

Senate Bill 613

Sponsored by Senator FREDERICK (at the request of Donald E. Clark and Dick Feeney) (Pre-session filed.)

SUMMARY

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

Provides that arbitral determinations made in proceedings concerning alleged misconduct by law enforcement officers concerning use of excessive force are nonbinding and subject to review and approval by Department of Public Safety Standards and Training. Directs department to review arbitral determinations and determine whether to approve or vacate determinations.

A BILL FOR AN ACT

1
2 Relating to arbitration concerning alleged misconduct by law enforcement officers; creating new
3 provisions; and amending ORS 243.706.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 181A.355 to**
6 **181A.670.**

7 **SECTION 2. (1) When an arbitrator has made a determination regarding the alleged**
8 **misconduct by a sworn law enforcement officer of any law enforcement agency in an arbi-**
9 **tration proceeding under ORS 243.706 (3)(b), the law enforcement agency shall promptly no-**
10 **tify the Department of Public Safety Standards and Training of the determination.**

11 **(2) Upon receipt of notification of the arbitrator's determination, the department shall**
12 **review the record of the proceeding and, after providing to the parties involved in the arbi-**
13 **tration proceeding notice and an opportunity to be heard in accordance with ORS 183.415 and**
14 **183.417, shall determine whether to approve the arbitrator's decision. The department may**
15 **modify or vacate the arbitrator's decision only if the department determines that:**

16 **(a) The arbitral award interferes with the administration of justice; or**

17 **(b) The recognition or enforcement of the arbitral award would be contrary to public**
18 **policy.**

19 **(3) A decision made by the department under this section is final and not subject to**
20 **further review.**

21 **(4) As used in this section, "law enforcement agency" and "law enforcement officer" have**
22 **the meanings given those terms in ORS 131.930.**

23 **SECTION 3. ORS 243.706, as amended by section 1, chapter 18, Oregon Laws 2020 (first special**
24 **session), is amended to read:**

25 243.706. (1) A public employer may enter into a written agreement with the exclusive represen-
26 tative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding
27 arbitration or any other dispute resolution process agreed to by the parties. As a condition of
28 enforceability, any arbitration award that orders the reinstatement of a public employee or other-
29 wise relieves the public employee of responsibility for misconduct shall comply with public policy
30 requirements as clearly defined in statutes or judicial decisions including but not limited to policies

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 respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or
2 deadly force and serious criminal misconduct, related to work. In addition, with respect to claims
3 that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based
4 upon the public employer's alleged previous differential treatment of employees for the same or
5 similar conduct, the arbitration award must conform to the following principles:

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

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

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

14 (3)(a) Notwithstanding subsection (1) of this section **and subject to paragraph (b) of this**
15 **subsection**, when an arbitration proceeding involves alleged misconduct by a sworn law enforce-
16 ment officer of any law enforcement agency, as those terms are defined in ORS 131.930, and the
17 arbitrator makes a finding that misconduct has occurred consistent with the law enforcement
18 agency's finding of misconduct, the arbitration award may not order any disciplinary action that
19 differs from the disciplinary action imposed by the agency, if the disciplinary action imposed by the
20 agency is consistent with the provisions of a discipline guide or discipline matrix adopted by the
21 agency as a result of collective bargaining and incorporated into the agency's disciplinary policies.

22 **(b) Notwithstanding ORS 243.752, where an arbitration proceeding concerns alleged mis-**
23 **conduct concerning the use of excessive force by a sworn law enforcement officer, the mat-**
24 **ter shall be determined by nonbinding arbitration subject to review and approval by the**
25 **Department of Public Safety Standards and Training pursuant to section 2 of this 2021 Act.**

26 (4) In an arbitration proceeding under this section, the arbitrators, or a majority of the
27 arbitrators, may:

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

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

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

32 (b) Administer oaths or affirmations to witnesses; and

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

34 (5) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each
35 party to the arbitration proceeding.

36 (6) The arbitrators issuing a subpoena under this section may rule on objections to the issuance
37 of the subpoena.

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

1 (8) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the
2 public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

3 (9) As used in this section:

4 (a) "Discipline guide" means a grid that is designed to provide parameters for the level of dis-
5 cipline to be imposed for an act of misconduct that is categorized by the severity of the misconduct
6 and that take into account the presumptive level of discipline for the misconduct and any aggra-
7 vating or mitigating factors.

8 (b) "Discipline matrix" means a grid used to determine the level of discipline to be imposed for
9 an act of misconduct that is categorized by the severity of the misconduct, according to the inter-
10 section where the category of misconduct and the level of disciplinary action meet.

11
