistance.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to health care for low-income workers; creating new provisions; amending ORS 657.660,
3 657.665 and 659A.885; and prescribing an effective date.

4 Whereas working Oregonians should have affordable, comprehensive health insurance coverage;
5 and

6 Whereas most working Oregonians obtain their health insurance coverage through their em-
7 ployment, but some working Oregonians receive coverage of their health care costs through the
8 medical assistance program; and

9 Whereas employers who fail to provide affordable coverage to low-wage workers who are cov-
10 ered by medical assistance shift the cost of health care coverage from the employer to the taxpayer;
11 and

12 Whereas workers who face low wages, work part-time or both are too often eligible for
13 taxpayer-funded medical assistance instead of affordable, employer-based coverage; and

14 Whereas persons who are covered by health insurance have better health outcomes than those
15 who lack coverage; and

16 Whereas persons without health insurance coverage are more likely to be in poor health, more
17 likely to miss needed medications and treatment and more likely to have chronic conditions that are
18 not properly managed; and

19 Whereas persons without health insurance coverage are at risk of financial ruin because med-
20 ical debt is the second most common cause of personal bankruptcy in the United States; and

21 Whereas taxpayers, through state and local governments, fund county clinics, community clinics
22 and other safety net providers that provide care to those working people whose employers fail to
23 provide affordable health insurance coverage to their employees as well as to other uninsured per-
24 sons; and

25 Whereas controlling health care costs can be more readily achieved if a greater share of work-
26 ing people and their families have employer-sponsored health insurance so that cost shifting is
27 minimized; and

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 Whereas the social and economic burden created by the lack of health insurance coverage for
2 some workers and the coverage of other workers through the medical assistance program creates
3 a burden on other employers, the state, affected workers and the families of affected workers who
4 suffer ill health and risk financial ruin; now, therefore,

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

6 **SECTION 1.** The purpose of sections 1 to 5 and 7 of this 2018 Act is to:

7 (1) **Ensure that employers pay a fair share penalty for health care coverage provided to
8 their employees through the medical assistance program.**

9 (2) **Encourage employers to provide affordable health insurance coverage to low-wage
10 employees who would otherwise be enrolled in the medical assistance program.**

11 (3) **Protect employees who receive medical assistance from retaliation by their employers
12 for seeking or obtaining medical assistance.**

13 (4) **Pay a share of the costs of medical assistance provided to working adults who lack
14 affordable employer-sponsored health insurance, improve reimbursement to the health care
15 providers who care for these workers and support the safety net providers that care for the
16 remaining uninsured workers.**

17 **SECTION 2.** As used in sections 1 to 5 of this 2018 Act:

18 (1)(a) **“Covered employee” means an individual who meets all of the following conditions:**

19 (A) **The individual is 18 to 64 years of age.**

20 (B) **The individual is employed for an average of at least 30 hours per week by an em-
21 ployer that offers health insurance coverage to its employees.**

22 (C) **The individual is enrolled in medical assistance on the basis of the individual’s income
23 and not by reason of a disability or being over 65 years of age.**

24 (b) **“Covered employee” includes a leased employee or other individual under the direction
25 and control of the employer.**

26 (2)(a) **“Employer” means an employing unit as defined in ORS 657.020 that employed an
27 average of at least 50 full-time employees on business days during the preceding calendar
28 year.**

29 (b) **“Employer” includes all of the members of a controlled group of corporations. As used
30 in this paragraph, “controlled group of corporations” means a controlled group of corpo-
31 rations as defined in section 1563(a) of the Internal Revenue Code, except that “more than
32 50 percent” shall be substituted for “at least 80 percent” each place it appears in section
33 1563(a)(1) of the Internal Revenue Code, and the determination shall be made without regard
34 to sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.**

35 (c) **“Employer” does not include a public employer as defined in ORS 243.650.**

36 (3) **“Medical assistance” has the meaning given that term in ORS 414.025.**

37 (4) **“Safety net provider” means any provider of comprehensive primary care or acute
38 hospital inpatient services that provides these services to a significant number of medical
39 assistance and medically indigent patients in relation to the total number of patients served
40 by the provider.**

41 **SECTION 3.** (1) **Except as otherwise provided in section 4 of this 2018 Act, every employer
42 shall pay to the Department of Consumer and Business Services an employer responsibility
43 penalty for each covered employee, as determined under subsection (3) of this section.**

44 (2) **Each year the department shall determine the average cost of a full year of
45 employee-only coverage under a group health benefit plan that has an actuarial value of 70**

1 percent.

2 (3) For each employer, the department shall:

3 (a) Multiply the amount determined under subsection (2) of this section by the number
4 of the employer's covered employees;

5 (b) Multiply the product calculated in paragraph (a) of this subsection by 0.9; and

6 (c) Impose an employer responsibility penalty on the employer that is equal to the prod-
7 uct calculated in paragraph (b) of this subsection.

8 (4) All moneys collected pursuant to this section shall be deposited in the Employer Re-
9 sponsibility for Medical Assistance Trust Fund created in section 5 of this 2018 Act.

10 **SECTION 4.** (1) The Department of Consumer and Business Services has all powers and
11 duties necessary to administer the collection and enforcement of employer responsibility
12 penalties required to be remitted by employers under this section and section 3 of this 2018
13 Act, including but not limited to the power to:

14 (a) Adopt rules to administer and enforce sections 1 to 5 and 6 of this 2018 Act;

15 (b) Subpoena documents and subpoena witnesses to testify under oath; and

16 (c) Institute or prosecute actions for the enforcement of sections 1 to 5 and 6 of this 2018
17 Act.

18 (2) An employer shall pay to the department, for deposit into the Employer Responsibility
19 for Medical Assistance Trust Fund, any employer responsibility penalties imposed on the
20 employer pursuant to section 3 of this 2018 Act.

21 (3) The department shall annually send to each employer subject to an employer respon-
22 sibility penalty under section 3 of this 2018 Act a notice of any employer responsibility pen-
23 alty imposed and the date on which payment is due. The amount of the penalty shall become
24 conclusive and binding upon the employer unless, within 20 days after the mailing of the
25 notice to the last-known address of the employer as shown on the records of the department,
26 or in the absence of mailing, within 20 days after the delivery of the notice, the employer
27 files a request for hearing. Hearings shall be conducted in accordance with ORS chapter 183.

28 (4) Interest shall be assessed on employer responsibility penalties not paid on or before
29 payment is due at 10 percent per annum. Interest shall begin to accrue the day after the date
30 the payment is due and shall be deposited into the Employer Responsibility for Medical As-
31 sistance Trust Fund.

32 (5) If an employer responsibility penalty payment is more than 60 days overdue, a penalty
33 equal to the interest charged as described in subsection (4) of this section shall be assessed
34 and due for each month, or part thereof, that the employer responsibility penalty payment
35 is not received.

36 (6) All penalties shall be paid to and collected by the department at such times and in
37 such manner as the department may prescribe and upon collection shall be deposited in the
38 Employer Responsibility for Medical Assistance Trust Fund.

39 (7) An employer shall provide information to all newly hired and existing employees re-
40 garding the availability of medical assistance for low-income employees and regarding the
41 employees' rights under section 7 of this 2018 Act. The department, in consultation with the
42 Oregon Health Authority, shall develop a simple, uniform notice containing the information.

43 **SECTION 5.** (1) The Employer Responsibility for Medical Assistance Trust Fund is cre-
44 ated in the State Treasury, separate and distinct from the General Fund, and consists of
45 moneys collected under sections 3 and 4 of this 2018 Act. Interest earned by the Employer

1 **Responsibility for Medical Assistance Trust Fund shall be credited to the fund.**

2 **(2) Moneys in the fund are appropriated to the Oregon Health Authority to be used for**
 3 **the following purposes:**

4 **(a) To pay a portion of the cost of medical assistance provided to covered employees.**

5 **(b) To increase the reimbursement paid by the authority to health care providers that:**

6 **(A) Contract with the authority to provide services to medical assistance recipients; and**

7 **(B) Are located in health profession shortage areas or medically underserved areas as**
 8 **designated by the Office of Rural Health.**

9 **(c) To make supplemental medical assistance payments to health care providers if 30**
 10 **percent or more of a provider's patients are medical assistance recipients or uninsured.**

11 **(d) To reimburse safety net providers for the cost of providing care, without expectation**
 12 **of compensation, to Oregonians who do not have health insurance.**

13 **(e) To provide funding for medical residency programs in this state.**

14 **(3) All costs to implement and administer sections 1 to 5 and 6 of this 2018 Act shall be**
 15 **paid from moneys deposited in the fund, including any necessary costs incurred by the au-**
 16 **thority, the Department of Consumer and Business Services or any other state government**
 17 **agency.**

18 **SECTION 6. (1) The Oregon Health Authority, the Employment Department, the De-**
 19 **partment of Consumer and Business Services and the Department of Revenue shall enter**
 20 **into interagency agreements and take any steps necessary, including by requesting from a**
 21 **federal agency a waiver of federal requirements, to share the data required to carry out the**
 22 **provisions of sections 1 to 5 of this 2018 Act.**

23 **(2) The authority shall provide to the Department of Consumer and Business Services a**
 24 **list of employers with one or more employees who receive medical assistance in order to**
 25 **permit the department to determine and collect the employer responsibility penalty imposed**
 26 **pursuant to section 3 of this 2018 Act.**

27 **(3) Any and all shared data identifying recipients of medical assistance may not be fur-**
 28 **ther disclosed for purposes other than the administration of sections 1 to 5 of this 2018 Act**
 29 **and are subject to the confidentiality requirements in ORS 413.171 and 657.665.**

30 **(4) As used in this section, "medical assistance" has the meaning given that term in ORS**
 31 **414.025.**

32 **SECTION 7. (1) As used in this section:**

33 **(a) "Employer" has the meaning given that term in section 2 of this 2018 Act.**

34 **(b) "Health insurance exchange" has the meaning give that term in ORS 741.300.**

35 **(c) "Medical assistance" has the meaning given that term in ORS 414.025.**

36 **(d) "Premium tax credits" means tax credits provided under section 36B of the Internal**
 37 **Revenue Code to a person who is enrolled in a qualified health plan through a health insur-**
 38 **ance exchange.**

39 **(2) It is an unlawful employment practice under ORS chapter 659A for an employer to**
 40 **refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an**
 41 **employee who applies for or receives medical assistance or premium tax credits.**

42 **(3) An employee who alleges a violation of subsection (2) of this section may bring a civil**
 43 **action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of**
 44 **Labor and Industries in the manner provided by ORS 659A.820.**

45 **SECTION 8. ORS 657.660 is amended to read:**

1 657.660. (1) Every employing unit shall keep true and accurate records of all persons employed
 2 by it and such records of hours worked, wages paid and other statistics as prescribed by the Di-
 3 rector of the Employment Department for the administration of this chapter **and section 6 of this**
 4 **2018 Act.**

5 (2) Such records shall be open to inspection by the director or an authorized representative of
 6 the director at any reasonable time. No person shall refuse to allow the director or authorized
 7 representative to inspect the payroll or other records or documents relative to the enforcement of
 8 this chapter **and section 6 of this 2018 Act.**

9 (3) The director may require from any employing unit such reports on the wages, hours, em-
 10 ployment, unemployment and related matters concerning its employees as the director deems nec-
 11 essary to the effective administration of this chapter **and section 6 of this 2018 Act.**

12 (4) Every employing unit shall fully, correctly and promptly furnish the director all information
 13 required by the director to carry out the purposes and provisions of this chapter **and section 6 of**
 14 **this 2018 Act.**

15 **SECTION 9.** ORS 657.665 is amended to read:

16 657.665. (1) Except as provided in subsections (2) to (5) of this section, all information in the
 17 records of the Employment Department pertaining to the administration of the unemployment in-
 18 surance, employment service and workforce and labor market information programs:

19 (a) Is confidential and for the exclusive use and information of the Director of the Employment
 20 Department in administering the unemployment insurance, employment service and workforce and
 21 labor market information programs in Oregon.

22 (b) May not be used in any court action or in any proceeding pending in the court unless the
 23 director or the state is a party to the action or proceeding or unless the proceeding concerns the
 24 establishment, enforcement or modification of a support obligation and support services are being
 25 provided by the Division of Child Support or the district attorney pursuant to ORS 25.080.

26 (c) Is exempt from disclosure under ORS 192.311 to 192.478.

27 (2) The Employment Department shall disclose information:

28 (a) To any claimant or legal representative, at a hearing before an administrative law judge, to
 29 the extent necessary for the proper presentation of an unemployment insurance claim.

30 (b) Upon request to the United States Secretary of Labor. The Employment Department shall
 31 disclose the information in a form and containing the information that the United States Secretary
 32 of Labor may require. The information disclosed is confidential and may not be used for any other
 33 purpose.

34 (c) Pursuant to section 303(a)(7) of the Social Security Act, upon request to any agency of the
 35 United States charged with the administration of public works or assistance through public em-
 36 ployment. Under this paragraph, the Employment Department shall disclose the name, address, or-
 37 dinary occupation and employment status of each recipient of unemployment insurance benefits and
 38 a statement of the recipient's right to further benefits under this chapter. The information disclosed
 39 is confidential and may not be used for any other purpose.

40 (d) Pursuant to section 303(c)(1) of the Social Security Act, to the Railroad Retirement Board.
 41 Under this paragraph, the Employment Department shall disclose unemployment insurance records.
 42 The information disclosed is confidential and may not be used for any other purpose. The costs of
 43 disclosing information under this paragraph shall be paid by the board.

44 (e) Pursuant to section 303(d) of the Social Security Act, upon request to officers and employees
 45 of the United States Department of Agriculture and to officers or employees of any state Supple-

1 mental Nutrition Assistance Program agency for the purpose of determining an individual's eligibil-
2 ity for or the amount of supplemental nutrition assistance. The information disclosed is confidential
3 and may not be used for any other purpose. The costs of disclosing information under this paragraph
4 shall be paid by the United States Department of Agriculture.

5 (f) Pursuant to section 303(e)(1) and (2)(A)(ii) of the Social Security Act, to state or local child
6 support enforcement agencies enforcing child support obligations under Title IV-D of the Social Se-
7 curity Act for the purposes of establishing child support obligations, locating individuals owing child
8 support obligations and collecting child support obligations from those individuals. The information
9 disclosed is confidential and may not be used for any other purpose. The costs of disclosing infor-
10 mation under this paragraph shall be paid by the child support enforcement agency.

11 (g) Pursuant to sections 303(f) and 1137 of the Social Security Act, to agencies participating in
12 the income and eligibility verification system for the purpose of verifying an individual's eligibility
13 for benefits, or the amount of benefits, under unemployment insurance, temporary assistance for
14 needy families, Medicaid, the Supplemental Nutrition Assistance Program, Supplemental Security
15 Income, child support enforcement or Social Security programs. The information disclosed is confi-
16 dential and may not be used for any other purpose. The costs of disclosing information under this
17 paragraph shall be paid by the requesting agency.

18 (h) Pursuant to section 303(h) of the Social Security Act and section 3304(a)(16)(B) of the Federal
19 Unemployment Tax Act, to the United States Department of Health and Human Services National
20 Directory of New Hires. The information disclosed is confidential and may not be used for any other
21 purpose. The costs of disclosing information under this paragraph shall be paid by the United States
22 Department of Health and Human Services.

23 (i) Pursuant to section 303(i) of the Social Security Act, to officers and employees of the United
24 States Department of Housing and Urban Development and to representatives of a public housing
25 agency for the purpose of determining an individual's eligibility for benefits, or the amount of ben-
26 efits, under a housing assistance program of the United States Department of Housing and Urban
27 Development. The information disclosed is confidential and may not be used for any other purpose.
28 The costs of disclosing information under this paragraph shall be paid by the United States De-
29 partment of Housing and Urban Development or the public housing agency.

30 (j) Pursuant to regulations of the United States Secretary of Health and Human Services issued
31 under section 3304(a)(16)(A) of the Federal Unemployment Tax Act, and except as required by sec-
32 tion 303 of the Social Security Act, to the state, a political subdivision or a federally recognized
33 Indian tribe that has signed an agreement with the Department of Human Services to administer
34 Part A of Title IV of the Social Security Act for the purpose of determining an individual's eligibility
35 for assistance, or the amount of assistance, under a program funded under Part A of Title IV of the
36 Social Security Act. The information disclosed is confidential and may not be used for any other
37 purpose.

38 (k) Upon request, to the United States Attorney's Office. Under this paragraph, the Employment
39 Department may disclose an individual's employment and wage information in response to a federal
40 grand jury subpoena or for the purpose of collecting civil and criminal judgments, including
41 restitution and special assessment fees. The information disclosed is confidential and may not be
42 used for any other purpose. The costs of disclosing information under this paragraph shall be paid
43 by the United States Attorney's Office.

44 (3) The Employment Department may disclose information secured from employing units:

45 (a) To state agencies, federal agencies, local government agencies, public universities listed in

1 ORS 352.002 and the Oregon Health and Science University established under ORS 353.020, to the
2 extent necessary to properly carry out governmental planning, performance measurement, program
3 analysis, socioeconomic analysis or policy analysis functions performed under applicable law. The
4 information disclosed is confidential and may not be disclosed by the agencies or universities in any
5 manner that would identify individuals, claimants, employees or employing units. If the information
6 disclosed under this paragraph is not prepared for the use of the Employment Department, the costs
7 of disclosing the information shall be paid by the agency or university requesting the information.

8 (b) As part of a geographic information system. Points on a map may be used to represent eco-
9 nomic data, including the location, employment size class and industrial classification of businesses
10 in Oregon. Information presented as part of a geographic information system may not give specific
11 details regarding a business's address, actual employment or proprietary information. If the infor-
12 mation disclosed under this paragraph is not prepared for the use of the Employment Department,
13 the costs of disclosing the information shall be paid by the party requesting the information.

14 (c) In accordance with ORS 657.673.

15 (4) The Employment Department may:

16 (a) Disclose information to public employees in the performance of their duties under state or
17 federal laws relating to the payment of unemployment insurance benefits, the provision of employ-
18 ment services and the provision of workforce and labor market information.

19 (b) At the discretion of the Director of the Employment Department and subject to an intera-
20 gency agreement, disclose information to public officials in the performance of their official duties
21 administering or enforcing laws within their authority and to the agents or contractors of public
22 officials. The public official shall agree to assume responsibility for misuse of the information by
23 the official's agent or contractor.

24 (c) Disclose information pursuant to an informed consent, received from an employer or claim-
25 ant, to disclose the information.

26 (d) Disclose information to partners under the federal Workforce Innovation and Opportunity
27 Act for the purpose of administering state workforce programs under the Act. The information dis-
28 closed is confidential and may not be used for any other purpose. The costs of disclosing information
29 under this paragraph shall be paid by the requesting partner.

30 (e) Disclose the names and addresses of employing units to the Bureau of Labor and Industries
31 for the purpose of disseminating information to employing units. The names and addresses disclosed
32 are confidential and may not be used for any other purpose. If the information disclosed under this
33 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
34 information shall be paid by the bureau.

35 (f) Disclose information to the Commissioner of the Bureau of Labor and Industries for the
36 purpose of performing duties under ORS 279C.800 to 279C.870, 658.005 to 658.245 or 658.405 to
37 658.503 or ORS chapter 652, 653 or 659A. The information disclosed may include the names and ad-
38 dresses of employers and employees and payroll data of employers and employees. The information
39 disclosed is confidential and may not be used for any other purpose. If the information disclosed
40 under this paragraph is not prepared for the use of the Employment Department, the costs of dis-
41 closing the information shall be paid by the bureau.

42 (g) Disclose information required under ORS 657.660 (3) and (4) to the Public Employees Re-
43 tirement System for the purpose of determining the eligibility of members of the retirement system
44 for disability under ORS chapters 238 and 238A. The information disclosed is confidential and may
45 not be used for any other purpose. The costs of disclosing information under this paragraph shall

1 be paid by the Public Employees Retirement System.

2 (h) Disclose to the Oregon Business Development Commission and the Oregon Business Development Department information required by the commission and the department in performing their
3 duties under ORS 285A.050 and 285B.630 to verify changes in employment levels following direct
4 employer participation in department programs or indirect participation through municipalities under
5 ORS 285B.410 to 285B.482. The information disclosed to the commission and the department may
6 include an employer's employment level, total subject wages payroll and whole hours worked. The
7 information disclosed is confidential and may not be used for any other purpose. The commission
8 and the department may not disclose the information in any manner that would identify an employ-
9 ing unit or employee except to the extent necessary to carry out the commission's and the
10 department's duties under ORS 285A.050 and 285B.630. If the information disclosed under this para-
11 graph is not prepared for the use of the Employment Department, the costs of disclosing the infor-
12 mation shall be paid by the commission or the Oregon Business Development Department.

13 (i) Disclose information to the Department of Revenue for the purpose of performing its duties
14 under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may
15 include the names and addresses of employers and employees and payroll data of employers and
16 employees. The information disclosed is confidential and may not be disclosed by the Department
17 of Revenue in any manner that would identify an employing unit or employee except to the extent
18 necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any
19 report or return required or permitted to be filed under the revenue and tax laws administered by
20 the department. The Department of Revenue may not disclose any information received to any pri-
21 vate collection agency or for any other purpose. If the information disclosed under this paragraph
22 is not prepared for the use of the Employment Department, the costs of disclosing the information
23 shall be paid by the Department of Revenue.

24 (j) Disclose information to the Department of Consumer and Business Services for the purpose
25 of performing its duties under ORS chapters 654 and 656 **and sections 1 to 5 and 6 of this 2018**
26 **Act**. The information disclosed may include the name, address, number of employees and industrial
27 classification code of an employer and payroll data of employers and employees. The information
28 disclosed is confidential and may not be disclosed by the Department of Consumer and Business
29 Services in any manner that would identify an employing unit or employee except to the extent
30 necessary to carry out the department's duties under ORS chapters 654 and 656 **and sections 1 to**
31 **5 and 6 of this 2018 Act**, including administrative hearings and court proceedings in which the
32 Department of Consumer and Business Services is a party. If the information disclosed under this
33 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
34 information shall be paid by the Department of Consumer and Business Services.

35 (k) Disclose information to the Construction Contractors Board for the purpose of performing
36 its duties under ORS chapter 701. The information disclosed to the board may include the names and
37 addresses of employers and status of their compliance with this chapter. If the information disclosed
38 under this paragraph is not prepared for the use of the Employment Department, the costs of dis-
39 closing the information shall be paid by the board.

40 (L) Disclose information to the State Fire Marshal to assist the State Fire Marshal in carrying
41 out duties under ORS 453.307 to 453.414. The information disclosed may include the name, address,
42 telephone number and industrial classification code of an employer. The information disclosed is
43 confidential and may not be disclosed by the State Fire Marshal in any manner that would identify
44 an employing unit except to the extent necessary to carry out duties under ORS 453.307 to 453.414.
45

1 If the information disclosed under this paragraph is not prepared for the use of the Employment
2 Department, the costs of disclosing the information shall be paid by the office of the State Fire
3 Marshal.

4 (m) Disclose information to the Higher Education Coordinating Commission for the purpose of
5 performing the commission's duties under ORS chapter 348 and Title IV of the Higher Education
6 Act of 1965. The information disclosed may include the names and addresses of employers and em-
7 ployees and payroll data of employers and employees. The information disclosed is confidential and
8 may not be disclosed by the commission in any manner that would identify an employing unit or
9 employee except to the extent necessary to carry out the commission's duties under ORS chapter
10 348 or Title IV of the Higher Education Act of 1965. If the information disclosed under this para-
11 graph is not prepared for the use of the Employment Department, the costs of disclosing the infor-
12 mation shall be paid by the commission.

13 (n) Disclose information to the Department of Transportation to assist the Department of
14 Transportation in carrying out the duties of the Department of Transportation relating to collection
15 of delinquent and liquidated debts, including taxes, under ORS 184.610 to 184.665, 184.670 to 184.733
16 and 805.263, ORS chapter 319 and the Oregon Vehicle Code. The information disclosed may include
17 the names and addresses of employers and employees and payroll data of employers and employees.
18 The information disclosed is confidential and may not be disclosed by the Department of Transpor-
19 tation in any manner that would identify an employing unit or employee except to the extent nec-
20 essary to carry out the Department of Transportation's duties relating to collection of delinquent
21 and liquidated debts or in auditing or reviewing any report or return required or permitted to be
22 filed under the revenue and tax laws administered by the Department of Transportation. The De-
23 partment of Transportation may not disclose any information received to any private collection
24 agency or for any other purpose. If the information disclosed under this paragraph is not prepared
25 for the use of the Employment Department, the costs of disclosing the information shall be paid by
26 the Department of Transportation.

27 (o) Disclose information to the Department of Human Services and the Oregon Health Authority
28 to assist the Department of Human Services and the Oregon Health Authority in the collection of
29 debts that the Department of Human Services and the Oregon Health Authority are authorized by
30 law to collect. The information disclosed may include the names, addresses and payroll data of em-
31 ployers and employees. The information disclosed is confidential and may not be disclosed by the
32 Department of Human Services or the Oregon Health Authority in a manner that would identify an
33 employing unit or employee except to the extent necessary for the collection of debts as described
34 in this paragraph. The Department of Human Services and the Oregon Health Authority may not
35 disclose information received under this paragraph to a private collection agency or use the infor-
36 mation for a purpose other than the collection of debts as described in this paragraph. If the infor-
37 mation disclosed under this paragraph is not prepared for the use of the Employment Department,
38 the costs of disclosing the information shall be paid by the Department of Human Services or the
39 Oregon Health Authority.

40 (p) Disclose to the Alcohol and Drug Policy Commission information required by the commission
41 in evaluating and measuring the performance of alcohol and drug prevention and treatment pro-
42 grams under ORS 430.242 or the impact of the programs on employment. The information disclosed
43 to the commission may include total subject wages payroll and whole hours worked. The information
44 disclosed under this paragraph is confidential and may not be used for any other purpose. The
45 commission may not disclose the information in any manner that would identify an employing unit

1 or employee except to the extent necessary to carry out the commission's duties under ORS 430.242.
 2 If the information disclosed under this paragraph is not prepared for the use of the Employment
 3 Department, the costs of disclosing the information shall be paid by the commission.

4 (q) Disclose to any person establishment level information secured pursuant to this chapter from
 5 federal, state and local government agencies, public universities listed in ORS 352.002 or the Oregon
 6 Health and Science University established under ORS 353.020. If the information disclosed under this
 7 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
 8 information shall be paid by the person requesting the information.

9 (r) Disclose to any person the industrial classification code assigned to an employing unit. If the
 10 information disclosed under this paragraph is not prepared for the use of the Employment Depart-
 11 ment, the costs of disclosing the information shall be paid by the person requesting the information.

12 (5) The Employment Department may make public all decisions of the Employment Appeals
 13 Board.

14 (6) Any officer appointed by or any employee of the Director of the Employment Department
 15 who discloses confidential information, except with the authority of the director, pursuant to rules
 16 or as otherwise required by law, may be disqualified from holding any appointment or employment
 17 with the Employment Department.

18 (7) Any person or any officer or employee of an entity to whom information is disclosed by the
 19 Employment Department under this section who divulges or uses the information for any purpose
 20 other than that specified in the provision of law or agreement authorizing the use or disclosure may
 21 be disqualified from performing any service under contract or disqualified from holding any ap-
 22 pointment or employment with the state agency that engaged or employed that person, officer or
 23 employee. The Employment Department may immediately cancel or modify any information sharing
 24 agreement with an entity when a person or an officer or employee of that entity discloses confi-
 25 dential information, other than as specified in law or agreement.

26 **SECTION 10.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and
 27 section 13, chapter 691, Oregon Laws 2017, 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, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
 43 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
 44 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 45 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,

1 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
2 659A.318, 659A.320, 659A.355 or 659A.421 **or section 7 of this 2018 Act**; or

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

4 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
5 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
6 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
7 659A.290, 659A.318, 659A.355 or 659A.421 **or section 7 of this 2018 Act**:

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

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

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

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

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

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

18 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
19 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

44 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
45 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable

1 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
 2 and

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

5 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
 6 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 7 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 8 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 9 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 10 manner as a person or group of persons may file a civil action under this section. In a civil action
 11 filed under this subsection, the court may assess against the respondent, in addition to the relief
 12 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 violation of ORS 659A.145 or
 16 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 17 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 18 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 19 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 20 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 21 appealing an adverse decision of the trial court.

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

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

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

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

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

32 **SECTION 11.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
 33 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

45 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall

1 review the judgment pursuant to the standard established by ORS 19.415 (3).

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

3 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
 4 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
 5 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 6 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 7 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 8 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 7 of this 2018 Act**; or

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

10 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 11 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 12 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 13 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 7 of this 2018 Act**:

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) The operator or manager of the place of public accommodation, the employee or person

1 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
 2 damages awarded in the action;

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

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

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

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

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

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

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

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

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

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

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

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

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

38 **SECTION 12. Sections 1 to 7 of this 2018 Act and the amendments to ORS 657.660, 657.665**
 39 **and 659A.885 by sections 8 to 11 of this 2018 Act become operative on January 1, 2020.**

40 **SECTION 13. (1) The Department of Consumer and Business Services, the Employment**
 41 **Department, the Oregon Health Authority and the Department of Revenue may take any**
 42 **action prior to the operative date specified in section 12 of this 2018 Act that is necessary**
 43 **to carry out sections 1 to 6 of this 2018 Act and the amendments to ORS 657.660 and 657.665**
 44 **by sections 8 and 9 of this 2018 Act on and after the operative date specified in section 12**
 45 **of this 2018 Act.**

1 **(2) The Commissioner of the Bureau of Labor and Industries may take any action prior**
2 **to the operative date specified in section 12 of this 2018 Act that is necessary to carry out**
3 **section 7 of this 2018 Act and the amendments to ORS 659A.885 by sections 10 and 11 of this**
4 **2018 Act on and after the operative date specified in section 12 of this 2018 Act.**

5 **SECTION 14.** **This 2018 Act takes effect on the 91st day after the date on which the 2018**
6 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

7
