

Enrolled

Senate Bill 822

Sponsored by Senator DECKERT; Senator DEVLIN, Representatives BARKER, NELSON (at the request of Robert Thornhill, George Winslow, United Veterans of Oregon)

CHAPTER

AN ACT

Relating to veterans' preferences; creating new provisions; amending ORS 408.225, 408.230, 408.235 and 659A.885; and declaring an emergency.

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

SECTION 1. ORS 408.225 is amended to read:

408.225. (1) As used in ORS 408.225 to 408.235:

[(1)] (a) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.

[(2)] (b) "Disabled veteran" means a person entitled to disability compensation under laws administered by the United States Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.

(c) "**Public employer**" means the state or any agency or political subdivision of the state and any person authorized to act on behalf of the state or any agency or political subdivision of the state with respect to control, management or supervision of any employee.

[(3)(a)] (d) "Veteran" means a person who:

(A) Served on active duty with the Armed Forces of the United States:

[(A)] (i) For a period of more than 178 consecutive days[,] and was discharged or released from active duty [*with other than a dishonorable discharge*] **under honorable conditions**;

[(B)] (ii) For 178 days or less and was discharged or released from active duty [*with other than a dishonorable discharge*] **under honorable conditions** because of a service-connected disability; or

[(C)] (iii) For at least one day in a combat zone and was discharged or released from active duty [*with other than a dishonorable discharge; or*] **under honorable conditions; or**

[(D)] (B) Received a combat or campaign ribbon for service in the Armed Forces of the United States.

[(b)] (2) As used in [this] subsection (1)(d) of this section, "active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

SECTION 2. ORS 408.230 is amended to read:

408.230. [(1) An eligible veteran or eligible disabled veteran who has successfully completed all phases of a civil service test shall be allowed preference on the list established as a result of such test.

If the test results in a score, preference means that to the score of a veteran who has passed a test five points shall be added, and to the score of a disabled veteran who has passed a test 10 points shall be added. All such points shall be added to the total combined test score of the veteran and shall not be allocated to any single feature or part of the examination. If the test consists of interviews, performance, evaluation of experience and training, a supervisor's rating or any other method of ranking applicants that does not result in a score, preference must still be provided to veterans and disabled veterans. Preference does not mean that veterans must be appointed to vacant positions, but does provide a uniform method by which special consideration is given to eligible veterans and disabled veterans seeking public employment.]

[(2) Any person who has been appointed permanently to a civil service position, granted military leave to serve in the armed services who would qualify as a veteran or disabled veteran and who has returned to duty in a permanent civil service position, shall be allowed such preference on any successfully completed promotion test for a position which would put the person in another class having a higher maximum salary rate.]

(1) A public employer shall grant a preference to a veteran or disabled veteran who successfully completes an initial application screening or an application examination or who successfully completes a civil service test the employer administers to establish eligibility for a vacant civil service position. The employer shall grant the preference in the following manner:

(a) For an initial application screening used to develop a list of persons for interviews, the employer shall add five preference points to a veteran's score and 10 preference points to a disabled veteran's score.

(b) For an application examination, given after the initial application screening, that results in a score, the employer shall add preference points to the total combined examination score without allocating the points to any single feature or part of the examination. The employer shall add five preference points to a veteran's score and 10 preference points to a disabled veteran's score.

(c) For an application examination that consists of an interview, an evaluation of the veteran's performance, experience or training, a supervisor's rating or any other method of ranking an applicant that does not result in a score, the employer shall give a preference to the veteran or disabled veteran. An employer that uses an application examination of the type described in this paragraph shall devise and apply methods by which the employer gives special consideration in the employer's hiring decision to veterans and disabled veterans.

(2) Preferences of the type described in subsection (1) of this section are not a requirement that the public employer appoint a veteran or disabled veteran to a civil service position.

(3) A public employer shall appoint an otherwise qualified veteran or disabled veteran to a vacant civil service position if the results of a veteran's or disabled veteran's application examination, when combined with the veteran's or disabled veteran's preference, are equal to or higher than the results of an application examination for an applicant who is not a veteran or disabled veteran.

(4) If a public employer does not appoint a veteran or disabled veteran to a vacant civil service position, upon written request of the veteran or disabled veteran, the employer, in writing, shall provide the employer's reasons for the decision not to appoint the veteran or disabled veteran to the position. The employer may base a decision not to appoint the veteran or disabled veteran solely on the veteran's or disabled veteran's merits or qualifications with respect to the vacant civil service position.

(5) Whether or not the person qualifies for a preference under subsection (1) of this section, a public employer shall grant to a person the employer has hired for a permanent civil service position a veteran's or disabled veteran's preference, as appropriate, if the person seeks promotion to a position with a higher maximum salary rate and the person:

(a) Was granted military leave by the public employer to serve in the armed services;

- (b) Returned from military leave to the civil service position;
 - (c) Qualified as a veteran or disabled veteran by reason of the person's service during military leave or otherwise;
 - (d) Successfully completed a test or examination for the position; and
 - (e) Meets the minimum qualifications and any special qualifications for the position.
- (6) Violation of this section is an unlawful employment practice.
- (7) A veteran or disabled veteran claiming to be aggrieved by a violation of this section may file a verified written complaint with the Commissioner of the Bureau of Labor and Industries in accordance with ORS 659A.820.

SECTION 3. ORS 408.235 is amended to read:

408.235. [(1) Except for a veteran described in subsection (2) of this section,] A veteran is eligible to use the preference provided for in ORS 408.230 only for a position for which application is made within 15 years of discharge or release from service in the Armed Forces. Such time limit shall not apply in the case of a disabled veteran.

[(2) A veteran whose service in the Armed Forces of the United States occurred between January 1, 1962, and May 7, 1975, within the borders of Vietnam, Cambodia, Laos or Thailand may use the preference provided for in ORS 408.230 only for a position for which application is made by July 1, 1999.]

[(3) Once a veteran has used the preference provided for in ORS 408.230 and has successfully completed trial service and attained regular employee status, the veteran may not use the preference again. The preference shall not be allowed on any promotion test for a civil service position except as provided in ORS 408.230 (2). Such limitations do not apply to a disabled veteran.]

SECTION 4. 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 other equitable relief as 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, **408.230**, 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 place or by any person aiding or abetting such place or person in violation of ORS 659A.406 may bring an action against the operator or manager of such place, the employee or person acting on behalf of such place or the aider or abettor of such 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).

SECTION 5. The amendments to ORS 408.225, 408.230, 408.235 and 659A.885 apply to hiring decisions for civil service positions made by public employers on or after the effective date of this 2007 Act.

SECTION 6. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by Senate May 11, 2007

Received by Governor:

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

.....Secretary of Senate

Approved:

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

.....President of Senate

.....Governor

Passed by House June 5, 2007

Filed in Office of Secretary of State:

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

.....Speaker of House

.....Secretary of State