

Senate Bill 915

Sponsored by Senator G GEORGE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows court to award punitive damages in public employee whistleblower case. Requires court to award attorney fees to prevailing plaintiff in public employee whistleblower case.

Requires Oregon Government Standards and Practices Commission to appoint ombudsman for public employees. Requires ombudsman to act as advocate for public employees by accepting, investigating and attempting to resolve complaints concerning alleged violations of whistleblower laws.

A BILL FOR AN ACT

1
2 Relating to whistleblowing by public employees; creating new provisions; and amending ORS
3 659A.885.

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

5 **SECTION 1.** ORS 659A.885 is amended to read:

6 659A.885. (1) Any individual claiming to be aggrieved by an unlawful practice **in violation of**
7 **a statute** specified in subsection (2) of this section may file a civil action in circuit court. In any
8 action under this subsection, the court may order injunctive relief and such other equitable relief
9 as may be appropriate, including but not limited to reinstatement or the hiring of employees with
10 or without back pay. A court may order back pay in an action under this subsection only for the
11 two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Com-
12 missioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action
13 was commenced, the two-year period immediately preceding the filing of the action. In any action
14 under this subsection, the court may allow the prevailing party costs and reasonable attorney fees
15 at trial and on appeal. Except as provided in subsection (3) of this section:

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

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

19 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
20 25.337, 25.424, 171.120, 399.235, 476.574, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069,
21 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233,
22 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 (1) or
23 (3).

24 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
25 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262,
26 659A.318 or 659A.421 (1) or (3):

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

4 (4) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 5 659A.203 or 659A.218[,]:

6 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 7 compensatory damages or \$250, whichever is greater, **and punitive damages; and**

8 **(b) The court shall award a prevailing plaintiff costs and reasonable attorney fees at trial**
 9 **and on appeal. However, the award of attorney fees may not exceed the amount of attorney**
 10 **fees paid by the public employer to defend the action.**

11 (5) Any individual against whom any distinction, discrimination or restriction on account of
 12 race, color, religion, sex, national origin, marital status or age, if the individual is 18 years of age
 13 or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any
 14 person acting on behalf of [*such*] **the** place or by any person aiding or abetting [*such*] **the** place or
 15 person in violation of ORS 659A.406 may bring an action against the operator or manager of [*such*]
 16 **the** place, the employee or person acting on behalf of [*such*] **the** place or the aider or abettor of
 17 [*such*] **the** place or person. Notwithstanding subsection (1) of this section, in an action under this
 18 subsection:

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

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

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

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

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

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

32 **SECTION 2. (1) The Oregon Government Standards and Practices Commission shall ap-**
 33 **point an ombudsman for public employees. The ombudsman is under the supervision and**
 34 **control of the commission and the commission may terminate the ombudsman.**

35 **(2) The ombudsman for public employees shall:**

36 **(a) Act as an advocate for public employees by accepting, investigating and attempting**
 37 **to resolve complaints concerning alleged unlawful employment practices under ORS 659A.200**
 38 **to 659A.224, 659A.230, 659A.233 or 659A.236;**

39 **(b) Provide information to public employees to enable them to protect their rights under**
 40 **ORS 659A.200 to 659A.224, 659A.230, 659A.233 and 659A.236; and**

41 **(c) Report to the Governor and the commission in writing at least once each quarter. A**
 42 **report shall include a summary of the services that the ombudsman provided during the**
 43 **quarter and the ombudsman's recommendations for improving ombudsman services and for**
 44 **protecting public employees' rights under ORS 659A.200 to 659A.224, 659A.230, 659A.233 and**
 45 **659A.236.**

1 **SECTION 3.** The amendments to ORS 659A.885 by section 1 of this 2007 Act apply only
2 to civil actions filed on or after the effective date of this 2007 Act.
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