

SENATE AMENDMENTS TO SENATE BILL 478

By COMMITTEE ON WORKFORCE

April 23

- 1 On page 1 of the printed bill, line 2, delete “260.407” and insert “244.350, 260.407 and 260.995”.
- 2 On page 2, delete line 5 and insert “workplace harassment. A nondisclosure agreement made in
3 violation of this subparagraph is void and may not be enforced by a court of this state.”
- 4 Delete line 28 and insert “workplace harassment. A nondisclosure agreement made in violation
5 of this subparagraph is void and may not be enforced by a court of this state.”
- 6 On page 3, delete line 8 and insert “workplace harassment. A nondisclosure agreement made in
7 violation of this subparagraph is void and may not be enforced by a court of this state.”
- 8 After line 17, insert:
- 9 “(d) ‘Workplace harassment’ means conduct that constitutes discrimination prohibited by ORS
10 659A.030, including conduct that constitutes sexual assault as defined in ORS 181A.323.”
- 11 Delete lines 19 through 24 and insert:
- 12 **“SECTION 3. (1) A public official or candidate may not:**
- 13 **“(a) Use public moneys to make payments in connection with a nondisclosure agreement**
14 **relating to workplace harassment; or**
- 15 **“(b) Use moneys received from a third party to make payments in connection with a**
16 **nondisclosure agreement relating to workplace harassment if the alleged harassment oc-**
17 **curred when the public official or candidate was acting as a public official or candidate.**
- 18 **“(2) A nondisclosure agreement made in violation of this section is void and may not be**
19 **enforced by a court of this state.**
- 20 **“(3) As used in this section:**
- 21 **“(a) ‘Payments in connection with a nondisclosure agreement’ includes any form of con-**
22 **sideration provided in exchange for the silence of an individual on issues relating to**
23 **workplace harassment, including but not limited to:**
- 24 **“(A) Money;**
- 25 **“(B) Stock, personal property or other items with a resale value;**
- 26 **“(C) Severance pay or benefits for an individual who resigned or was fired from a place**
27 **of employment without cause;**
- 28 **“(D) The promise of a positive reference or assistance in obtaining future employment**
29 **in a position in which the individual’s salary is paid for with public moneys;**
- 30 **“(E) The promise of a bonus payment of moneys in addition to the individual’s salary;**
- 31 **“(F) Alternative work arrangements that have the effect of reducing the amount of work**
32 **required to be performed by the individual, or of removing the individual from the workplace;**
33 **or**
- 34 **“(G) Any agreement that terminates the employment of the individual and includes a**
35 **waiver of past or future claims against the public official, the public body or any public em-**

1 ployee.

2 “(b) ‘Workplace harassment’ means conduct that constitutes discrimination prohibited
3 by ORS 659A.030, including conduct that constitutes sexual assault as defined in ORS
4 181A.323.

5 “(4) This section does not prevent a public official from using public moneys to make
6 payments in connection with the receipt of a legally required confidential or privileged report
7 of discrimination, sexual assault or harassment, including workplace harassment.

8 “SECTION 4. Section 5 of this 2019 Act is added to and made a part of ORS chapter 260.

9 “SECTION 5. (1) In addition to the requirements set forth in ORS 260.407, a political
10 committee or petition committee may not provide any form of consideration in connection
11 with a nondisclosure agreement relating to workplace harassment.

12 “(2) As used in this section:

13 “(a) ‘Consideration in connection with a nondisclosure agreement’ includes any form of
14 consideration provided in exchange for the silence of an individual on issues relating to
15 workplace harassment, including but not limited to:

16 “(A) Money;

17 “(B) Stock, personal property or other items with a resale value;

18 “(C) Severance pay or benefits for an individual who resigned or was fired from a place
19 of employment without cause;

20 “(D) The promise of a positive reference or assistance in obtaining future employment
21 in a position in which the individual’s salary is paid for with public moneys;

22 “(E) The promise of a bonus payment of moneys in addition to the individual’s salary;

23 “(F) Alternative work arrangements that have the effect of reducing the amount of work
24 required to be performed by the individual, or of removing the individual from the workplace;
25 or

26 “(G) Any agreement that terminates the employment of the individual and includes a
27 waiver of past or future claims against the public official, the public body or any public em-
28 ployee.

29 “(b) ‘Workplace harassment’ means conduct that constitutes discrimination prohibited
30 by ORS 659A.030, including conduct that constitutes sexual assault as defined in ORS
31 181A.323.

32 “SECTION 6. ORS 260.995 is amended to read:

33 “260.995. (1) Except as provided in subsection (2) of this section, following an investigation un-
34 der ORS 260.345, the Secretary of State or Attorney General may impose a civil penalty not to ex-
35 ceed \$1,000 for each violation of any provision of Oregon Revised Statutes relating to the conduct
36 of any election, any rule adopted by the secretary under ORS chapters 246 to 260 or any other
37 matter preliminary to or relating to an election, for which a civil penalty is not otherwise provided.

38 “(2) The secretary or the Attorney General may impose a civil penalty not to exceed:

39 “(a)(A) **Except as provided in subparagraph (B) of this paragraph,** \$1,000 plus the amount
40 converted to personal use for each violation of ORS 260.407;

41 “(B) **Two times the amount of the penalty provision for violating a nondisclosure agree-**
42 **ment that is contained within each nondisclosure agreement entered into in violation of ORS**
43 **260.407 or section 5 of this 2019 Act;** or

44 “(b) \$10,000 for each violation of ORS 260.555, 260.558, 260.575, 260.695 (1) or 260.715 (1) or
45 section 1b, Article IV of the Oregon Constitution.

1 “(3) Except as otherwise provided by this section, civil penalties under this section shall be
2 imposed as provided in ORS 183.745. In addition to the requirements of ORS 183.745, the notice shall
3 include:

4 “(a) A statement of the authority and jurisdiction under which the hearing is to be held; and

5 “(b) If the person is an agency, corporation or an unincorporated association, a statement that
6 such person must be represented by an attorney licensed in Oregon, unless the person is a political
7 committee which may be represented by any officer identified in the most recent statement of or-
8 ganization filed with the filing officer.

9 “(4) A hearing on whether to impose a civil penalty and to consider circumstances in mitigation
10 shall be held by the secretary or Attorney General:

11 “(a) Upon request of the person against whom the penalty may be assessed, if the request is
12 made not later than the 20th day after the date the person received notice sent under subsection (3)
13 of this section; or

14 “(b) Upon the secretary’s or Attorney General’s own motion.

15 “(5) The person against whom a penalty may be assessed need not appear in person at a hearing
16 held under this section, but instead may submit written testimony or other evidence, sworn to before
17 a notary public, to the secretary or Attorney General for entry in the hearing record. The testimony
18 or other evidence must be received by the secretary or Attorney General not later than three
19 business days before the day of the hearing.

20 “(6) All hearings under this section shall be held not later than 45 days after the deadline for
21 the person against whom the penalty may be assessed to request a hearing. However, if requested
22 by the person against whom the penalty may be assessed, a hearing under subsection (4) of this
23 section shall be held not later than 60 days after the deadline for the person against whom the
24 penalty may be assessed to request a hearing.

25 “(7) The secretary or Attorney General shall issue an order not later than 90 days after a
26 hearing or after the deadline for requesting a hearing if no hearing is held.

27 “(8) All penalties recovered under this section shall be paid into the State Treasury and credited
28 to the General Fund.

29 “(9) In the case of a civil penalty imposed under this section for a violation of ORS 260.407, the
30 person against whom the penalty is assessed:

31 “(a) Is personally responsible for the payment of the civil penalty;

32 “(b) Shall pay the civil penalty from personal funds of the person; and

33 “(c) May not pay the civil penalty from contributions received by a candidate, a candidate’s
34 principal campaign committee, a political committee or a petition committee.

35 “**SECTION 7.** ORS 244.350 is amended to read:

36 “244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to ex-
37 ceed:

38 “(a) Except as provided in paragraphs (b), (c) **and** (d) [*and (c)*] of this subsection, \$5,000 for vi-
39 olation of any provision of this chapter or any resolution adopted under ORS 244.160.

40 “(b) \$25,000 for violation of ORS 244.045.

41 “(c) \$10,000 for willfully violating ORS 244.040.

42 “(d) **Two times the amount of the penalty provision for violating a nondisclosure agree-**
43 **ment that is contained within each nondisclosure agreement entered into in violation of**
44 **section 3 of this 2019 Act.**

45 “(2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil

1 penalties not to exceed \$1,000 for violation of any provision of ORS 192.660.

2 “(b) A civil penalty may not be imposed under this subsection if the violation occurred as a re-
3 sult of the governing body of the public body acting upon the advice of the public body’s counsel.

4 “(3) The commission may impose civil penalties not to exceed \$250 for violation of ORS 293.708.
5 A civil penalty imposed under this subsection is in addition to and not in lieu of a civil penalty that
6 may be imposed under subsection (1) of this section.

7 “(4)(a) The commission may impose civil penalties on a person who fails to file the statement
8 required under ORS 244.050 or 244.217. In enforcing this subsection, the commission is not required
9 to follow the procedures in ORS 244.260 before finding that a violation of ORS 244.050 or 244.217
10 has occurred.

11 “(b) Failure to file the required statement in timely fashion is prima facie evidence of a violation
12 of ORS 244.050 or 244.217.

13 “(c) The commission may impose a civil penalty of \$10 for each of the first 14 days the statement
14 is late beyond the date set by law, or by the commission under ORS 244.050, and \$50 for each day
15 thereafter. The maximum penalty that may be imposed under this subsection is \$5,000.

16 “(5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing a
17 civil penalty under this section, the commission may issue a written letter of reprimand, explanation
18 or education.”.

19 In line 25, delete “4” and insert “8”.

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