

A-Engrossed
Senate Bill 483

Ordered by the Senate April 8
Including Senate Amendments dated April 8

Sponsored by Senator TAYLOR; Senators DEMBROW, GELSER, MANNING JR (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates rebuttable presumption that person violated prohibition against retaliation or discrimination against employee or prospective employee if person takes certain action against employee or prospective employee within 60 days after employee or prospective employee has engaged in certain protected activities.

Provides that employee or prospective employee bears burden of proof when person takes certain action against employee or prospective employee more than 60 days after employee or prospective employee has engaged in protected activities.

Applies to complaints and civil actions filed in which decision or judgment is entered on or after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to presumption of violation of certain prohibitions against protected activities regarding
3 workplace safety; creating new provisions; amending ORS 654.062; and declaring an emergency.

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

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

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

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

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

18 (4) The director shall establish procedures for keeping confidential the identity of any employee
19 who requests protection in writing. When a request has been made, neither a written complaint from
20 an employee, or representative of the employee, nor a memorandum containing the identity of a
21 complainant may be disclosed under ORS 192.311 to 192.478.

22 (5) It is an unlawful employment practice for any person to bar or discharge from employment
23 or otherwise discriminate against any employee or prospective employee because the employee or

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 prospective employee has:

2 (a) Opposed any practice forbidden by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to
3 654.780;

4 (b) Made any complaint or instituted or caused to be instituted any proceeding under or related
5 to ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, or has testified or is about to
6 testify in any such proceeding;

7 (c) Exercised on behalf of the employee, prospective employee or others any right afforded by
8 ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780; or

9 (d) In good faith reported an assault that occurred on the premises of a health care employer
10 as defined in ORS 654.412 or in the home of a patient receiving home health care services.

11 (6)(a) Any employee or prospective employee alleging to have been barred or discharged from
12 employment or otherwise discriminated against in compensation, or in terms, conditions or privileges
13 of employment, in violation of subsection (5) of this section may, within 90 days after the employee
14 or prospective employee has reasonable cause to believe that the violation has occurred, file a
15 complaint with the Commissioner of the Bureau of Labor and Industries alleging discrimination un-
16 der the provisions of ORS 659A.820. Upon receipt of the complaint the commissioner shall process
17 the complaint under the procedures, policies and remedies established by ORS chapter 659A and the
18 policies established by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 in the same
19 way and to the same extent that the complaint would be processed if the complaint involved
20 allegations of unlawful employment practices under ORS 659A.030 (1)(f).

21 (b) Within 90 days after receipt of a complaint filed under this subsection, the commissioner
22 shall notify the complainant of the commissioner's determination.

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

28 (d) The commissioner or the circuit court may order all appropriate relief including rehiring or
29 reinstatement to the employee's former position with back pay.

30 **(7)(a) In any action brought under subsection (6) of this section, there is a rebuttable**
31 **presumption that a violation of subsection (5) of this section has occurred if a person bars**
32 **or discharges an employee or prospective employee from employment or otherwise discrimi-**
33 **nates against an employee or prospective employee within 60 days after the employee or**
34 **prospective employee has engaged in any of the protected activities described in subsection**
35 **(5)(a) to (d) of this section. The person may rebut the presumption that a violation of sub-**
36 **section (5) of this section has occurred by a demonstration of a preponderance of the evi-**
37 **dence.**

38 **(b) If a person bars or discharges an employee or prospective employee from employment**
39 **or otherwise discriminates against the employee or prospective employee more than 60 days**
40 **after the employee or prospective employee has engaged in any of the protected activities**
41 **described under subsection (5)(a) to (d) of this section, such action does not create a**
42 **presumption in favor of or against finding that a violation of subsection (5) of this section**
43 **has occurred. Where such action has occurred more than 60 days after the protected activ-**
44 **ity, this subsection does not modify any existing rule of case law relating to the proximity**
45 **of time between a protected activity and an adverse employment action. The burden of proof**

1 shall be on the employee or prospective employee to demonstrate by a preponderance of the
2 evidence that a violation occurred.

3 **SECTION 2.** The amendments to ORS 654.062 by section 1 of this 2021 Act apply to com-
4 plaints filed with the Commissioner of the Bureau of Labor and Industries in which a deci-
5 sion on the complaint is made on or after the effective date of this 2021 Act and to civil
6 actions brought in a circuit court in which judgment is entered on or after the effective date
7 of this 2021 Act.

8 **SECTION 3.** This 2021 Act being necessary for the immediate preservation of the public
9 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
10 on its passage.

11 _____