

Enrolled Senate Bill 725

Sponsored by Senator CARTER; Senators AVAKIAN, BROWN, DECKERT, DEVLIN, GORDLY, MONNES ANDERSON, MORRISSETTE, VERGER, WALKER, WESTLUND, WINTERS, Representatives BARKER, BUCKLEY, CANNON, CLEM, DINGFELDER, HOLVEY, MERKLEY, ROBLAN, ROSENBAUM, SCHAUFLER, SHIELDS, WITT (at the request of Housing and Community Services Department, Fair Housing Council of Oregon, Urban League of Portland)

CHAPTER

AN ACT

Relating to housing discrimination; creating new provisions; amending ORS 90.390, 659A.003, 659A.006, 659A.145, 659A.421, 659A.805, 659A.820, 659A.830, 659A.835, 659A.845, 659A.850, 659A.855, 659A.870 and 659A.885 and section 42, chapter 100, Oregon Laws 2007 (Enrolled Senate Bill 2); and repealing ORS 659A.424.

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

SECTION 1. ORS 659A.003 is amended to read:

659A.003. The purpose of this chapter is to encourage the fullest utilization of the available workforce by removing arbitrary standards of race, religion, color, sex, marital status, national origin or age as a barrier to employment of the inhabitants of this state, and to ensure the human dignity of all people within this state and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of **unlawful** discrimination of any kind based on race, religion, color, sex, **disability**, marital status, [or] national origin **or familial status**. To accomplish this purpose, the Legislative Assembly intends by this chapter to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of **unlawful** discrimination because of race, religion, color, sex, **disability**, marital status, [or] national origin **or familial status** are based.

(2) An adequate remedy for persons aggrieved by certain acts of **unlawful** discrimination because of race, religion, color, sex, **disability**, marital status, [or] national origin **or familial status**, or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of **unlawful** discrimination through a procedure involving investigation, conference, conciliation and persuasion, to encourage the use in good faith of such machinery by all parties to a complaint of **unlawful** discrimination and to discourage unilateral action that makes moot the outcome of final administrative or judicial determination on the merits of such a complaint.

SECTION 1a. If Senate Bill 2 becomes law, section 1 of this 2007 Act (amending ORS 659A.003) is repealed and ORS 659A.003, as amended by section 2, chapter 100, Oregon Laws 2007 (Enrolled Senate Bill 2), is amended to read:

659A.003. The purpose of this chapter is to encourage the fullest utilization of the available workforce by removing arbitrary standards of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability as a barrier to employment of the inhabitants of this state,

and to ensure the human dignity of all people within this state and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of **unlawful** discrimination of any kind based on race, color, religion, sex, sexual orientation, national origin, marital status, age, [or] disability **or familial status**. To accomplish this purpose, the Legislative Assembly intends by this chapter to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of **unlawful** discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age, [or] disability **or familial status** are based.

(2) An adequate remedy for persons aggrieved by certain acts of **unlawful** discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, [or] disability **or familial status**, or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of **unlawful** discrimination through a procedure involving investigation, conference, conciliation and persuasion, to encourage the use in good faith of the machinery by all parties to a complaint of **unlawful** discrimination and to discourage unilateral action that makes moot the outcome of final administrative or judicial determination on the merits of the complaint.

SECTION 2. ORS 659A.006 is amended to read:

659A.006. (1) It is declared to be the public policy of Oregon that practices of **unlawful** discrimination against any of its inhabitants because of race, religion, color, sex, marital status, national origin, age [or], disability **or familial status** are a matter of state concern and that such discrimination threatens not only the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

(2) The opportunity to obtain employment without **unlawful** discrimination because of race, religion, color, sex, marital status, national origin, age or disability hereby is recognized as and declared to be a civil right. However, this section shall not be construed to prevent a bona fide church or sectarian religious institution, including but not limited to a school, hospital or church camp, from preferring an employee or applicant for employment of one religious sect or persuasion over another when:

(a) That religious sect or persuasion to which the employee or applicant belongs is the same as that of such church or institution;

(b) In the opinion of such bona fide church or sectarian religious institution, such a preference will best serve the purposes of such church or institution; and

(c) The employment involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity which has no necessary relationship to the church or institution, or to its primary purposes.

SECTION 3. ORS 659A.145 is amended to read:

659A.145. (1) A person, because of a disability of a purchaser, lessee or renter, a disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any person associated with a purchaser, lessee or renter, [shall] **may** not discriminate by:

(a) Refusing to sell, lease, rent or otherwise make available any real property to a purchaser, lessee or renter;

(b) Expelling a purchaser, lessee or renter;

(c) Making any distinction or restriction against a purchaser, lessee or renter in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or the furnishing of any facilities or services in connection therewith; or

(d) Attempting to discourage the sale, rental or lease of any real property.

(2) For purposes of this [subsection] **section**, discrimination includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by [such] **the** person if [such] **the** modifications may be necessary to afford [such] **the** person full enjoyment of the premises, except that, in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a modification on

the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; [or]

(b) A refusal to make reasonable accommodations in rules, policies, practices or services when [such] **the** accommodations may be necessary to afford [such] **the disabled** person equal opportunity to use and enjoy a dwelling[.]; **and**

(c) Failure to design and construct a covered multifamily dwelling as required by the Fair Housing Act (42 U.S.C. 3601 et seq.).

(3) A person [shall] **may** not publish, circulate, issue or display or cause to be published, circulated, issued or displayed any communication, notice, advertisement, or sign of any kind relating to the sale, rental or leasing of real property [which] **that** indicates any preference, limitation, specification or discrimination against a disabled person.

(4) A person whose business includes engaging in residential real estate related transactions, as defined in ORS 659A.421 (2)(b), [shall] **may** not discriminate against any person in making a **transaction** available [such a transaction], or in the terms or conditions of [such a] **the** transaction, because of a disability.

(5) A real estate broker or principal real estate broker [shall] **may** not accept or retain a listing of real property for sale, lease or rental with an understanding that the purchaser, lessee or renter may be discriminated against solely because a person is a disabled person.

(6) A person may not deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation, because that person is a disabled person.

[(6)] (7) A person [shall] **may** not assist, induce, incite or coerce another person to [permit] **commit** an act or engage in a practice that violates this section.

[(7)] (8) A person [shall] **may** not coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

[(8)] (9) A person [shall] **may** not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a disabled person or persons.

(10) In the sale, lease or rental of real property, a person may not disclose to any person that an occupant or owner of the real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

[(9)] (11) Any violation of this section is an unlawful practice.

SECTION 3a. If Senate Bill 83 becomes law, section 3 of this 2007 Act (amending ORS 659A.145) is repealed and ORS 659A.145, as amended by section 298, chapter 70, Oregon Laws 2007 (Enrolled Senate Bill 83), is amended to read:

659A.145. (1) A person, because of a disability of a purchaser, lessee or renter, a disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any person associated with a purchaser, lessee or renter, may not discriminate by:

(a) Refusing to sell, lease, rent or otherwise make available any real property to a purchaser, lessee or renter;

(b) Expelling a purchaser, lessee or renter;

(c) Making any distinction or restriction against a purchaser, lessee or renter in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or the furnishing of any facilities or services in connection therewith; or

(d) Attempting to discourage the sale, rental or lease of any real property.

(2) For purposes of this [subsection] **section**, discrimination includes:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by [such] **the** person if [such] **the** modifications may

be necessary to afford [such] **the** person full enjoyment of the premises, except that, in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; [or]

(b) A refusal to make reasonable accommodations in rules, policies, practices or services when [such] **the** accommodations may be necessary to afford [such] **the** person **with a disability** equal opportunity to use and enjoy a dwelling; **and**

(c) Failure to design and construct a covered multifamily dwelling as required by the Fair Housing Act (42 U.S.C. 3601 et seq.).

(3) A person may not publish, circulate, issue or display or cause to be published, circulated, issued or displayed any communication, notice, advertisement, or sign of any kind relating to the sale, rental or leasing of real property [which] **that** indicates any preference, limitation, specification or discrimination against a person with a disability.

(4) A person whose business includes engaging in residential real estate related transactions, as defined in ORS 659A.421 (2)(b), may not discriminate against any person in making **a transaction** available [such a transaction], or in the terms or conditions of [such a] **the** transaction, because of a disability.

(5) A real estate broker or principal real estate broker may not accept or retain a listing of real property for sale, lease or rental with an understanding that the purchaser, lessee or renter may be discriminated against solely because a person is a person with a disability.

(6) A person may not deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation, because that person is a person with a disability.

[(6)] (7) A person may not assist, induce, incite or coerce another person to [permit] **commit** an act or engage in a practice that violates this section.

[(7)] (8) A person may not coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

[(8)] (9) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person with a disability.

(10) In the sale, lease or rental of real property, a person may not disclose to any person that an occupant or owner of the real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

[(9)] (11) Any violation of this section is an unlawful practice.

SECTION 4. ORS 659A.421 is amended to read:

659A.421. (1) [No person shall] **A person may not**, because of race, color, sex, marital status, source of income, familial status, religion or national origin of any person:

(a) Refuse to sell, lease or rent any real property to a purchaser.

(b) Expel a purchaser from any real property.

(c) Make any distinction, discrimination or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property [which] **that** indicates any preference, limitation, specification or **unlawful** discrimination based on race, color, sex, marital status, source of income, **familial status**, religion or national origin.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this [subsection and subsection (3) of this] section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected by this section.

(h) Deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation.

(i) Represent to a person that a dwelling is not available for inspection, sale or rental when the dwelling in fact is available for inspection, sale or rental.

(j) Otherwise make unavailable or deny a dwelling to a person.

(2)(a) [No] **A** person whose business includes engaging in residential real estate related transactions [shall] **may not** discriminate against any person in making **a transaction** available [such a transaction], or in the terms or conditions of [such a] **the** transaction, because of race, color, sex, marital status, source of income, familial status, religion or national origin.

(b) As used in this subsection, "residential real estate related transaction" means any of the following:

(A) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(ii) For securing residential real estate; or

(B) The selling, brokering or appraising of residential real property.

(3) [No] **A** real estate licensee [shall] **may not** accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, sex, marital status, source of income, familial status, religion or national origin.

(4) [No person shall] **A person may not**, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, marital status, source of income, familial status, religion or national origin.

(5) For purposes of [subsections (1) to (4) of] this section, "source of income" does not include federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income derived in an illegal manner.

(6) [Subsections (1) and (3) of this section do] **This section does** not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of [subsections (1) and (3) of] this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

(7)(a) This section does not apply to familial status distinction, discrimination or restriction with respect to housing for older persons.

(b) As used in this subsection, "housing for older persons" means housing:

(A) Provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined by the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing qualifies as housing for older persons under this subparagraph if:

(i) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and

(ii) Policies and procedures [which] **that** demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older are published and adhered to.

(c) Housing [shall] **does** not fail to meet the requirements for housing for older persons if:

(A) Persons residing in *[such]* **the** housing as of September 13, 1988, do not meet the requirements of paragraph (b)(B) or (C) of this subsection. However, new occupants of *[such]* **the** housing shall meet the age requirements of paragraph (b)(B) or (C) of this subsection; or

(B) The housing includes unoccupied units. *However, such units* **that** are reserved for occupancy by persons who meet the age requirements of paragraph (b)(B) or (C) of this subsection.

(d) Nothing in this section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

[(8) In the sale, lease or rental of real estate, no person shall disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.]

[(9)] **(8)** The provisions of subsection (1)(a) to (d) and (f) of this section that prohibit actions based upon familial status or sex do not apply to the renting of space within a single-family residence if the owner actually maintains and occupies the residence as the owner's primary residence and all occupants share some common space within the residence.

[(10)] **(9)** Any violation of this section is an unlawful practice.

SECTION 4a. If Senate Bill 2 becomes law, section 4 of this 2007 Act (amending ORS 659A.421) is repealed and ORS 659A.421, as amended by section 8, chapter 100, Oregon Laws 2007 (Enrolled Senate Bill 2), is amended to read:

659A.421. (1) A person may not, because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of any person:

(a) Refuse to sell, lease or rent any real property to a purchaser.

(b) Expel a purchaser from any real property.

(c) Make any distinction, discrimination or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or **unlawful** discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this *[subsection and subsection (3) of this]* section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected by this section.

(h) Deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation.

(i) Represent to a person that a dwelling is not available for inspection, sale or rental when the dwelling in fact is available for inspection, sale or rental.

(j) Otherwise make unavailable or deny a dwelling to a person.

(2)(a) A person whose business includes engaging in residential real estate related transactions may not discriminate against any person in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(b) As used in this subsection, "residential real estate related transaction" means any of the following:

(A) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(ii) For securing residential real estate; or

(B) The selling, brokering or appraising of residential real property.

(3) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(4) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(5) For purposes of [subsections (1) to (4) of] this section, “source of income” does not include federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income derived in an illegal manner.

(6) [Subsections (1) and (3) of this section do] **This section does** not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of [subsections (1) and (3) of] this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

(7)(a) This section does not apply to familial status distinction, discrimination or restriction with respect to housing for older persons.

(b) As used in this subsection, “housing for older persons” means housing:

(A) Provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined by the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing qualifies as housing for older persons under this subparagraph if:

(i) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and

(ii) Policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older are published and adhered to.

(c) Housing does not fail to meet the requirements for housing for older persons if:

(A) Persons residing in the housing as of September 13, 1988, do not meet the requirements of paragraph (b)(B) or (C) of this subsection. However, new occupants of the housing shall meet the age requirements of paragraph (b)(B) or (C) of this subsection; or

(B) The housing includes unoccupied units[, if the units] **that** are reserved for occupancy by persons who meet the age requirements of paragraph (b)(B) or (C) of this subsection.

(d) Nothing in this section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

[(8) *In the sale, lease or rental of real estate, a person may not disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.*]

[(9)] **(8)** The provisions of subsection (1)(a) to (d) and (f) of this section that prohibit actions based upon sex, sexual orientation or familial status do not apply to the renting of space within a single-family residence if the owner actually maintains and occupies the residence as the owner’s primary residence and all occupants share some common space within the residence.

[(10)] **(9)** Any violation of this section is an unlawful practice.

SECTION 5. ORS 659A.805 is amended to read:

659A.805. (1) In accordance with any applicable provision of ORS chapter 183, the Commissioner of the Bureau of Labor and Industries may adopt reasonable rules:

(a) Establishing what acts and communications constitute a notice, sign or advertisement that public accommodation or real property will be refused, withheld from, or denied to any person or that [*discrimination will be made against*] the person **will be unlawfully discriminated against** because of race, religion, sex, marital status, **disability**, color, national origin, **familial status** or, with respect to public accommodation, age.

(b) Establishing what inquiries in connection with employment and prospective employment express a limitation, specification or **unlawful** discrimination as to race, religion, color, sex, **disability**, national origin or age.

(c) Establishing what inquiries in connection with employment and prospective employment soliciting information as to race, religion, color, sex, **disability**, national origin or age are based on bona fide job qualifications.

(d) For internal operation and practice and procedure before the commissioner under this chapter.

(e) Covering any other matter required to carry out the purposes of this chapter.

(2) In adopting rules under this section the commissioner shall consider the following factors, among others:

(a) The relevance of information requested to job performance in connection with which it is requested.

(b) Available reasonable alternative ways of obtaining requested information without soliciting responses as to race, religion, color, sex, **disability**, marital status, national origin, [or] age **or, with respect to real property transactions, familial status.**

(c) Whether a statement or inquiry soliciting information as to race, religion, color, sex, **disability**, marital status, national origin, [or] age **or, with respect to real property transactions, familial status**, communicates an idea independent of an intention to limit, specify or **unlawfully** discriminate as to race, religion, color, sex, **disability**, marital status, national origin, [or] age **or, with respect to real property transactions, familial status.**

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind of transaction which it contemplates.

(e) The ease with which the independent idea relating to a legitimate objective of the kind of transaction contemplated could be communicated without connoting an intention to **unlawfully** discriminate as to race, religion, color, sex, **disability**, marital status, national origin, [or] age **or, with respect to real property transactions, familial status.**

SECTION 5a. If Senate Bill 2 becomes law, section 5 of this 2007 Act (amending ORS 659A.805) is repealed and ORS 659A.805, as amended by section 10, chapter 100, Oregon Laws 2007 (Enrolled Senate Bill 2), is amended to read:

659A.805. (1) In accordance with any applicable provision of ORS chapter 183, the Commissioner of the Bureau of Labor and Industries may adopt reasonable rules:

(a) Establishing what acts and communications constitute a notice, sign or advertisement that public accommodation or real property will be refused, withheld from, or denied to any person or that [*discrimination will be made against*] the person **will be unlawfully discriminated against** because of race, color, religion, sex, sexual orientation, national origin, marital status, disability or:

(A) With respect to public accommodation, age.

(B) With respect to real property **transactions**, familial status or source of income.

(b) Establishing what inquiries in connection with employment and prospective employment express a limitation, specification or **unlawful** discrimination as to race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.

(c) Establishing what inquiries in connection with employment and prospective employment soliciting information as to race, color, religion, sex, sexual orientation, national origin, marital status, age or disability are based on bona fide occupational qualifications.

(d) For internal operation and practice and procedure before the commissioner under this chapter.

(e) Covering any other matter required to carry out the purposes of this chapter.

(2) In adopting rules under this section the commissioner shall consider the following factors, among others:

(a) The relevance of information requested to job performance in connection with which it is requested.

(b) Available reasonable alternative ways of obtaining requested information without soliciting responses as to race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, [*familial status or*] source of income **or, with respect to real property transactions, familial status.**

(c) Whether a statement or inquiry soliciting information as to race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, [*familial status or*] source of income **or, with respect to real property transactions, familial status,** communicates an idea independent of an intention to limit, specify or **unlawfully** discriminate as to race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, [*familial status or*] source of income **or, with respect to real property transactions, familial status.**

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind of transaction that it contemplates.

(e) The ease with which the independent idea relating to a legitimate objective of the kind of transaction contemplated could be communicated without connoting an intention to **unlawfully** discriminate as to race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, [*familial status or*] source of income **or, with respect to real property transactions, familial status.**

SECTION 6. ORS 659A.820 is amended to read:

659A.820. (1) Any person claiming to be aggrieved by an alleged unlawful practice may file with the Commissioner of the Bureau of Labor and Industries a verified written complaint that states the name and address of the person alleged to have committed the unlawful practice. The complaint may be signed by the complainant or the attorney for the complainant. The complaint must set forth the acts or omissions alleged to be an unlawful practice. The complainant may be required to set forth in the complaint such other information as the commissioner may require. Except as provided in ORS 654.062, a complaint under this section must be filed no later than one year after the alleged unlawful practice.

(2) A complaint may not be filed under this section if a civil action has been commenced in state or federal court alleging the same matters.

(3) [*Any*] **If an employer** [*whose*] **has one or more employees**, [*or any of them,*] **who** refuse or threaten to refuse to abide by the provisions of this chapter or to cooperate in carrying out the purposes of this chapter, **the employer** may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

(4) **Except as provided in subsection (5) of this section,** the commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the complaint. The [*notice*] **commissioner** shall include **in the notice** the date, place and circumstances of the alleged unlawful practice.

(5) **The commissioner shall notify the person against whom a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law is made within 10 days of the filing of the complaint. The commissioner shall include in the notice:**

(a) **The date, place and circumstances of the alleged unlawful practice; and**

(b) **A statement that the person against whom the complaint is made may file an answer to the complaint.**

SECTION 7. ORS 659A.830 is amended to read:

659A.830. (1) Except as provided in subsection (5) of this section, all authority of the Commissioner of the Bureau of Labor and Industries to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 ceases upon the filing of a civil action by the complainant alleging the same matters that are the basis of the complaint under ORS 659A.820.

(2) The commissioner may dismiss a complaint at any time after the complaint is filed. Upon the written request of the person who filed the complaint under ORS 659A.820, the commissioner shall dismiss the complaint. Upon dismissal of the complaint, the commissioner shall issue a 90-day notice if notice is required under ORS 659A.880.

(3) Except as provided in [subsection (4) of] this section, all authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 ceases one year after the complaint is filed unless the commissioner has issued a finding of substantial evidence under ORS 659A.835 during the one-year period.

(4) The authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 alleging [a violation of] **an unlawful practice under** ORS 659A.403 or 659A.406 continues until the filing of a civil action by the complainant or until the commissioner dismisses the proceedings, enters into a settlement agreement or enters a final order in the matter after a hearing under ORS 659A.850.

(5) The authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 alleging [a violation of] **an unlawful practice under** ORS 659A.145 or 659A.421 or [of an equivalent federal] **discrimination under federal housing** law does not cease upon the filing of a civil action by the complainant, but ceases upon the commencement of a trial in the civil action.

(6) The authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 alleging a violation of ORS 659A.145 or 659A.421 or 659A.406 does not cease under subsection (3) of this section if the issuance of a finding of substantial evidence under ORS 659A.835 within the time allowed under subsection (3) of this section is not practicable. The commission must notify the parties in writing of the reasons that the issuance of substantial evidence cannot be made within the time allowed.

[6] (7) Nothing in this section affects the ability of the commissioner to enforce any order entered by the commissioner or to enforce any settlement agreement signed by a representative of the commissioner.

SECTION 8. ORS 659A.835 is amended to read:

659A.835. (1) **Except as provided in subsection (2) of this section**, after the filing of any complaint under ORS 659A.820 or 659A.825, the Commissioner of the Bureau of Labor and Industries may investigate the complaint. [If by reason of the investigation the commissioner determines that additional persons should be named as respondents in the complaint, the commissioner may add the names of those persons to the complaint as respondents. The commissioner may name additional persons as respondents under this subsection only during the course of the investigation.]

(2) The commissioner shall commence an investigation of any complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within 30 days after the filing of the complaint.

(3) If, by reason of an investigation under this section, the commissioner determines that additional persons should be named as respondents in the complaint, the commissioner may add the names of those persons to the complaint. The commissioner may name additional persons as respondents under this subsection only during the course of the investigation. Within 10 days after identifying an additional person who will be named as a respondent, the commission shall serve the person with a copy of the complaint that identifies the alleged discriminatory housing practice and a notice that advises the person of the procedural rights and obligations of the person, including the person's right to file an answer to the complaint.

[2] (4) If an investigation under this section discloses any substantial evidence supporting the allegations of a complaint, the commissioner shall issue a finding of substantial evidence. The finding must be sent to the respondent and the complainant and must be signed by the commissioner or the commissioner's designee. The finding must include at least the following information:

- (a) The names of the complainant and the respondent;
- (b) The allegations contained in the complaint;
- (c) Facts found by the commissioner that are related to the allegations of the complaint; and
- (d) A statement that the investigation of the complaint has disclosed substantial evidence supporting the allegations of the complaint.

SECTION 9. ORS 659A.845 is amended to read:

659A.845. (1) If the Commissioner of the Bureau of Labor and Industries issues a finding of substantial evidence under ORS 659A.835 and the matter cannot be settled through conference, conciliation and persuasion, or if the commissioner determines that the interest of justice requires that a hearing be held without first seeking settlement, the commissioner shall prepare formal charges. Formal charges must contain all information required for a notice under ORS 183.415 and must specify the allegations of the complaint to which the respondent will be required to make response. Formal charges shall also set the time and place for hearing the formal charges.

(2)(a) The commissioner shall serve the formal charges on all respondents found to have engaged in the unlawful practice.

(b) **If the formal charges allege a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law, the commissioner shall serve on the named respondents and complainants the formal charges and a notice of the right of the respondents and complainants under ORS 659A.870 to opt for a court trial instead of a hearing under ORS 659A.850.**

SECTION 10. ORS 659A.850 is amended to read:

659A.850. (1) All proceedings before the Commissioner of the Bureau of Labor and Industries under this section shall be conducted as contested case proceedings under the provisions of ORS chapter 183. The commissioner may appoint a special tribunal or hearing officer to hear the matter. The commissioner may affirm, reverse, modify or supplement the determinations, conclusions or order of any special tribunal or hearing officer appointed under this subsection. The scheduling of a hearing under this section does not affect the ability of the commissioner and any respondent to thereafter settle the matters alleged in the complaint through conference, conciliation and persuasion.

(2) After considering all the evidence, the commissioner shall cause to be issued findings of facts and conclusions of law.

(3) The commissioner shall issue an order dismissing the formal charges against any respondent not found to have engaged in any unlawful practice alleged in the complaint.

(4) After a hearing under this section, the commissioner shall issue an appropriate cease and desist order against any respondent found to have engaged in any unlawful practice alleged in the complaint. The order must be signed by the commissioner and must take into account the need to supervise compliance with the terms of order. The order may require that the respondent:

(a) Perform an act or series of acts designated in the order that are reasonably calculated to:

(A) Carry out the purposes of this chapter;[, to]

(B) Eliminate the effects of the unlawful practice that the respondent is found to have engaged in, [and to] **including but not limited to paying an award of actual damages suffered by the complainant and complying with injunctive or other equitable relief; and**

(C) Protect the rights of the complainant and other persons similarly situated;

(b) Submit reports to the commissioner on the manner of compliance with other terms and conditions specified in the commissioner's order, and take other action as may be required to ensure compliance with the commissioner's order; and

(c) Refrain from any action specified in the order that would jeopardize the rights of the complainant or other persons similarly situated, or that would otherwise frustrate the purposes of this chapter.

(5) A cease and desist order issued under subsection (4) of this section may be recorded in the County Clerk Lien Record in the manner provided by ORS 205.125 and enforced in the manner provided by ORS 205.126. In addition to enforcement under ORS 205.126, the order may be enforced by writ of mandamus or a civil action to compel specific performance of the order.

SECTION 11. ORS 659A.855 is amended to read:

659A.855. (1)(a) If the Commissioner of the Bureau of Labor and Industries files a complaint under ORS 659A.825 alleging an unlawful practice other than an unlawful employment practice, and the commissioner finds that the respondent engaged in the unlawful practice, the commissioner may,

in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each respondent found to have committed the unlawful practice.

[2)] (b) Civil penalties under this [section] **subsection** may not exceed \$1,000 for each violation. [Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.]

(2)(a) **Notwithstanding subsection (1)(b) of this section, if a complaint is filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law and the commissioner finds that a respondent has engaged in an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the commissioner may assess against the respondent, in addition to any other relief available, a civil penalty:**

(A) **In an amount not exceeding \$11,000;**

(B) **Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$27,500 if the respondent has been adjudged to have engaged in one other discriminatory housing practice during the five-year period ending on the date of the filing of the formal charges leading to the hearing; or**

(C) **Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$55,000 if the respondent has been adjudged to have engaged in two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the formal charges leading to the hearing.**

(b) **If acts constituting the discriminatory housing practice that is the object of the hearing were committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties listed in paragraph (a)(B) and (C) of this subsection may be imposed regardless of the period of time between the previous discriminatory housing practice and the discriminatory housing practice that is the object of this hearing.**

(3) **Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.**

[3)] (4) All sums collected as civil penalties under this section must first be applied toward reimbursement of the costs incurred in determining the violations, conducting hearings and assessing and collecting the penalty. The remainder, if any, shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund. The department shall issue a receipt for the money to the commissioner.

SECTION 12. ORS 659A.870 is amended to read:

659A.870. (1) Except as provided in this section, the filing of a civil action by a person in circuit court pursuant to ORS 659A.885, or in federal district court under applicable federal law, waives the right of the person to file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 with respect to the matters alleged in the civil action.

(2) The filing of a complaint under ORS 659A.820 is not a condition precedent to the filing of any civil action.

(3) If a person files a civil action [*claiming a violation of*] **alleging an unlawful practice under ORS 659A.145 or 659A.421 or [*of an equivalent federal*] discrimination under federal housing law**, the filing does not constitute an election of remedies or a waiver of the right of the person to file a complaint with the commissioner under ORS 659A.820, but the commissioner shall dismiss the complaint upon the commencement of a trial in the civil action.

(4)(a) The filing of a complaint under ORS 659A.820 by a person [*claiming a violation of*] **alleging an unlawful practice under ORS 659A.145 or 659A.421 or [*of an equivalent federal*] discrimination under federal housing law** does not constitute an election of remedies or a waiver of the right of the person to file a civil action with respect to the same matters, but a civil action may not be filed after a hearing officer has commenced a hearing on the record under this chapter with respect to the allegations of the complaint.

(b) **A respondent or complainant named in a complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination un-**

der federal housing law may elect to have the matter heard in circuit court. The election must be made in writing and received by the commissioner within 20 days after service of formal charges under ORS 659A.845. If the respondent or the complainant makes the election, the commissioner shall pursue the matter in court on behalf of the complainant at no cost to the complainant.

(c) If the Attorney General or the commissioner files a complaint under ORS 659A.825, the Attorney General or the commissioner may elect to have the matter heard in circuit court.

(d) If the respondent, the complainant, the Attorney General or the commissioner do not elect to have the matter heard in circuit court, the commissioner may conduct a hearing on the formal charges under ORS 659A.850.

(5) A person who has filed a complaint under ORS 659A.820 need not receive a 90-day notice under ORS 659A.880 before commencing a civil action that is based on the same matters alleged in the complaint filed with the commissioner.

(6) **Except as provided in subsections (3) and (4) of this section**, this section [*shall not be construed to*] **does not** limit or alter in any way the authority or power of the commissioner, or [*to*] limit or alter in any way any of the rights of an individual complainant, until and unless the complainant commences a civil action.

SECTION 13. ORS 659A.885 is amended to read:

659A.885. (1) Any individual claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and [*such*] **any** other equitable relief [*as*] **that** may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 171.120, 399.235, 476.574, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 [(1) or (3)].

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262, 659A.318 or 659A.421 [(1) or (3)]:

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

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

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

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

(4) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(5) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any

person acting on behalf of [such] **the** place or by any person aiding or abetting [such] **the** place or person in violation of ORS 659A.406 may bring an action against the operator or manager of [such] **the** place, the employee or person acting on behalf of [such] **the** place or the aider or abettor of [such] **the** place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

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

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

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

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

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

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

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

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

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

(7) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

SECTION 14. ORS 90.390 is amended to read:

90.390. (1) A landlord may not discriminate against a tenant in violation of local, state or federal law, including ORS 346.630, 346.660, 346.690, 659A.145 and 659A.421.

(2) If the tenant can prove that the landlord [*has in fact acted in violation of*] **violated** subsection (1) of this section, the tenant has a defense in any discriminatory action brought by the landlord against the tenant for possession, unless the tenant is in default in rent.

(3) A tenant may prove a landlord's discrimination in violation of ORS 659A.145 or 659A.421 by demonstrating that a facially neutral housing policy has a disparate adverse impact on [*members of a protected class as described in ORS 659A.424*] **persons based on the characteristics described in ORS 659A.145 or 659A.421.**

(4) A landlord may not discriminate against an applicant solely because the applicant was a defendant in an action for possession pursuant to ORS 105.105 to 105.168 that was dismissed or that resulted in general judgment for the defendant prior to the application. This subsection does not apply if the prior action has not resulted in a dismissal or general judgment at the time of the application. If the landlord knowingly acts in violation of this subsection, the applicant may recover actual damages or \$200, whichever is greater.

SECTION 15. ORS 659A.424 is repealed.

SECTION 15a. Notwithstanding section 9, chapter 100, Oregon Laws 2007 (Enrolled Senate Bill 2) (amending ORS 659A.424), if Senate Bill 2 becomes law, ORS 659A.424 is repealed.

SECTION 16. The amendments to ORS 90.390, 659A.003, 659A.006, 659A.145, 659A.421, 659A.805, 659A.820, 659A.830, 659A.835, 659A.845, 659A.850, 659A.855, 659A.870 and 659A.885 by sections 1 to 14 of this 2007 Act and the repeal of ORS 659A.424 by sections 15 and 15a of this 2007 Act apply to conduct occurring on or after the effective date of this 2007 Act.

SECTION 17. If Senate Bill 2 becomes law, section 42, chapter 100, Oregon Laws 2007 (Enrolled Senate Bill 2), is amended to read:

Sec. 42. The amendments to ORS 10.030, 20.107, 30.860, 93.270, 109.035, 166.155, 166.165, 174.100, 179.750, 192.630, 240.306, 338.125, 353.100, 418.648, 418.925, 421.352, 430.550, 443.739, 458.505, 659.850, 659A.003, 659A.006, 659A.030, 659A.403, 659A.406, 659A.409, 659A.421, [659A.424,] 659A.805, 659A.815, 659A.885, 660.139 and 744.353 by sections 1 to 31, 33 and 34, **chapter 100, Oregon Laws 2007 (Enrolled Senate Bill 2)**, [of this 2007 Act] and the repeal of ORS 236.380 by section 32, **chapter 100, Oregon Laws 2007 (Enrolled Senate Bill 2)**, [of this 2007 Act] may be cited as the Oregon Equality Act.

Passed by Senate May 15, 2007

Received by Governor:

Repassed by Senate June 19, 2007

.....M.,....., 2007

Approved:

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Secretary of Senate

.....M.,....., 2007

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President of Senate

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Governor

Passed by House June 18, 2007

Filed in Office of Secretary of State:

.....M.,....., 2007

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Speaker of House

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Secretary of State