

SENATE AMENDMENTS TO SENATE BILL 907

By COMMITTEE ON LABOR AND BUSINESS

April 7

1 On page 1 of the printed bill, line 2, after “assignments;” delete the rest of the line and delete
2 line 3 and insert “amending ORS 654.062.”.

3 Delete lines 5 through 29.

4 Delete pages 2 through 4 and insert:

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
24 prospective employee has:

25 **“(a)** Opposed any practice forbidden by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750
26 to 654.780;

27 **“(b)** Made any complaint or instituted or caused to be instituted any proceeding under or related
28 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
29 testify in any such proceeding;

30 **“(c)** Exercised on behalf of the employee, prospective employee or others any right afforded by
31 ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780; [*or*]

32 **“(d)** In good faith reported an assault that occurred on the premises of a health care employer
33 as defined in ORS 654.412 or in the home of a patient receiving home health care services[.]; **or**

34 **“(e) With no reasonable alternative and in good faith, refused to expose the employee or**
35 **prospective employee to serious injury or death arising from a hazardous condition at a place**

1 **of employment.**

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

12 “(b) Within 90 days after receipt of a complaint filed under this subsection, the commissioner
13 shall notify the complainant of the commissioner’s determination.

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

19 “(d) The commissioner or the circuit court may order all appropriate relief including rehiring
20 or reinstatement to the employee’s former position with back pay.

21 “(7)(a) In any action brought under subsection (6) of this section, there is a rebuttable
22 presumption that a violation of subsection (5) of this section has occurred if a person bars or dis-
23 charges an employee or prospective employee from employment or otherwise discriminates against
24 an employee or prospective employee within 60 days after the employee or prospective employee has
25 engaged in any of the protected activities described in subsection (5)(a) to [(d)] (e) of this section.
26 The person may rebut the presumption that a violation of subsection (5) of this section has occurred
27 by a demonstration of a preponderance of the evidence.

28 “(b) If a person bars or discharges an employee or prospective employee from employment or
29 otherwise discriminates against the employee or prospective employee more than 60 days after the
30 employee or prospective employee has engaged in any of the protected activities described under
31 subsection (5)(a) to [(d)] (e) of this section, such action does not create a presumption in favor of
32 or against finding that a violation of subsection (5) of this section has occurred. Where such action
33 has occurred more than 60 days after the protected activity, this subsection does not modify any
34 existing rule of case law relating to the proximity of time between a protected activity and an ad-
35 verse employment action. The burden of proof shall be on the employee or prospective employee to
36 demonstrate by a preponderance of the evidence that a violation occurred.

37 “(8) **The director shall adopt rules necessary for the administration of subsection (5)(e)**
38 **of this section that are in accordance with the federal Occupational Safety and Health Act**
39 **of 1970 (29 U.S.C. 651 et seq.).”**