

SB 780-3  
(LC 3433)  
4/6/21 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO  
SENATE BILL 780**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating  
2 new provisions; amending ORS 659A.350 and 659A.885;”.

3 Delete lines 4 through 30 and delete pages 2 and 3 and insert:

4 **“SECTION 1. As used in sections 1 to 3 of this 2021 Act:**

5 **“(1)(a) ‘Covered entity’ means a corporation, partnership or associ-**  
6 **ation or any other form of legal or business entity that:**

7 **“(A) Directly, or indirectly through one or more intermediaries,**  
8 **controls, or is controlled by, or is under common control with a cov-**  
9 **ered provider;**

10 **“(B) Directs the rendering of health care services by a covered**  
11 **provider;**

12 **“(C) Owns or operates a hospital, health maintenance organization**  
13 **or health care entity; or**

14 **“(D) Employs a health care provider.**

15 **“(b) ‘Covered entity’ does not include:**

16 **“(A) A long term care facility as defined in ORS 442.015;**

17 **“(B) A residential care facility as defined in ORS 443.400;**

18 **“(C) An establishment furnishing primarily domiciliary care as de-**  
19 **scribed in ORS 443.205;**

20 **“(D) A facility licensed or approved under the rules of the Depart-**  
21 **ment of Corrections;**

1       **“(E) A juvenile detention facility, local correctional facility or**  
2 **lockup, as those terms are defined in ORS 169.005;**

3       **“(F) A regional correctional facility as defined in ORS 169.620; or**

4       **“(G) A youth correction facility as defined in ORS 420.005.**

5       **“(2) ‘Covered provider’ means a health care provider, health main-**  
6 **tenance organization, hospital or health care entity.**

7       **“(3) ‘COVID-19 emergency period’ means the time in which any**  
8 **declaration of a state of emergency issued by the Governor related to**  
9 **COVID-19, and any extension of the declaration, is in effect.**

10       **“(4) ‘COVID-19 emergency rule’ means an executive order, order of**  
11 **the Public Health Director, declaration, directive or other state or**  
12 **federal authorization, policy, statement, guidance, rule or regulation**  
13 **that creates a standard or waives, suspends or modifies otherwise ap-**  
14 **licable state or federal law, regulations or standards regarding the**  
15 **rendering of health care services, including those regarding the**  
16 **standard of care during the COVID-19 emergency period and the use**  
17 **of telemedicine during the COVID-19 emergency period.**

18       **“(5)(a) ‘Health care entity’ means a corporation, partnership or as-**  
19 **sociation or any other form of legal or business entity that renders**  
20 **health care services, including but not limited to:**

21       **“(A) An ambulatory surgical center as defined in ORS 442.015;**

22       **“(B) A hospital-affiliated clinic or affiliated clinic as defined in ORS**  
23 **442.612; or**

24       **“(C) An outpatient clinic, including a medical clinic, community**  
25 **health clinic, student health center or dental clinic.**

26       **“(b) ‘Health care entity’ does not include:**

27       **“(A) A long term care facility as defined in ORS 442.015;**

28       **“(B) A residential care facility as defined in ORS 443.400;**

29       **“(C) An establishment furnishing primarily domiciliary care as de-**  
30 **scribed in ORS 443.205;**

1       **“(D) A facility licensed or approved under the rules of the Depart-**  
2 **ment of Corrections;**

3       **“(E) A juvenile detention facility, local correctional facility or**  
4 **lockup, as those terms are defined in ORS 169.005;**

5       **“(F) A regional correctional facility as defined in ORS 169.620; or**

6       **“(G) A youth correction facility as defined in ORS 420.005.**

7       **“(6) ‘Health care provider’ means:**

8       **“(a) A physician licensed under ORS chapter 677;**

9       **“(b) An advanced practice registered nurse who meets the require-**  
10 **ments of ORS 678.025;**

11       **“(c) A nurse licensed under ORS 678.040 to 678.101;**

12       **“(d) A physician assistant licensed under ORS 677.505 to 677.525;**

13       **“(e) A dentist licensed under ORS 679.060 to 679.180; or**

14       **“(f) A dental hygienist licensed under ORS 680.010 to 680.205.**

15       **“(7) ‘Health care services’ means supplies and services, including**  
16 **services provided by telemedicine, that involve the:**

17       **“(a) Treatment, diagnosis, prevention or mitigation of COVID-19;**

18       **“(b) Assessment or care of an individual with a confirmed or sus-**  
19 **pected case of COVID-19; or**

20       **“(c) Assessment, care or clinically or medically related prevention,**  
21 **diagnostic or treatment services of any other individual during the**  
22 **COVID-19 emergency period and during a time when COVID-19 emer-**  
23 **gency rules are in effect.**

24       **“(8) ‘Health maintenance organization’ has the meaning given that**  
25 **term in ORS 750.005.**

26       **“(9) ‘Hospital’ has the meaning given that term in ORS 442.015 and**  
27 **includes hospital satellites and any location where the Oregon Health**  
28 **Authority allows hospital services to be provided during the COVID-19**  
29 **emergency period, including but not limited to temporarily licensed**  
30 **additional hospital space on-campus or off-campus and temporary or**

1 mobile on-campus locations.

2 “(10) ‘Telemedicine’ means the provision of health care services to  
3 a patient by a health care provider from a distance using electronic  
4 communications, including synchronous audio and video communi-  
5 cation, audio-only telephone communication, store-and-forward tech-  
6 nology or any other form of two-way electronic communication.

7 **“SECTION 2. (1) A person may not bring a claim against a covered  
8 provider arising from acts or omissions performed:**

9 **“(a) In the course of rendering health care services; and**

10 **“(b) In order to comply with the COVID-19 emergency rule or rules  
11 applicable to the act or omission that are in effect at the time of the  
12 act or omission.**

13 **“(2) The immunity provided in subsection (1) of this section does  
14 not apply to:**

15 **“(a) Acts or omissions constituting gross negligence;**

16 **“(b) Reckless, wanton or intentional misconduct;**

17 **“(c) False claims actions brought by or on behalf of the state;**

18 **“(d) Fraud;**

19 **“(e) Deceptive acts or practices;**

20 **“(f) The delay or cancellation of a nonurgent or elective procedure  
21 in response to a COVID-19 emergency rule that puts a patient at risk  
22 of irreversible harm based on the medical evidence available at the  
23 time of the delay or cancellation. Criteria for determining whether a  
24 delay or cancellation puts a patient at risk of irreversible harm based  
25 on the medical evidence available at the time of the delay or cancel-  
26 lation include, but are not limited to:**

27 **“(A) Threat to the patient’s life;**

28 **“(B) Threat of irreversible harm to the patient’s physical or mental  
29 health;**

30 **“(C) Threat of permanent dysfunction of an extremity or organ;**

1       **“(D) Risk of cancer metastasis or progression of staging; and**

2       **“(E) Risk of rapidly worsening condition; or**

3       **“(g) An act or omission performed by a covered provider at a long**  
4 **term care facility as defined in ORS 442.015, a residential care facility**  
5 **as defined in ORS 443.400, an establishment furnishing primarily**  
6 **domiciliary care as described in ORS 443.205, a facility licensed or ap-**  
7 **proved under the rules of the Department of Corrections, a juvenile**  
8 **detention facility, local correctional facility or lockup, as those terms**  
9 **are defined in ORS 169.005, a regional correctional facility as defined**  
10 **in ORS 169.620 or a youth correction facility as defined in ORS 420.005.**

11       **“(3) A person may not bring a claim against a covered entity arising**  
12 **from acts or omissions performed by a covered provider if the covered**  
13 **provider would have immunity under subsection (1) of this section.**

14       **“(4) This section does not limit the obligation of a covered provider**  
15 **to comply with any other applicable rule, guidance or law.**

16       **“(5) This section does not limit any other cause of action or remedy**  
17 **available to any person, including any action for whistleblower pro-**  
18 **tections or discrimination.**

19       **“SECTION 3. (1) A covered provider or covered entity may move**  
20 **at any time to strike a claim in a civil action that is barred by section**  
21 **2 of this 2021 Act. A motion to strike under this section shall be**  
22 **treated as a motion to dismiss under ORCP 21 A but is not subject to**  
23 **ORCP 21 F. Upon granting a motion under this section, the court shall**  
24 **enter a judgment of dismissal without prejudice. If the court denies a**  
25 **motion under this section, the court shall enter a limited judgment**  
26 **denying the motion.**

27       **“(2)(a) A covered provider or covered entity that moves to strike a**  
28 **claim under this section has the initial burden of making a prima facie**  
29 **showing that the claim is barred under section 2 of this 2021 Act.**

30       **“(b) If the covered provider or covered entity meets this burden, the**

1 **burden shifts to the plaintiff in the action to establish that a genuine**  
2 **issue of material fact exists that the claim is not barred under section**  
3 **2 of this 2021 Act. If the plaintiff meets the burden under this para-**  
4 **graph, the court shall deny the motion.**

5 **“(c) The court shall only consider the pleadings and supporting and**  
6 **opposing affidavits in making a determination whether a genuine issue**  
7 **of material fact exists. If the court determines that a genuine issue**  
8 **of material fact exists:**

9 **“(A) The fact that the determination has been made and the sub-**  
10 **stance of the determination may not be admitted in evidence at any**  
11 **later stage of the case; and**

12 **“(B) The determination does not affect the burden of proof or**  
13 **standard of proof that is applied in the proceeding.**

14 **“SECTION 4. Section 5 of this 2021 Act is added to and made a part**  
15 **of ORS chapter 659A.**

16 **“SECTION 5. (1) As used in this section:**

17 **“(a) ‘COVID-19 emergency period’ means the time in which any**  
18 **declaration of a state of emergency issued by the Governor related to**  
19 **COVID-19, and any extension of the declaration, is in effect.**

20 **“(b) ‘Health care provider’ means:**

21 **“(A) A physician licensed under ORS chapter 677;**

22 **“(B) An advanced practice registered nurse who meets the require-**  
23 **ments of ORS 678.025;**

24 **“(C) A nurse licensed under ORS 678.040 to 678.101;**

25 **“(D) A physician assistant licensed under ORS 677.505 to 677.525;**

26 **“(E) A dentist licensed under ORS 679.060 to 679.180; or**

27 **“(F) A dental hygienist licensed under ORS 680.010 to 680.205.**

28 **“(c) ‘Health maintenance organization’ has the meaning given that**  
29 **term in ORS 750.005.**

30 **“(d) ‘Hospital’ has the meaning given that term in ORS 442.015 and**

1 includes hospital satellites and any location where the Oregon Health  
2 Authority allows hospital services to be provided during the COVID-19  
3 emergency period, including but not limited to temporarily licensed  
4 additional hospital space on-campus or off-campus and temporary or  
5 mobile on-campus locations.

6 “(2) It is an unlawful employment practice for a hospital or health  
7 maintenance organization to discharge, demote, suspend or in any  
8 manner discriminate or retaliate against an employee with regard to  
9 promotion, compensation or other terms, conditions or privileges of  
10 employment for the reason that the employee, in good faith:

11 “(a) Reported to a person who has authority within the hospital or  
12 health maintenance organization to take corrective action information  
13 that the employee reasonably believes is evidence of a violation of a  
14 standard of care during the COVID-19 emergency period by the hospi-  
15 tal or health maintenance organization or by a health care provider  
16 employed by the hospital or health maintenance organization; or

17 “(b) Testified or participated in any proceeding involving a claim for  
18 injuries related to health care rendered during the COVID-19 emer-  
19 gency period.

20 “(3) Subsection (2)(a) of this section applies only to an employee  
21 who has sufficient qualifications to evaluate the standard of care  
22 during the COVID-19 emergency period, including experience, educa-  
23 tion and professional licensure.

24 “(4) The remedies provided by this chapter are in addition to any  
25 common law remedy or other remedy that may be available to an  
26 employee for the conduct constituting a violation of this section.

27 **“SECTION 6.** ORS 659A.350 is amended to read:

28 “659A.350. (1) An intern is considered to be in an employment relationship  
29 with an employer for the purposes of the employee protections provided un-  
30 der ORS 659A.030, 659A.082, 659A.109, 659A.112, 659A.136, 659A.142, 659A.199,

1 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303, 659A.306 and  
2 659A.315 and section 5 of this 2021 Act.

3 “(2) Nothing in subsection (1) of this section creates an employment re-  
4 lationship between an employer and an intern for the purposes of ORS  
5 chapter 652, 653, 654, 656, 657 or 658.

6 “(3) As used in this section, ‘intern’ means a person who performs work  
7 for an employer for the purpose of training if:

8 “(a) The employer is not committed to hire the person performing the  
9 work at the conclusion of the training period;

10 “(b) The employer and the person performing the work agree in writing  
11 that the person performing the work is not entitled to wages for the work  
12 performed; and

13 “(c) The work performed:

14 “(A) Supplements training given in an educational environment that may  
15 enhance the employability of the intern;

16 “(B) Provides experience for the benefit of the person performing the  
17 work;

18 “(C) Does not displace regular employees;

19 “(D) Is performed under the close supervision of existing staff; and

20 “(E) Provides no immediate advantage to the employer providing the  
21 training and may occasionally impede the operations of the employer.

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

25 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-  
26 tice specified in subsection (2) of this section may file a civil action in cir-  
27 cuit court. In any action under this subsection, the court may order  
28 injunctive relief and any other equitable relief that may be appropriate, in-  
29 cluding but not limited to reinstatement or the hiring of employees with or  
30 without back pay. A court may order back pay in an action under this sub-



1 section only for the two-year period immediately preceding the filing of a  
2 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-  
3 bor and Industries, or if a complaint was not filed before the action was  
4 commenced, the two-year period immediately preceding the filing of the  
5 action. In any action under this subsection, the court may allow the pre-  
6 vailing 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 sub-  
9 section; and

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

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

15 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),  
16 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,  
17 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,  
18 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147,  
19 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,  
20 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290,  
21 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343,  
22 659A.355, 659A.370 or 659A.421 **or section 5 of this 2021 Act**; or

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

25 “(3) In any action under subsection (1) of this section alleging a violation  
26 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852,  
27 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to  
28 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
29 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 5 of**  
30 **this 2021 Act**:

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

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

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

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

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

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

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

17 “(5) In any action under subsection (1) of this section alleging a violation  
18 of ORS 653.060 or 659A.147, the court may award, in addition to the relief  
19 authorized under subsection (1) of this section, compensatory damages or  
20 \$200, whichever is greater.

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

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

29 “(8) Any individual against whom any distinction, discrimination or re-  
30 striction on account of race, color, religion, sex, sexual orientation, national

1 origin, marital status or age, if the individual is 18 years of age or older,  
2 has been made by any place of public accommodation, as defined in ORS  
3 659A.400, by any employee or person acting on behalf of the place or by any  
4 person aiding or abetting the place or person in violation of ORS 659A.406  
5 may bring an action against the operator or manager of the place, the em-  
6 ployee or person acting on behalf of the place or the aider or abettor of the  
7 place or person. Notwithstanding subsection (1) of this section, in an action  
8 under this subsection:

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

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

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

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

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

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

24 “(9) When the commissioner or the Attorney General has reasonable cause  
25 to believe that a person or group of persons is engaged in a pattern or  
26 practice of resistance to the rights protected by ORS 659A.145 or 659A.421  
27 or federal housing law, or that a group of persons has been denied any of the  
28 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the  
29 commissioner or the Attorney General may file a civil action on behalf of  
30 the aggrieved persons in the same manner as a person or group of persons

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

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

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

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

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

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

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

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

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

28 **“SECTION 8.** ORS 659A.885, as amended by section 10, chapter 197,  
29 Oregon Laws 2017, section 6, chapter 139, Oregon Laws 2019, section 8,  
30 chapter 343, Oregon Laws 2019, section 8, chapter 463, Oregon Laws 2019, and

1 section 13, chapter 701, Oregon Laws 2019, is amended to read:

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

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

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

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

22 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),  
23 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,  
24 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,  
25 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147,  
26 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,  
28 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343,  
29 659A.355, 659A.357, 659A.370 or 659A.421 **or section 5 of this 2021 Act**; or

30 “(b) ORS 653.470, except an action may not be brought for a claim relating

1 to ORS 653.450.

2 “(3) In any action under subsection (1) of this section alleging a violation  
3 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852,  
4 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to  
5 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
6 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or**  
7 **section 5 of this 2021 Act:**

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

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

12 “(c) Upon appeal of any judgment finding a violation, the appellate court  
13 shall review the judgment pursuant to the standard established by ORS  
14 19.415 (1); and

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

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

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

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

24 “(5) In any action under subsection (1) of this section alleging a violation  
25 of ORS 653.060 or 659A.147, the court may award, in addition to the relief  
26 authorized under subsection (1) of this section, compensatory damages or  
27 \$200, whichever is greater.

28 “(6) In any action under subsection (1) of this section alleging a violation  
29 of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the  
30 relief authorized under subsection (1) of this section, compensatory damages

1 or \$250, whichever is greater.

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

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

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

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

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

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

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

28 “(f) Upon any appeal of a judgment under this subsection, the appellate  
29 court shall review the judgment pursuant to the standard established by ORS  
30 19.415 (1).

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

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

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

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

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

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

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

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

30 “(b) An aggrieved person in regard to issues to be determined in an action



1 may intervene as of right in the action. The Attorney General may intervene  
2 in the action if the Attorney General certifies that the case is of general  
3 public importance. The court may allow an intervenor prevailing party costs  
4 and reasonable attorney fees at trial and on appeal.

5 **“SECTION 9.** ORS 659A.885, as amended by section 10, chapter 197,  
6 Oregon Laws 2017, section 6, chapter 139, Oregon Laws 2019, section 8,  
7 chapter 343, Oregon Laws 2019, section 8, chapter 463, Oregon Laws 2019,  
8 section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701,  
9 Oregon Laws 2019, is amended to read:

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

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

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

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

30 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2),

1 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,  
2 653.549, 653.601 to 653.661, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,  
3 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to  
4 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203,  
5 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262,  
6 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318,  
7 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or section 5 of**  
8 **this 2021 Act**; or

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

11 “(3) In any action under subsection (1) of this section alleging a violation  
12 of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and  
13 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082,  
14 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to  
15 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or  
16 659A.421 **or section 5 of this 2021 Act**:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **“SECTION 10. (1) Sections 1 to 3 of this 2021 Act apply to claims**  
15 **arising from acts or omissions that occur during the COVID-19 emer-**  
16 **gency period, as defined in section 1 of this 2021 Act.**

17 **(2) Section 5 of this 2021 Act and the amendments to ORS 659A.350**  
18 **and 659A.885 by sections 6 to 9 of this 2021 Act apply to actions taken**  
19 **against employees at any time during the COVID-19 emergency period,**  
20 **as defined in section 5 of this 2021 Act.**

21 **“SECTION 11. This 2021 Act being necessary for the immediate**  
22 **preservation of the public peace, health and safety, an emergency is**  
23 **declared to exist, and this 2021 takes effect on its passage.”.**

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