

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO
SENATE BILL 479**

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

3 Delete lines 4 through 29 and delete page 2 and insert:

4 **“SECTION 1. As used in sections 1 to 4 of this 2019 Act:**

5 **“(1) ‘Public employer’ has the meaning given that term in ORS
6 260.432.**

7 **“(2) ‘Workplace harassment’ means conduct that constitutes dis-
8 crimination prohibited by ORS 659A.030, including conduct that con-
9 stitutes sexual assault, as defined in ORS 181A.323.**

10 **“SECTION 2. (1) A public employer shall establish and adopt a
11 written policy that seeks to prevent workplace harassment that occurs
12 between employees or between an employer and an employee in the
13 workplace or at a work-related event that is off the employment
14 premises and coordinated by or through the employer, or between an
15 employer and an employee, off the employment premises.**

16 **“(2) The policy must include:**

17 **“(a) A statement prohibiting workplace harassment;**

18 **“(b) Information explaining that a victim of workplace harassment
19 has a right to seek redress through the employer’s internal process
20 provided under section 3 of this 2019 Act, through the Bureau of Labor
21 and Industries’ complaint resolution process under ORS 659A.820 to**

1 **659A.865 or under any other available law, whether civil or criminal,**
2 **including:**

3 **“(A) The timeline under which relief may be sought;**

4 **“(B) Any available administrative or judicial remedies; and**

5 **“(C) The advance notice of claim against a public body that a**
6 **claimant must provide as required under ORS 30.275;**

7 **“(c) A statement that a person who reports workplace harassment**
8 **has the right to be protected from retaliation;**

9 **“(d) A statement of the scope of the policy, including that the policy**
10 **applies to elected public officials, volunteers and interns;**

11 **“(e) An explanation that a victim of workplace harassment may**
12 **voluntarily disclose information regarding an incident of workplace**
13 **harassment that involves the victim; and**

14 **“(f) Information to connect a victim of workplace harassment with**
15 **legal resources and counseling and support services, including any**
16 **available employee assistance services.**

17 **“(3) A public employer shall provide a copy of the policies described**
18 **in this section to each employee and shall include a copy of the poli-**
19 **cies in any orientation materials that are provided to new employees**
20 **at the time of hire.**

21 **“(4) If an employee discloses any concerns about workplace**
22 **harassment to a supervisor of the employer, the supervisor shall, at**
23 **the time of the disclosure, provide to the employee a copy of the poli-**
24 **cies described in this section.**

25 **“SECTION 3. A public employer shall develop written policies and**
26 **procedures for the prompt investigation of a report of workplace**
27 **harassment. The policies and procedures must:**

28 **“(1) Provide instruction for maintaining records of workplace**
29 **harassment.**

30 **“(2) Establish a process for a victim of workplace harassment to file**

1 a complaint, provided that the process allows a victim to file the
2 complaint within five years from the date on which the alleged
3 harassment occurred or within the applicable time limitation on the
4 commencement of an action under ORS 659A.875, whichever is greater.

5 “(3) Subject to subsection (4) of this section, require the employer
6 to follow up with the victim of the alleged harassment once every
7 three months for the calendar year following the date on which the
8 employer received a report of harassment, to determine whether the
9 alleged harassment has stopped or if the victim has experienced re-
10 taliation.

11 “(4) Inform the victim that the employer will follow up in the
12 manner described in subsection (3) of this section until and unless the
13 victim objects to such action in writing.

14 “SECTION 4. (1) A public employer may not enter into an agree-
15 ment with an employee or prospective employee, as a condition of
16 employment, continued employment, promotion, compensation or the
17 receipt of benefits, that contains a nondisclosure provision, a
18 nondisparagement provision or any other provision that has the pur-
19 pose or effect of preventing the employee from disclosing or discussing
20 workplace harassment.

21 “(2)(a) A public employer may not enter into a settlement, sepa-
22 ration or severance agreement that includes a provision described un-
23 der subsection (1) of this section or that prevents the disclosure of
24 factual information relating to a claim of workplace harassment.

25 “(b) Paragraph (a) of this subsection does not apply if the settle-
26 ment, separation or severance agreement is entered into at the request
27 of an employee claiming to be a victim of workplace harassment.

28 “(3) A public employer may not prohibit an employee from seeking
29 reemployment with the employer as a term or condition of any
30 settlement, separation or severance agreement.

1 **“(4) An employee may file a complaint under ORS 659A.820 for vio-**
2 **lations of this section and may bring a civil action under ORS 659A.885**
3 **and recover relief as provided by ORS 659A.885 (1) to (3).**

4 **“SECTION 5.** ORS 659A.885, as amended by section 9, chapter 197,
5 Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is
6 amended to read:

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

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

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

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

27 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
28 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
29 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
30 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to

1 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
2 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
3 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 **or**
4 **section 4 of this 2019 Act**; or

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

7 “(3) In any action under subsection (1) of this section alleging a violation
8 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
9 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
10 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
11 659A.318, 659A.355 or 659A.421 **or section 4 of this 2019 Act**:

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

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

16 “(c) Upon appeal of any judgment finding a violation, the appellate court
17 shall review the judgment pursuant to the standard established by ORS
18 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
21 section alleging a violation of ORS 652.220, the court may award punitive
22 damages if:

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

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

28 “(5) In any action under subsection (1) of this section alleging a violation
29 of ORS 653.060, the court may award, in addition to the relief authorized
30 under subsection (1) of this section, compensatory damages or \$200, which-

1 ever is greater.

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

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

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

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

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

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

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

28 “(e) The court may award reasonable attorney fees and expert witness fees
29 incurred by a defendant who prevails only if the court determines that the
30 plaintiff had no objectively reasonable basis for asserting a claim or no

1 reasonable basis for appealing an adverse decision of a trial court; and

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

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

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

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

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

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

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

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

1 practice; or

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

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

9 **“SECTION 6.** ORS 659A.885, as amended by sections 9 and 10, chapter
10 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is
11 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, 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, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
5 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
6 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
7 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
8 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.357 or
9 **659A.421 or section 4 of this 2019 Act; or**

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

12 “(3) In any action under subsection (1) of this section alleging a violation
13 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
14 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
15 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
16 659A.318, 659A.355, 659A.357 or **659A.421 or section 4 of this 2019 Act:**

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

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

21 “(c) Upon appeal of any judgment finding a violation, the appellate court
22 shall review the judgment pursuant to the standard established by ORS
23 19.415 (1); and

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

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

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

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

3 “(5) In any action under subsection (1) of this section alleging a violation
4 of ORS 653.060, the court may award, in addition to the relief authorized
5 under subsection (1) of this section, compensatory damages or \$200, which-
6 ever is greater.

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

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

15 “(8) Any individual against whom any distinction, discrimination or re-
16 striction on account of race, color, religion, sex, sexual orientation, national
17 origin, marital status or age, if the individual is 18 years of age or older,
18 has been made by any place of public accommodation, as defined in ORS
19 659A.400, by any employee or person acting on behalf of the place or by any
20 person aiding or abetting the place or person in violation of ORS 659A.406
21 may bring an action against the operator or manager of the place, the em-
22 ployee or person acting on behalf of the place or the aider or abettor of the
23 place or person. Notwithstanding subsection (1) of this section, in an action
24 under this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14
