

A-Engrossed
Senate Bill 1026

Ordered by the Senate April 22
Including Senate Amendments dated April 22

Sponsored by Senators HEARD, JOHNSON, ROBLAN, Representatives GOMBERG, MCKEOWN, SMITH DB

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.

[Requires employers of seafood processors to calculate applicable overtime pay for employees on daily and weekly basis and pay greater of two amounts.]

[Removes substantive language from definition of "workweek."]

Repeals exemption for seafood processors from overtime requirements applicable to persons employed in canneries, driers and packing plants.

A BILL FOR AN ACT

1
2 Relating to seafood processing; amending ORS 652.035, 653.265 and 659A.885; and repealing ORS
3 653.263.

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

5 **SECTION 1.** ORS 653.265 is amended to read:

6 653.265. (1) As used in this section:

7 (a) "Perishable product" means any product that may spoil, deteriorate or undergo other mate-
8 rial changes that render it unsuitable for the use for which it was produced. "Perishable product"
9 includes agricultural crops, meat and fish.

10 (b) "Undue hardship period" means the period of time during which perishable product must be
11 processed after harvesting, slaughter or catch.

12 (c) "Workweek" means a fixed period of time established by an employer that reflects a regu-
13 larly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin
14 on any day of the week and any hour of the day and need not coincide with a calendar week. The
15 beginning of the workweek may be changed if the change is intended to be permanent and is not
16 designed to evade overtime requirements.

17 (2)(a) Except as provided in paragraphs (b) to (d) of this subsection, an employer may not require
18 or permit an employee employed in any cannery, drier or packing plant in this state to work more
19 than:

20 (A) 10 hours in any one day; or

21 (B) 55 hours in one workweek.

22 (b) An employer may permit an employee described in paragraph (a) of this subsection to work
23 up to 60 hours in one workweek if the employee requests or consents in writing to work more than
24 55 hours in the workweek.

25 (c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer
26 is eligible for an undue hardship period exemption under subsection (5) of this section, an employer

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 may permit an employee described in paragraph (a) of this subsection to work:

2 (A) Up to 84 hours per workweek for four workweeks; and

3 (B) Up to 80 hours per workweek for the remainder of the undue hardship period.

4 (d) An employer may permit an employee described in paragraph (a) of this subsection to work
5 more than 10 hours in any one day if the employer compensates the employee as follows:

6 (A) One and one-half times the employee's regular rate of pay for each hour the employee works
7 over 10 hours in any one day if the employee is an hourly employee; or

8 (B) One and one-half times the regular price for all work done during the time the employee is
9 employed over 10 hours per day if the employee is a piece worker.

10 (3) An employer shall calculate an employee's overtime on a daily basis under subsection (2)(d)
11 of this section and on a weekly basis under ORS 653.261 (1) and pay the greater of the two amounts
12 if, during the same workweek, the employee works more than:

13 (a) 10 hours in one day as described in subsection (1) of this section; and

14 (b) 40 hours in one workweek as described in ORS 653.261 (1).

15 (4) An employer that makes an overtime payment to an employee pursuant to subsection (3) of
16 this section satisfies the overtime compensation requirements under this section and ORS 653.261
17 (1).

18 (5)(a) An employer is eligible for an undue hardship period exemption from the restrictions on
19 work hours under subsection (2)(a) of this section if the employer, in the ordinary course of the
20 employer's business, processes perishable products. The undue hardship period exemption shall be
21 effective only during an undue hardship period. An employer may be eligible for more than one un-
22 due hardship period exemption in a calendar year. However, the combined total duration of the
23 employer's undue hardship period exemptions may not exceed 21 workweeks in a calendar year.

24 (b) To claim an undue hardship period exemption, an employer must provide notice of the undue
25 hardship period to the Commissioner of the Bureau of Labor and Industries and obtain written
26 consent from each employee whom the employer will request to work more than 55 hours in any
27 workweek during the undue hardship period.

28 (c)(A) The notice the employer sends to the commissioner under paragraph (b) of this subsection
29 must be in a form prescribed by the commissioner by rule and include a description of the reasons
30 for the undue hardship period, the start and expected end dates of the undue hardship period and
31 any other information required by the commissioner.

32 (B) The employee's written consent shall be in a form prescribed by the commissioner by rule
33 and include:

34 (i) A description of the employer's reasons for the undue hardship period;

35 (ii) The start and expected end dates of the undue hardship period;

36 (iii) A statement that the employer may require the employee to work up to 84 hours per
37 workweek for up to four workweeks during the undue hardship period;

38 (iv) A statement that the employer may require the employee to work up to 80 hours per
39 workweek for the remainder of the undue hardship period;

40 (v) A statement that the employee consents to working up to 84 hours per workweek for up to
41 four workweeks during the undue hardship period and up to 80 hours per workweek for the re-
42 mainder of the undue hardship period;

43 (vi) Contact information for the Bureau of Labor and Industries; and

44 (vii) Any other information required by the commissioner.

45 (6) An employer may not coerce an employee into consenting to work more than 55 hours in a

1 given workweek.

2 (7) This section does not apply to:

3 (a) An employee employed in a cannery, drier or packing plant that is located on a farm and
4 primarily processes products produced on the farm;

5 (b) An employee employed in a cannery, drier or packing plant who is engaged in manufacturing,
6 as that term is defined in ORS 652.020; **or**

7 *[(c) An employee employed by a seafood processor, as that term is defined in ORS 653.263; or]*

8 *[(d)]* (c) An employee employed in a cannery, drier or packing plant whose principal duties are
9 administrative in nature or who is not otherwise, in the usual course of the employee's duties, en-
10 gaged in the direct processing of goods.

11 (8) Subsections (2) to (6) of this section do not apply to employees who are represented by a
12 labor organization for purposes of collective bargaining with their employer, provided limits on the
13 required hours of work and overtime payment have been agreed to between the employer and labor
14 organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and
15 payments shall not be deemed to be changed from the previous collective bargaining agreement be-
16 tween the employer and labor organization unless the employees have been locked out or are en-
17 gaged in a strike or the employer has unilaterally implemented new terms and conditions of
18 employment.

19 (9)(a) Notwithstanding ORS 653.256, in addition to any other penalty provided by law, the com-
20 missioner may assess the following civil penalties against an employer:

21 (A) \$2,000 per violation if the commissioner determines the employer coerced an employee into
22 consenting under subsection (2)(b) of this section to work more than 55 hours in any given
23 workweek; and

24 (B) \$3,000 per violation if the commissioner determines the employer coerced an employee into
25 consenting under subsection (5) of this section to work more than 55 hours per workweek in any
26 given workweek during an undue hardship period.

27 (b) Each violation described in paragraph (a) of this subsection is a separate and distinct offense.
28 In the case of a continuing violation, each workweek's continuance is a separate and distinct vio-
29 lation.

30 (c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
31 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
32 provided in ORS 653.256.

33 (10)(a) In addition to any other remedy provided by law, an employee has a private cause of
34 action against an employer if the employer violates subsection (2) of this section by requiring the
35 employee to work more than the applicable limit for the maximum allowable hours of employment
36 in one workweek.

37 (b) If the employee prevails in an action brought under this section, the court may enter judg-
38 ment against the employer for:

39 (A) Actual damages or \$3,000 per claim, whichever is greater;

40 (B) Equitable relief; and

41 (C) Liquidated damages in an amount equal to twice the employee's overtime wages earned
42 during the period not allowed under subsection (2) of this section.

43 (c) In an action brought under this section, the court may award to the prevailing plaintiff costs,
44 disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by
45 the court.

1 **SECTION 2.** ORS 652.035 is amended to read:

2 652.035. (1) Any employee asserting a violation of ORS 652.020[, 653.263] or 653.265 may file a
3 complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a
4 civil action as provided in ORS 659A.885.

5 (2) In addition to any other damages provided by law, the commissioner may assess a civil pen-
6 alty against the employer in the amount of \$1,000.

7 (3) The commissioner shall waive 50 percent of the amount of any civil penalty imposed by order
8 under this section if the commissioner determines that the employer paid the full remedy due, not
9 including any civil penalty, within 14 days after the order imposing the remedy became final by
10 operation of law or on appeal.

11 (4) Civil penalties authorized by this section shall be imposed in the manner provided in ORS
12 183.745.

13 (5) An employer may not retaliate or in any way discriminate against an individual with respect
14 to hire or tenure or any other term or condition of employment because the individual has inquired
15 about the provisions of this section or ORS 652.020, 653.261 or 653.265 or has reported a violation
16 to, or filed a complaint with, the Bureau of Labor and Industries.

17 **SECTION 3.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and sec-
18 tion 13, chapter 691, Oregon Laws 2017, is amended to read:

19 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
20 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
21 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
22 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
23 court may order back pay in an action under this subsection only for the two-year period imme-
24 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
25 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
26 year period immediately preceding the filing of the action. In any action under this subsection, the
27 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
28 cept as provided in subsection (3) of this section:

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

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

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

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

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

40 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
41 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
42 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
43 659A.290, 659A.318, 659A.355 or 659A.421:

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

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

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

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

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

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

9 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
10 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

41 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
42 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
43 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
44 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
45 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same

1 manner as a person or group of persons may file a civil action under this section. In a civil action
2 filed under this subsection, the court may assess against the respondent, in addition to the relief
3 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

6 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
7 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
8 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
9 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
10 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
11 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
12 appealing an adverse decision of the trial court.

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

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

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

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

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

23 **SECTION 4.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
24 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

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

39 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
40 652.220, 652.355, 653.060, [653.263,] 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
41 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
42 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
43 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
44 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421; or

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

1 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
2 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
3 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
4 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421:

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

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

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

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

15 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
16 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

45 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the

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

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

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

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

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

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

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

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

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

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

29 **SECTION 5. ORS 653.263 is repealed.**

30