

SENATE AMENDMENTS TO SENATE BILL 1586

By COMMITTEE ON LABOR AND BUSINESS

February 14

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating new provisions; and”.

2 Delete lines 4 through 28 and delete pages 2 through 5 and insert:

3 “**SECTION 1.** ORS 659A.370 is amended to read:

4 “659A.370. (1) Except as provided in subsections (2) or (4) of this section, it is an unlawful em-
5 ployment practice for an employer to enter into an agreement with **a former, current** [*an*
6 *employee*] or prospective employee, as a condition of employment, continued employment, promotion,
7 compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement
8 provision or any other provision that has the purpose or effect of preventing the employee from
9 disclosing or discussing conduct:

10 “(a)(A) That constitutes discrimination prohibited by ORS 659A.030, including conduct that
11 constitutes sexual assault; or

12 “(B) That constitutes discrimination prohibited by ORS 659A.082 or 659A.112; and

13 “(b)(A) That occurred between employees or between an employer and an employee in the
14 workplace or at a work-related event that is off the employment premises and coordinated by or
15 through the employer; or

16 “(B) That occurred between an employer and an employee off the employment premises.

17 “[*2*] *An employer may enter into a settlement, separation or severance agreement that includes one*
18 *or more of the following provisions only when an employee claiming to be aggrieved by conduct de-*
19 *scribed under subsection (1) of this section requests to enter into the agreement.:*]

20 “**(2)(a) Whenever an employer and a former, current or prospective employee enter into**
21 **an agreement, the terms of which release a claim brought against the employer by an em-**
22 **ployee alleging the occurrence of unlawful conduct described in subsection (1)(a) and (b) of**
23 **this section, the agreement may include one or more of the following provisions only when**
24 **the employee who is a party to the agreement requests the inclusion of such provisions in**
25 **the agreement:**

26 “[*a*] **(A)** A provision described in subsection (1) of this section;

27 “[*b*] *A provision that prevents the disclosure of factual information relating to a claim of dis-*
28 *crimination or conduct that constitutes sexual assault; or]*

29 “**(B) A provision that prevents the disclosure of the amount of or fact of any settlement;**
30 **or**

31 “[*c*] **(C)** A no-rehire provision that prohibits the employee from seeking reemployment with the
32 employer as a term or condition of the agreement.

33 “**(b) It is a violation of this subsection for an employer or former employer to:**

34 “**(A) Make an offer of settlement conditional upon a request to include in the agreement**
35 **the provisions described in paragraph (a) of this subsection.**

1 **“(B) Fail to provide a person with whom the employer seeks to enter into the agreement**
2 **a copy of the policy described in ORS 659A.375.**

3 “(3)(a) An agreement entered into under subsection (2) of this section must provide that the
4 employee has at least seven days after executing the agreement to revoke the agreement.

5 “(b) The agreement may not become effective until after the revocation period has expired.

6 **“(4) The prohibitions under subsection (1) of this section do not apply to agreements en-**
7 **tered into between an employer and a former, current or prospective employee** if an employer
8 makes a good faith determination that [*an*] **the** employee has engaged in conduct prohibited by ORS
9 659A.030, including sexual assault, conduct prohibited by ORS 659A.082 or 659A.112 or conduct
10 prohibited by this section[, *the employer may enter into a settlement, separation or severance agreement*
11 *that includes one or more of the following provisions:*]

12 “[(a) A provision described in subsection (1) of this section;]

13 “[(b) A provision that prevents the disclosure of factual information that relates to a claim of dis-
14 crimination or conduct that conduct that constitutes sexual assault; or]

15 “[(c) A no-rehire provision that prohibits the employee from seeking reemployment with the em-
16 ployer as a term or condition of the agreement].

17 “(5) An employee may file a complaint under ORS 659A.820 for violations of this section and
18 may bring a civil action under ORS 659A.885 and recover **a civil penalty of up to \$5,000 and relief**
19 as provided by ORS 659A.885 (1) to (3).

20 “(6) This section does not apply to an employee who is tasked by law to receive confidential or
21 privileged reports of discrimination, sexual assault or harassment.

22 **“(7) Except to the extent provided under subsections (2) and (4) of this section, provisions**
23 **included in an agreement in violation of this section are void and unenforceable.**

24 **“(8) Nothing in this section prohibits an employer from enforcing a nondisclosure or**
25 **nondisparagement agreement that is unrelated to the conduct described in subsection (1) of**
26 **this section.**

27 “[(7)] **(9)** As used in this section, ‘sexual assault’ means unwanted conduct of a sexual nature
28 that is inflicted upon a person or compelled through the use of physical force, manipulation, threat
29 or intimidation.

30 **“SECTION 2. For purposes of mediation related to claims or allegations of the unlawful**
31 **conduct described under ORS 659A.370 (1)(a) and (b), a mediator in the mediation shall pro-**
32 **vide a person who is a party to the mediation and who is not represented by an attorney with**
33 **a copy of the model procedures and policies made available by the Bureau of Labor and In-**
34 **dustries under ORS 659A.375.**

35 **“SECTION 3.** ORS 659A.375 is amended to read:

36 “659A.375. (1) Every employer in this state shall adopt a written policy containing procedures
37 and practices for the reduction and prevention of discrimination prohibited by ORS 659A.030, in-
38 cluding sexual assault, as defined in ORS 659A.370, and discrimination prohibited by ORS 659A.082
39 and 659A.112.

40 “(2) At a minimum, the policy must:

41 “(a) Provide a process for an employee to report prohibited conduct;

42 “(b) Identify the individual designated by the employer who is responsible for receiving reports
43 of prohibited conduct, including an individual designated as an alternate to receive such reports;

44 “(c) Include the statute of limitations period applicable to an employee’s right of action for al-
45 leging unlawful conduct described in subsection (1) of this section;

1 “(d) Include a statement that an employer may not require or coerce an employee to enter into
2 a nondisclosure or nondisparagement agreement, including a description of the meaning of those
3 terms;

4 “(e) Include an explanation that an employee claiming to be aggrieved by conduct described in
5 subsection (1) of this section may voluntarily request to enter into an agreement described in ORS
6 659A.370 (2), including a statement that explains that the employee has at least seven days to revoke
7 the agreement; and

8 “(f) Include a statement that advises employers and employees to document any incidents in-
9 volving conduct prohibited by ORS 659A.030, including sexual assault as defined in ORS 659A.370,
10 or conduct prohibited by ORS 659A.082 and 659A.112.

11 “(3) An employer shall:

12 “(a) Make the policy available to employees within the workplace;

13 “(b) Provide a copy of the policy to each employee at the time of hire; *[and]*

14 “**(c) Provide to each person with whom the employer seeks to enter into an agreement,**
15 **as described in ORS 659A.370 (2), a copy of the policy in the language the employer typically**
16 **uses to communicate with the person; and**

17 “[*c*] **(d)** Require any individual who is designated by the employer to receive complaints to
18 provide a copy of the policy to an employee at the time that the employee discloses information
19 regarding prohibited discrimination or harassment.

20 “(4) The Bureau of Labor and Industries shall make available on the bureau’s website model
21 procedures or policies that employers may use as guidance to establish the policy described in this
22 section.

23 “(5) Nothing in this section is intended to relieve an employer of liability for engaging in con-
24 duct that is prohibited under ORS chapter 659A.

25 “**SECTION 4.** ORS 243.323 is amended to read:

26 “243.323. (1) Except as provided in subsection (2) or (4) of this section, it is an unlawful em-
27 ployment practice under ORS chapter 659A for a public employer to enter into an agreement with
28 **a former, current** *[an employee]* or prospective employee, as a condition of employment, continued
29 employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure pro-
30 vision, a nondisparagement provision or any other provision that has the purpose or effect of pre-
31 venting the employee from disclosing or discussing workplace harassment:

32 “(a) That occurred between employees or between an employer and an employee in the
33 workplace or at a work-related event that is off the employment premises and coordinated by or
34 through the employer; or

35 “(b) That occurred between an employer and an employee off the employment premises.

36 “[*2*] *A public employer may enter into a settlement, separation or severance agreement that in-*
37 *cludes one or more of the following provisions only when an employee claiming to be aggrieved by*
38 *workplace harassment described under subsection (1) of this section requests to enter into the agree-*
39 *ment:]*

40 “**(2) Whenever a public employer and a former, current or prospective employee enter**
41 **into an agreement, the terms of which release a claim brought against the employer by an**
42 **employee alleging workplace harassment described under subsection (1) of this section, the**
43 **agreement may include one or more of the following provisions only when the employee who**
44 **is a party to the agreement requests the inclusion of such provisions in the agreement:**

45 “(a) A provision described in subsection (1) of this section;

1 “(b) A provision that prevents the disclosure of factual information relating to the claim of dis-
2 crimination or conduct that constitutes sexual assault; or]

3 “(b) **A provision that prevents the disclosure of the amount of or fact of any settlement;**
4 **or**

5 “(c) A no-rehire provision that prohibits the employee from seeking reemployment with the em-
6 ployer as a term or condition of the agreement.

7 “(3)(a) An agreement entered into under subsection (2) of this section must provide that the
8 employee has at least seven days after executing the agreement to revoke the agreement.

9 “(b) The agreement may not become effective until after the revocation period has expired.

10 “(4) **The prohibitions in subsection (1) of this section do not apply to agreements entered**
11 **into between a public employer and a former, current or prospective employee** if [an] **the**
12 **public** employer makes a good faith determination that [an] **the** employee has engaged in workplace
13 harassment described under subsection (1) of this section[, *the employer may enter into a settlement,*
14 *separation or severance agreement that includes one or more of the following provisions:]*

15 “[(a) A provision described in subsection (1) of this section,]

16 “[(b) A provision that prevents the disclosure of factual information that relates to the workplace
17 harassment; or]

18 “[(c) A no-rehire provision that prohibits the employee from seeking reemployment with the em-
19 ployer as a term or condition of the agreement].

20 “(5) An employee may file a complaint under ORS 659A.820 for violations of this section and
21 may bring a civil action under ORS 659A.885 and recover **a civil penalty of up to \$5,000 and** relief
22 as provided by ORS 659A.885 (1) to (3).

23 “(6) This section does not apply to an employee who is tasked by law to receive confidential or
24 privileged reports of discrimination, sexual assault or harassment.

25 “(7) **Except to the extent provided under subsections (2) and (4) of this section, provisions**
26 **included in an agreement in violation of this section are void and unenforceable.**

27 “(8) **Nothing in this section prohibits a public employer from enforcing a nondisclosure**
28 **or nondisparagement agreement that is unrelated to workplace harassment described in**
29 **subsection (1) of this section.**

30 “**SECTION 5. Section 6 of this 2022 Act is added to and made a part of ORS 243.317 to**
31 **243.323.**

32 “**SECTION 6. For purposes of a mediation related to claims or allegations of workplace**
33 **harassment, a mediator in the mediation shall provide a person who is a party to the medi-**
34 **ation and who is not represented by an attorney with a copy of the policy described in ORS**
35 **243.319.**

36 “**SECTION 7.** ORS 243.319 is amended to read:

37 “243.319. (1) A public employer shall establish and adopt a written policy that seeks to prevent
38 workplace harassment that occurs between employees or between an employer and an employee in
39 the workplace or at a work-related event that is off the employment premises and coordinated by
40 or through the employer, or between an employer and an employee off the employment premises.

41 “(2) The policy must include:

42 “(a) A statement prohibiting workplace harassment;

43 “(b) Information explaining that a victim of workplace harassment has a right to seek redress
44 through the employer’s internal process provided under ORS 243.321, through the Bureau of Labor
45 and Industries’ complaint resolution process under ORS 659A.820 to 659A.865 or under any other

1 available law, whether civil or criminal, including:

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

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

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

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

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

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

12 “(f) Information to connect a victim of workplace harassment with legal resources and coun-
13 seling and support services, including any available employee assistance services;

14 “(g) A statement that an employer may not require or coerce an employee to enter into a
15 nondisclosure or nondisparagement agreement, including a description of the meaning of those
16 terms;

17 “(h) An explanation that an employee claiming to be aggrieved by workplace harassment may
18 voluntarily request to enter into an agreement described in ORS 243.323 (2), including a statement
19 that explains that the employee has at least seven days to revoke the agreement; and

20 “(i) A statement that advises employers and employees to document any incidents of workplace
21 harassment.

22 “(3) A public employer shall provide a copy of the policies described in this section to each
23 employee and shall include a copy of the policies in any orientation materials that are provided to
24 new employees at the time of hire.

25 “(4) If an employee discloses any concerns about workplace harassment to a supervisor of the
26 employer, or to a designated individual as described in ORS 243.321 (3), the supervisor or designated
27 individual shall, at the time of the disclosure, provide to the employee a copy of the policy described
28 in this section.

29 “**(5) A public employer shall provide to each person with whom the employer seeks to**
30 **enter into an agreement, as described under ORS 243.323 (2), a copy of the policies described**
31 **in this section in the language that the employer typically uses to communicate with the**
32 **person.**

33 “[5] **(6) A policy established under this section must comply with the requirements for a writ-**
34 **ten policy provided under ORS 659A.375.”.**