

SENATE MINORITY REPORT AMENDMENTS TO SENATE BILL 1567

By Nonconcurring Members of COMMITTEE ON JUDICIARY

February 18

1 On page 1 of the printed bill, line 2, after the second semicolon delete the rest of the line and
2 delete line 3 and insert “and amending ORS 243.650, 243.656, 243.706 and 659A.885.”.

3 Delete lines 5 through 26 and delete pages 2 through 9 and insert:
4

“ARBITRATION

“(Procedures)

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6
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8 “**SECTION 1.** ORS 243.706 is amended to read:

9 “243.706. (1)(a) A public employer may enter into a written agreement with the exclusive rep-
10 resentative of an appropriate bargaining unit setting forth a grievance procedure culminating in
11 binding arbitration [*or any other dispute resolution process agreed to by the parties*].

12 “(b) **An arbitrator’s decision in a proceeding under this subsection shall be:**

13 “(A) **Made in writing;**

14 “(B) **Based on a standard described in section 3 of this 2020 Act if the arbitrator’s deci-**
15 **sion is to impose disciplinary action; and**

16 “(C) **Final and binding upon the parties if the decision is made within the scope and terms**
17 **of the collective bargaining agreement.**

18 “(2)(a) **For purposes of carrying out the procedure for arbitration under subsection (1)**
19 **of this section, the selection of the arbitrator shall be conducted in the manner provided in**
20 **ORS 243.746 (2).**

21 “(b) **The Employment Relations Board shall adopt rules establishing the minimum quali-**
22 **fications necessary for an arbitrator to be considered qualified to participate in an arbi-**
23 **tration proceeding under this section.**

24 “(c) **Nothing in this subsection is intended to prohibit a public employer and the exclusive**
25 **representative from agreeing in writing to a permanent selection of an arbitrator or a list**
26 **of arbitrators provided that each arbitrator who is permanently selected meets the minimum**
27 **qualifications established by the board by rule.**

28 “(3) **As a condition of enforceability, any arbitration award issued pursuant to a proceeding**
29 **under subsection (1) of this section that orders the reinstatement of a public employee or other-**
30 **wise relieves the public employee of responsibility for misconduct shall comply with public policy**
31 **requirements as clearly defined in statutes or judicial decisions including but not limited to policies**
32 **respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or**
33 **deadly force and serious criminal misconduct, related to work. In addition, with respect to claims**
34 **that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based**

1 upon the public employer's alleged previous differential treatment of employees for the same or
2 similar conduct, the arbitration award must conform to the following principles:

3 “(a) Some misconduct is so egregious that no employee can reasonably rely on past treatment
4 for similar offenses as a justification or defense to discharge or other discipline.

5 “(b) Public managers have a right to change disciplinary policies at any time, notwithstanding
6 prior practices, if such managers give reasonable advance notice to affected employees and the
7 change does not otherwise violate a collective bargaining agreement.

8 “[(2)] (4) In addition to subsection (1) of this section, a public employer may enter into a written
9 agreement with the exclusive representative of its employees providing that a labor dispute over
10 conditions and terms of a contract may be resolved through binding arbitration.

11 **“(5) When an arbitration proceeding involves alleged misconduct by a law enforcement
12 officer of any law enforcement agency, as those terms are defined in ORS 131.930, the
13 arbitrator may modify the employer's disciplinary action as follows:**

14 **“(a) If the law enforcement agency imposes disciplinary action pursuant to a discipline
15 guide or discipline matrix that is included in the terms of the collective bargaining agree-
16 ment, the arbitrator may issue an arbitration award imposing disciplinary action that is
17 based on a standard described in section 3 of this 2020 Act and that is consistent with the
18 provisions of the discipline guide or discipline matrix.**

19 **“(b) If the law enforcement agency imposes a disciplinary action and the terms of the
20 collective bargaining agreement do not include a discipline guide or a discipline matrix, the
21 arbitrator shall apply a standard described in section 3 of this 2020 Act in issuing an arbi-
22 tration award imposing disciplinary action.**

23 “[(3)] (6) In an arbitration proceeding under this section, the arbitrators, or a majority of the
24 arbitrators, may:

25 “(a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

26 “(A) Compel the attendance of a witness properly served by either party; and

27 “(B) Require from either party the production of books, papers and documents the arbitrators
28 find are relevant to the proceeding;

29 “(b) Administer oaths or affirmations to witnesses; and

30 “(c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

31 “[(4)] (7) The arbitrators shall promptly provide a copy of a subpoena issued under this section
32 to each party to the arbitration proceeding.

33 “[(5)] (8) The arbitrators issuing a subpoena under this section may rule on objections to the
34 issuance of the subpoena.

35 “[(6)] (9) If a person fails to comply with a subpoena issued under this section or if a witness
36 refuses to testify on a matter on which the witness may be lawfully questioned, the party who re-
37 quested the subpoena or seeks the testimony may apply to the arbitrators for an order authorizing
38 the party to apply to the circuit court of any county to enforce the subpoena or compel the testi-
39 mony. On the application of the attorney of record for the party or on the application of the
40 arbitrators, or a majority of the arbitrators, the court may require the person or witness to show
41 cause why the person or witness should not be punished for contempt of court to the same extent
42 and purpose as if the proceedings were pending before the court.

43 “[(7)] (10) Witnesses appearing pursuant to subpoena, other than parties or officers or employees
44 of the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS
45 44.415 (2).

1 “(11) The cost of representation in a proceeding under this section shall be borne equally
2 by the parties involved in the proceeding.

3 “(12) Nothing in this section is intended to prohibit a public employer and the exclusive
4 representative from entering into a collective bargaining agreement that provides for an al-
5 ternative arbitration procedure other than the arbitration procedure described under this
6 section, provided that the agreement:

7 “(a) Includes standards for the selection of a qualified arbitrator;

8 “(b) Provides for final and binding arbitration;

9 “(c) Delineates the scope and authority of the arbitrator in making an arbitration deci-
10 sion and award; and

11 “(d) Specifies how the costs of arbitration shall be borne.

12 “(13) As used in this section:

13 “(a) ‘Discipline guide’ means a grid that is designed to provide parameters for the level
14 of discipline to be imposed for an act of misconduct that is categorized by the severity of the
15 misconduct and take into account the presumptive level of discipline for the misconduct and
16 any aggravating or mitigating factors.

17 “(b) ‘Discipline matrix’ means a grid used to determine the level of discipline to be im-
18 posed for an act of misconduct that is categorized by the severity of the misconduct, ac-
19 cording to the intersection where the category of misconduct and the level of disciplinary
20 action meet.

21 “SECTION 2. Sections 3 to 6 of this 2020 Act are added to and made a part of ORS 243.650
22 to 243.806.

23 “SECTION 3. Standards for imposing discipline. (1) For purposes of determining whether
24 just cause exists to issue an arbitration award imposing disciplinary action in an arbitration
25 proceeding under ORS 243.706, an arbitrator shall consider all of the following:

26 “(a) Whether the public employer provided notice to the public employee warning the
27 employee of disciplinary consequences that may occur as a result of the employee’s conduct.

28 “(b) Whether the rules or policies of the public employer are reasonably related to the
29 employer’s business efficiency and performance that an employer may expect from an em-
30 ployee.

31 “(c) Whether the employer, prior to taking disciplinary action against the employee,
32 conducted an inquiry or investigation using an impartial and objective method to determine
33 whether the employee engaged in misconduct.

34 “(d) Whether the public employer obtained substantial evidence to support a finding of
35 misconduct.

36 “(e) Whether the employer’s disciplinary action was applied in a consistent and
37 nondiscriminatory manner.

38 “(f) Whether the degree of discipline was reasonably related to the seriousness of the
39 employee’s misconduct and the employee’s past conduct.

40 “(2) Notwithstanding ORS 236.360 (4), with regard to public employees who are repres-
41 ented under a collective bargaining agreement, an arbitrator may issue an arbitration award
42 under ORS 243.706 imposing disciplinary action that is based on a standard other than the
43 just cause standard described in subsection (1) of this section provided that:

44 “(a) The standard was agreed to as a result of the collective bargaining process between
45 a public employer and the exclusive representative;

1 “(b) The disciplinary standard is included in the terms of the collective bargaining
2 agreement; and

3 “(c) The standard requires, at a minimum, that the arbitrator consider the following:

4 “(A) Whether the public employer has conducted an inquiry or investigation using im-
5 partial and objective methods that are consistent with constitutional due process principles
6 to determine whether a public employee violated the employer’s policy or rules; and

7 “(B) Whether the degree of disciplinary action imposed by the public employer was rea-
8 sonably related and proportionate to the seriousness of the employee’s misconduct and made
9 in consideration of any mitigating factors or circumstances and the employee’s past conduct.

10 “(3) Every collective bargaining agreement entered into on or after January 1, 2021, shall
11 include a provision that requires any arbitrator’s decision to impose disciplinary action to
12 be based on a standard described under subsection (1) or (2) of this section.

13
14 “(Prohibited Conduct)

15
16 “SECTION 4. Prohibited discrimination against arbitrator. (1) It is an unlawful employ-
17 ment practice for a public employer to deny future opportunities for a person to be selected
18 as an arbitrator under ORS 243.706 or in any manner discriminate against the person because
19 the person previously issued an arbitration award in accordance with the arbitration proce-
20 dures authorized in ORS 243.706.

21 “(2)(a) Except as provided in paragraph (b) of this subsection, a person may file a com-
22 plaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 for
23 a violation of this section and may bring a civil action under ORS 659A.885.

24 “(b) The filing of a complaint with the Employment Relations Board by a person alleging
25 an unfair labor practice based on the conduct prohibited under subsection (1) of this section
26 precludes the filing of a complaint under ORS 659A.820.

27 “SECTION 5. Prohibited discrimination against employee. (1) It is an unlawful employ-
28 ment practice under ORS chapter 659A for a public employer to deny an employee a fair and
29 impartial arbitration process or to discriminate or retaliate against the employee in any way
30 for the employee’s participation in an arbitration proceeding under ORS 243.706.

31 “(2)(a) Except as provided under paragraph (b) of this subsection, an employee may file
32 a complaint with the Commissioner of the Bureau of Labor and Industries under ORS
33 659A.820 for a violation of this section and may bring a civil action under ORS 659A.885.

34 “(b) The filing of a complaint with the Employment Relations Board by a person alleging
35 an unfair labor practice based on the conduct prohibited under subsection (1) of this section
36 precludes the filing of a complaint under ORS 659A.820.

37
38 “(Reporting)

39
40 “SECTION 6. Law enforcement agency reporting. (1) As used in this section:

41 “(a) ‘Law enforcement agency’ has the meaning given that term in ORS 131.930.

42 “(b) ‘Law enforcement officer’ has the meaning given that term in ORS 131.930.

43 “(2) A law enforcement agency that is located in a city with a population exceeding
44 100,000 shall submit an annual report to the Legislative Assembly on or before January 15
45 of each year in the manner provided in ORS 192.245. The report must include:

1 “(a) A description of the manner in which the disciplinary policies and procedures in-
2 cluded in a collective bargaining agreement entered into by the law enforcement agency and
3 the exclusive representative of the appropriate bargaining unit of law enforcement officers
4 conform to the standards for imposing disciplinary action established under section 3 of this
5 2020 Act.

6 “(b) A description of how the disciplinary policies and procedures in the collective bar-
7 gaining agreement were applied to arbitration awards awarded in the prior calendar year.

8 “(c) An accounting of the number of disciplinary actions over the prior calendar year
9 that:

10 “(A) The law enforcement agency initiated against law enforcement officer employees.

11 “(B) That were sent to arbitration.

12 “(C) That were sustained, reversed in whole or adjusted in part by the arbitrator.

13 “(d) The total marginal cost of arbitration awards incurred by the law enforcement
14 agency over the prior calendar year.

15
16 “(Miscellaneous)
17

18 “**SECTION 7.** ORS 243.650 is amended to read:

19 “243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

20 “(1) ‘Appropriate bargaining unit’ means the unit designated by the Employment Relations Board
21 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
22 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
23 nonacademically licensed school employees. Academically licensed units may include but are not
24 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
25 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
26 to June 6, 1995, or to any school district with fewer than 50 employees.

27 “(2) ‘Board’ means the Employment Relations Board.

28 “(3) ‘Certification’ means official recognition by the board that a labor organization is the ex-
29 clusive representative for all of the employees in the appropriate bargaining unit.

30 “(4) ‘Collective bargaining’ means the performance of the mutual obligation of a public employer
31 and the representative of its employees to meet at reasonable times and confer in good faith with
32 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
33 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
34 concerning the interpretation or application of a collective bargaining agreement, and to execute
35 written contracts incorporating agreements that have been reached on behalf of the public employer
36 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
37 negotiate does not compel either party to agree to a proposal or require the making of a concession.
38 This subsection may not be construed to prohibit a public employer and a certified or recognized
39 representative of its employees from discussing or executing written agreements regarding matters
40 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
41 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

42 “(5) ‘Compulsory arbitration’ means the procedure whereby parties involved in a labor dispute
43 are required by law to submit their differences to a third party for a final and binding decision.

44 “(6) ‘Confidential employee’ means one who assists and acts in a confidential capacity to a per-
45 son who formulates, determines and effectuates management policies in the area of collective bar-

1 gaining.

2 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters concerning:

3 “(A) Direct or indirect monetary benefits, hours, vacations[,] **and** sick leave[.];

4 “(B) Labor organization access to and communication with represented employees[.];

5 “(C) **Arbitration and** grievance procedures, **including standards, guidelines or procedures**
6 **for determining disciplinary action imposed under an arbitration award;** and

7 “(D) Other conditions of employment.

8 “(b) ‘Employment relations’ does not include subjects determined to be permissive, nonmanda-
9 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

10 “(c) After June 6, 1995, ‘employment relations’ does not include subjects that the Employment
11 Relations Board determines to have a greater impact on management’s prerogative than on employee
12 wages, hours, or other terms and conditions of employment.

13 “(d) ‘Employment relations’ does not include subjects that have an insubstantial or de minimis
14 effect on public employee wages, hours, and other terms and conditions of employment.

15 “(e) For school district bargaining, ‘employment relations’ excludes class size, the school or ed-
16 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
17 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
18 gum chewing and similar matters of personal conduct, the standards and procedures for student
19 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
20 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
21 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
22 subsection.

23 “(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
24 Department of Corrections who have direct contact with adults in custody, ‘employment relations’
25 includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels
26 that have a significant impact on the on-the-job safety of the employees.

27 “(g) For all other employee bargaining except school district bargaining and except as provided
28 in paragraph (f) of this subsection, ‘employment relations’ excludes staffing levels and safety issues
29 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
30 the-job safety of public employees), scheduling of services provided to the public, determination of
31 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
32 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
33 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
34 matters of personal conduct at work, and any other subject proposed that is permissive under par-
35 agraphs (b), (c) and (d) of this subsection.

36 “(8) ‘Exclusive representative’ means the labor organization that, as a result of certification by
37 the board or recognition by the employer, has the right to be the collective bargaining agent of all
38 employees in an appropriate bargaining unit.

39 “(9) ‘Fact-finding’ means identification of the major issues in a particular labor dispute by one
40 or more impartial individuals who review the positions of the parties, resolve factual differences and
41 make recommendations for settlement of the dispute.

42 “(10) ‘Fair-share agreement’ means an agreement between the public employer and the recog-
43 nized or certified bargaining representative of public employees whereby employees who are not
44 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
45 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition

1 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
2 security agreement declaring they desire that the agreement be rescinded, the board shall take a
3 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
4 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
5 election favor the union security agreement, the board shall certify deauthorization of the agree-
6 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
7 calendar days after the collective bargaining agreement is executed. Only one such election may be
8 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
9 between a public employer and the recognized or certified bargaining representative.

10 “(11) ‘Final offer’ means the proposed contract language and cost summary submitted to the
11 mediator within seven days of the declaration of impasse.

12 “(12) ‘Labor dispute’ means any controversy concerning employment relations or concerning the
13 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
14 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
15 the proximate relation of employer and employee.

16 “(13) ‘Labor organization’ means any organization that has as one of its purposes representing
17 employees in their employment relations with public employers.

18 “(14) ‘Last best offer package’ means the offer exchanged by parties not less than 14 days prior
19 to the date scheduled for an interest arbitration hearing.

20 “(15) ‘Legislative body’ means the Legislative Assembly, the city council, the county commission
21 and any other board or commission empowered to levy taxes.

22 “(16) ‘Managerial employee’ means an employee of the State of Oregon or a public university
23 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
24 who represents management’s interest by taking or effectively recommending discretionary actions
25 that control or implement employer policy, and who has discretion in the performance of these
26 management responsibilities beyond the routine discharge of duties. A ‘managerial employee’ need
27 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
28 ‘managerial employee’ does not include faculty members at a community college, college or univer-
29 sity.

30 “(17) ‘Mediation’ means assistance by an impartial third party in reconciling a labor dispute
31 between the public employer and the exclusive representative regarding employment relations.

32 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for services by the exclu-
33 sive representative in negotiations and contract administration of all persons in an appropriate
34 bargaining unit who are not members of the organization serving as exclusive representative of the
35 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
36 be an amount agreed upon by the public employer and the exclusive representative of the employees.

37 “(19) ‘Public employee’ means an employee of a public employer but does not include elected
38 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
39 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-
40 visory employees or managerial employees.

41 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:
42 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
43 politan service districts, public service corporations or municipal corporations and public and
44 quasi-public corporations.

45 “(21) ‘Public employer representative’ includes any individual or individuals specifically desig-

1 nated by the public employer to act in its interests in all matters dealing with employee represen-
2 tation, collective bargaining and related issues.

3 “(22) ‘Strike’ means a public employee’s refusal in concerted action with others to report for
4 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
5 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
6 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
7 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
8 or impair the right of any public employee to lawfully express or communicate a complaint or
9 opinion on any matter related to the conditions of employment.

10 “(23)(a) ‘Supervisory employee’ means any individual having authority in the interest of the
11 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
12 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
13 commend such action, if in connection therewith, the exercise of the authority is not of a merely
14 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
15 sory status in any Employment Relations Board proceeding or in negotiations for any collective
16 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
17 board proceeding or contract negotiation.

18 “(b) ‘Supervisory employee’ includes a faculty member of a public university listed in ORS
19 352.002 or the Oregon Health and Science University who:

20 “(A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
21 sistant dean, head or equivalent position; or

22 “(B) Is employed in an administrative position without a reasonable expectation of teaching,
23 research or other scholarly accomplishments.

24 “(c) ‘Supervisory employee’ does not include:

25 “(A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
26 tionally been classified as supervisory;

27 “(B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the
28 work of other employees but does not have the authority to hire, discharge or impose economic
29 discipline on those employees;

30 “(C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
31 Science University who is not a faculty member described in paragraph (b) of this subsection; or

32 “(D) An employee of the Oregon State Police who:

33 “(i) Serves in a rank equivalent to or below the rank of sergeant;

34 “(ii) Is prohibited from striking by ORS 243.736; and

35 “(iii) Assigns, transfers or directs the work of other employees but does not hire, discharge or
36 impose economic discipline on those employees.

37 “(24) ‘Unfair labor practice’ means the commission of an act designated an unfair labor practice
38 in ORS 243.672.

39 “(25) ‘Voluntary arbitration’ means the procedure whereby parties involved in a labor dispute
40 mutually agree to submit their differences to a third party for a final and binding decision.

41 “**SECTION 8.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, is
42 amended to read:

43 “243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

44 “(1) ‘Appropriate bargaining unit’ means the unit designated by the Employment Relations Board
45 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-

1 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
2 nonacademically licensed school employees. Academically licensed units may include but are not
3 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
4 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
5 to June 6, 1995, or to any school district with fewer than 50 employees.

6 “(2) ‘Board’ means the Employment Relations Board.

7 “(3) ‘Certification’ means official recognition by the board that a labor organization is the ex-
8 clusive representative for all of the employees in the appropriate bargaining unit.

9 “(4) ‘Collective bargaining’ means the performance of the mutual obligation of a public employer
10 and the representative of its employees to meet at reasonable times and confer in good faith with
11 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
12 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
13 concerning the interpretation or application of a collective bargaining agreement, and to execute
14 written contracts incorporating agreements that have been reached on behalf of the public employer
15 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
16 negotiate does not compel either party to agree to a proposal or require the making of a concession.
17 This subsection may not be construed to prohibit a public employer and a certified or recognized
18 representative of its employees from discussing or executing written agreements regarding matters
19 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
20 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

21 “(5) ‘Compulsory arbitration’ means the procedure whereby parties involved in a labor dispute
22 are required by law to submit their differences to a third party for a final and binding decision.

23 “(6) ‘Confidential employee’ means one who assists and acts in a confidential capacity to a per-
24 son who formulates, determines and effectuates management policies in the area of collective bar-
25 gaining.

26 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters concerning:

27 “(A) Direct or indirect monetary benefits, hours, vacations[,] **and** sick leave[.];

28 “(B) Labor organization access to and communication with represented employees[.];

29 “(C) **Arbitration and** grievance procedures, **including standards, guidelines or procedures**
30 **for determining disciplinary action imposed under an arbitration award;** and

31 “(D) Other conditions of employment.

32 “(b) ‘Employment relations’ does not include subjects determined to be permissive, nonmanda-
33 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

34 “(c) After June 6, 1995, ‘employment relations’ does not include subjects that the Employment
35 Relations Board determines to have a greater impact on management’s prerogative than on employee
36 wages, hours, or other terms and conditions of employment.

37 “(d) ‘Employment relations’ does not include subjects that have an insubstantial or de minimis
38 effect on public employee wages, hours, and other terms and conditions of employment.

39 “(e) For school district bargaining, ‘employment relations’ excludes class size, the school or ed-
40 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
41 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
42 gum chewing and similar matters of personal conduct, the standards and procedures for student
43 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
44 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
45 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this

1 subsection.

2 “(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
3 Department of Corrections who have direct contact with adults in custody, ‘employment relations’
4 includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels
5 that have a significant impact on the on-the-job safety of the employees.

6 “(g) For all other employee bargaining except school district bargaining and except as provided
7 in paragraph (f) of this subsection, ‘employment relations’ excludes staffing levels and safety issues
8 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
9 the-job safety of public employees), scheduling of services provided to the public, determination of
10 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
11 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
12 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
13 matters of personal conduct at work, and any other subject proposed that is permissive under par-
14 agraphs (b), (c) and (d) of this subsection.

15 “(8) ‘Exclusive representative’ means the labor organization that, as a result of certification by
16 the board or recognition by the employer, has the right to be the collective bargaining agent of all
17 employees in an appropriate bargaining unit.

18 “(9) ‘Fact-finding’ means identification of the major issues in a particular labor dispute by one
19 or more impartial individuals who review the positions of the parties, resolve factual differences and
20 make recommendations for settlement of the dispute.

21 “(10) ‘Fair-share agreement’ means an agreement between the public employer and the recog-
22 nized or certified bargaining representative of public employees whereby employees who are not
23 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
24 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
25 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
26 security agreement declaring they desire that the agreement be rescinded, the board shall take a
27 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
28 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
29 election favor the union security agreement, the board shall certify deauthorization of the agree-
30 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
31 calendar days after the collective bargaining agreement is executed. Only one such election may be
32 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
33 between a public employer and the recognized or certified bargaining representative.

34 “(11) ‘Final offer’ means the proposed contract language and cost summary submitted to the
35 mediator within seven days of the declaration of impasse.

36 “(12) ‘Labor dispute’ means any controversy concerning employment relations or concerning the
37 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
38 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
39 the proximate relation of employer and employee.

40 “(13) ‘Labor organization’ means any organization that has as one of its purposes representing
41 employees in their employment relations with public employers.

42 “(14) ‘Last best offer package’ means the offer exchanged by parties not less than 14 days prior
43 to the date scheduled for an interest arbitration hearing.

44 “(15) ‘Legislative body’ means the Legislative Assembly, the city council, the county commission
45 and any other board or commission empowered to levy taxes.

1 “(16) ‘Managerial employee’ means an employee of the State of Oregon or a public university
2 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
3 who represents management’s interest by taking or effectively recommending discretionary actions
4 that control or implement employer policy, and who has discretion in the performance of these
5 management responsibilities beyond the routine discharge of duties. A ‘managerial employee’ need
6 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
7 ‘managerial employee’ does not include faculty members at a community college, college or univer-
8 sity.

9 “(17) ‘Mediation’ means assistance by an impartial third party in reconciling a labor dispute
10 between the public employer and the exclusive representative regarding employment relations.

11 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for services by the exclu-
12 sive representative in negotiations and contract administration of all persons in an appropriate
13 bargaining unit who are not members of the organization serving as exclusive representative of the
14 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
15 be an amount agreed upon by the public employer and the exclusive representative of the employees.

16 “(19) ‘Public employee’ means an employee of a public employer but does not include elected
17 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
18 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-
19 visory employees or managerial employees.

20 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:
21 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
22 politan service districts, public service corporations or municipal corporations and public and
23 quasi-public corporations.

24 “(21) ‘Public employer representative’ includes any individual or individuals specifically desig-
25 nated by the public employer to act in its interests in all matters dealing with employee represen-
26 tation, collective bargaining and related issues.

27 “(22) ‘Strike’ means a public employee’s refusal in concerted action with others to report for
28 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
29 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
30 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
31 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
32 or impair the right of any public employee to lawfully express or communicate a complaint or
33 opinion on any matter related to the conditions of employment.

34 “(23)(a) ‘Supervisory employee’ means any individual having authority in the interest of the
35 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
36 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
37 commend such action, if in connection therewith, the exercise of the authority is not of a merely
38 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
39 sory status in any Employment Relations Board proceeding or in negotiations for any collective
40 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
41 board proceeding or contract negotiation.

42 “(b) ‘Supervisory employee’ includes a faculty member of a public university listed in ORS
43 352.002 or the Oregon Health and Science University who:

44 “(A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
45 sistant dean, head or equivalent position; or

1 “(B) Is employed in an administrative position without a reasonable expectation of teaching,
2 research or other scholarly accomplishments.

3 “(c) ‘Supervisory employee’ does not include:

4 “(A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
5 tionally been classified as supervisory;

6 “(B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the
7 work of other employees but does not have the authority to hire, discharge or impose economic
8 discipline on those employees; or

9 “(C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
10 Science University who is not a faculty member described in paragraph (b) of this subsection.

11 “(24) ‘Unfair labor practice’ means the commission of an act designated an unfair labor practice
12 in ORS 243.672.

13 “(25) ‘Voluntary arbitration’ means the procedure whereby parties involved in a labor dispute
14 mutually agree to submit their differences to a third party for a final and binding decision.

15 “**SECTION 9.** ORS 243.656 is amended to read:

16 “243.656. The Legislative Assembly finds and declares that:

17 “**(1) Public employees have the right to decide by their free will and desire to collectively**
18 **bargain the terms of their employment. This right is protected by the Oregon Constitution,**
19 **Oregon laws and the natural principle that employers and employees each have an ability to**
20 **capitalize their respective efforts;**

21 “[1] **(2)** The people of this state have a fundamental interest in the development of harmonious
22 and cooperative relationships between government and its employees;

23 “[2] **(3)** Recognition by public employers of the right of public employees to organize and full
24 acceptance of the principle and procedure of collective negotiation between public employers and
25 public employee organizations can alleviate various forms of strife and unrest. **A comprehensive**
26 **and fair collective bargaining process includes a consideration of terms regarding arbitrating**
27 **employer discipline.** Experience in the private and public sectors of our economy has proved that
28 unresolved disputes in the public service are injurious to the public, the governmental agencies, and
29 public employees;

30 “[3] **(4)** Experience in private and public employment has also proved that protection by law
31 of the right of employees to organize and negotiate collectively safeguards employees and the public
32 from injury, impairment and interruptions of necessary services, and removes certain recognized
33 sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of
34 disputes arising out of differences as to wages, hours, terms and other working conditions, and by
35 establishing greater equality of bargaining power between public employers and public employees;

36 “**(5) Collective bargaining must be a fair process without undue interference from the**
37 **Legislative Assembly. Employers and employees must be able to bargain based on their in-**
38 **dividual local needs;**

39 “[4] **(6)** The state has a basic obligation to protect the public by attempting to assure the or-
40 derly and uninterrupted operations and functions of government. **Fair and objective disciplinary**
41 **standards that minimize public employers’ personal discretion are vital to maintaining a fair,**
42 **productive and well-regulated public employee workforce;**

43 “[5] **(7)** It is in the public interest to ensure that exclusive representatives of public employees
44 are able to effectively carry out their statutory duties by having direct access to represented em-
45 ployees, including communicating with the employees at the workplace or otherwise;

1 “[(6)] (8) It is the purpose of ORS 243.650 to 243.806 to obligate public employers, public em-
2 ployees and their representatives to enter into collective negotiations with willingness to resolve
3 grievances and disputes relating to employment relations and to enter into written and signed con-
4 tracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650
5 to 243.806 to promote the improvement of employer-employee relations within the various public
6 employers by providing a uniform basis for recognizing the right of public employees to join organ-
7 izations of their own choice, and to be represented by such organizations in their employment re-
8 lations with public employers; and

9 “[(7)] (9) Ensuring meaningful communication between labor organizations and employees in-
10 creases the effectiveness of public employees’ work performance.

11 12 “PUBLIC RECORDS PROVISIONS

13
14 “**SECTION 10.** For purposes of the conditional exemption described in ORS 192.345 (12),
15 materials and documents include the personal information of an arbitrator that has heard a
16 claim arising out of a personnel discipline action, including but not limited to the arbitrator’s
17 residential address, residential telephone number, personal cellular telephone number or
18 personal electronic mail address.

19 “**SECTION 11.** Section 10 of this 2020 Act applies to public records requests made on or
20 after July 1, 2021.

21 “**SECTION 12.** Sections 10 and 11 of this 2020 Act are repealed on July 1, 2022.

22 “**SECTION 13.** Personally identifiable information collected during the preparation of the
23 annual report required under section 6 of this 2020 Act is exempt from disclosure under ORS
24 192.311 to 192.478 unless the public interest requires disclosure in the particular instance, in
25 the same manner as described in ORS 192.345.

26 “**SECTION 14.** Section 13 of this 2020 Act applies to public records requests made on or
27 after January 1, 2021.

28 “**SECTION 15.** Sections 13 and 14 of this 2020 Act are repealed on January 1, 2022.

29 30 “PENALTIES

31
32 “**SECTION 16.** ORS 659A.885 is amended to read:

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

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

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

1 “(2) An action may be brought under subsection (1) of this section alleging a violation of:
2 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
3 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
4 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
5 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
6 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309,
7 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421; [or]
8 “(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];
9 “(c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**
10 “(d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**
11 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
12 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
13 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
14 659A.290, 659A.318, 659A.355 or 659A.421, **a violation of section 4 of this 2020 Act that arises**
15 **on or after January 1, 2022, or a violation of section 5 of this 2020 Act that arises on or after**
16 **July 1, 2022:**
17 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
18 tion, compensatory damages or \$200, whichever is greater, and punitive damages;
19 “(b) At the request of any party, the action shall be tried to a jury;
20 “(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
21 ment pursuant to the standard established by ORS 19.415 (1); and
22 “(d) Any attorney fee agreement shall be subject to approval by the court.
23 “(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a
24 violation of ORS 652.220, the court may award punitive damages if:
25 “(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
26 with malice or acted with willful and wanton misconduct; or
27 “(b) An employer was previously adjudicated in a proceeding under this section or under ORS
28 659A.850 for a violation of ORS 652.220.
29 “(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
30 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
31 tion, compensatory damages or \$200, whichever is greater.
32 “(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
33 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
34 of this section, compensatory damages or \$250, whichever is greater.
35 “(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or
36 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
37 a civil penalty in the amount of \$720.
38 “(8) Any individual against whom any distinction, discrimination or restriction on account of
39 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
40 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
41 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
42 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
43 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
44 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
45 section:

1 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
2 tion, compensatory and punitive damages;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 “**SECTION 17.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, and
42 section 7, chapter 463, Oregon Laws 2019, is amended to read:

43 “659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
44 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
45 the court may order injunctive relief and any other equitable relief that may be appropriate, in-

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

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

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

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

12 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
13 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
14 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
15 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
16 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
17 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.370 or 659A.421; [or]

18 “(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

19 “(c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

20 “(d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**

21 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
22 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
23 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
24 659A.290, 659A.318, 659A.355, 659A.370 or 659A.421, **a violation of section 4 of this 2020 Act that**
25 **arises on or after January 1, 2022, or a violation of section 5 of this 2020 Act that arises on**
26 **or after July 1, 2022:**

27 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
28 tion, compensatory damages or \$200, whichever is greater, and punitive damages;

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

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

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

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

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

37 “(b) An employer was previously adjudicated in a proceeding under this section or under ORS
38 659A.850 for a violation of ORS 652.220.

39 “(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
40 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
41 tion, compensatory damages or \$200, whichever is greater.

42 “(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
43 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
44 of this section, compensatory damages or \$250, whichever is greater.

45 “(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or

1 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
2 a civil penalty in the amount of \$720.

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

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

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

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

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

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

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

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

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

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

34 “(10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
35 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
36 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
37 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
38 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
39 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
40 appealing an adverse decision of the trial court.

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

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

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

45 “(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to

1 occur.

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

6 “**SECTION 18.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, section
7 7, chapter 463, Oregon Laws 2019, and section 12, chapter 701, Oregon Laws 2019, is amended to
8 read:

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

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

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

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

23 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
24 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
25 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
26 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
27 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
28 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421; [or]

29 “(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

30 “(c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

31 “(d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**

32 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
33 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
34 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
35 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421, **a violation of section 4 of this 2020**
36 **Act that arises on or after January 1, 2022, or a violation of section 5 of this 2020 Act that**
37 **arises on or after July 1, 2022:**

38 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
39 tion, compensatory damages or \$200, whichever is greater, and punitive damages;

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

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

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

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

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

3 “(b) An employer was previously adjudicated in a proceeding under this section or under ORS
4 659A.850 for a violation of ORS 652.220.

5 “(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
6 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
7 tion, compensatory damages or \$200, whichever is greater.

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

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

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

22 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
23 tion, compensatory and punitive damages;

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

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

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

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

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

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

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

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

45 “(10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or

1 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
2 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
3 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
4 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
5 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
6 appealing an adverse decision of the trial court.

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

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

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

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

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

17 “**SECTION 19.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, sec-
18 tion 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter
19 463, Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

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

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

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

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

34 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
35 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
36 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
37 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
38 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
39 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421; [or]

40 “(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

41 “(c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

42 “(d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**

43 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
44 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
45 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,

1 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421, **a violation of section 4**
2 **of this 2020 Act that arises on or after January 1, 2022, or a violation of section 5 of this 2020**
3 **Act that arises on or after July 1, 2022:**

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

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

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

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

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

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

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

16 “(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
17 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
18 tion, compensatory damages or \$200, whichever is greater.

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

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

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

33 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
34 tion, compensatory and punitive damages;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 “**SECTION 20.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, sec-
29 tion 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter
30 463, Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701,
31 Oregon Laws 2019, is amended to read:

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

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

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

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

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

8 “(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450[.];

9 “(c) **Section 4 of this 2020 Act that arises on or after January 1, 2021; or**

10 “(d) **Section 5 of this 2020 Act that arises on or after July 1, 2021.**

11 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
12 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
13 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
14 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
15 659A.421, **a violation of section 4 of this 2020 Act that arises on or after January 1, 2022, or**
16 **a violation of section 5 of this 2020 Act that arises on or after July 1, 2022:**

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

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

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

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

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

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

27 “(b) An employer was previously adjudicated in a proceeding under this section or under ORS
28 659A.850 for a violation of ORS 652.220.

29 “(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
30 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
31 tion, compensatory damages or \$200, whichever is greater.

32 “(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
33 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
34 of this section, compensatory damages or \$250, whichever is greater.

35 “(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or
36 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
37 a civil penalty in the amount of \$720.

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

1 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
2 tion, compensatory and punitive damages;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41
42 “CAPTIONS

43
44 “**SECTION 21.** The unit and section captions used in this 2020 Act are provided only for
45 the convenience of the reader and do not become part of the statutory law of this state or

1 **express any legislative intent in the enactment of this 2020 Act.”.**

2

/s/ Dennis Linthicum
Senator

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4

/s/ Alan Olsen
Senator

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