

Enrolled
House Bill 3639

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES

CHAPTER

AN ACT

Relating to discriminatory practices; creating new provisions; amending ORS 90.390, 659A.001, 659A.145, 659A.421, 659A.820, 659A.825, 659A.830, 659A.840, 659A.845, 659A.850, 659A.870, 659A.875, 659A.880 and 659A.885; repealing ORS 659A.420; and declaring an emergency.

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

SECTION 1. Section 2 of this 2008 Act is added to and made a part of ORS chapter 659A.

SECTION 2. (1) As used in this section:

(a) "Facially neutral housing policy" means a guideline, practice, rule or screening or admission criterion, regarding a real property transaction, that applies equally to all persons.

(b) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income or disability.

(c) "Real property transaction" means an act described in ORS 659A.145 or 659A.421 involving the renting or leasing of residential real property subject to ORS chapter 90.

(2) A court or the Commissioner of the Bureau of Labor and Industries may find a person to have violated ORS 659A.145 or 659A.421 if:

(a) The person applies a facially neutral housing policy to a member of a protected class in a real property transaction involving a residential tenancy subject to ORS chapter 90; and

(b) Application of the policy adversely impacts members of the protected class to a greater extent than the policy impacts persons generally.

(3) In determining under subsection (2) of this section whether a violation has occurred and, if a violation has occurred, what relief should be granted, a court or the commissioner shall consider:

(a) The significance of the adverse impact on the protected class;

(b) The importance and necessity of any business purpose for the facially neutral housing policy; and

(c) The availability of less discriminatory alternatives for achieving the business purpose for the facially neutral housing policy.

SECTION 3. 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 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 persons based on the characteristics described in ORS 659A.145 or 659A.421.]*, **as described in section 2 of this 2008 Act, on members of a protected class.**

(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 4. ORS 659A.001 is amended to read:

659A.001. As used in this chapter:

(1) "Bureau" means the Bureau of Labor and Industries.

(2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(3) "Employee" does not include any individual employed by the individual's parents, spouse or child or in the domestic service of any person.

(4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

(5) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(6)(a) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

(A) A parent or another person having legal custody of the individual; or

(B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(b) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(7) "Labor organization" includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(8) "National origin" includes ancestry.

(9) "Person" includes:

(a) One or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers. [*Person* also includes]

(b) A public body as defined in ORS 30.260.

(c) For purposes of ORS 659A.145 and 659A.421 and the application of any federal housing law, a fiduciary, mutual company, trust or unincorporated organization.

(10) "Respondent" means any person against whom a complaint or charge of an unlawful practice is filed with the commissioner or whose name has been added to such complaint or charge pursuant to ORS 659A.835.

(11) "Unlawful employment practice" means a practice specifically denominated as an unlawful employment practice in this chapter. "Unlawful employment practice" includes a practice that is specifically denominated in another statute of this state as an unlawful employment practice and that is specifically made subject to enforcement under this chapter.

(12) "Unlawful practice" means any unlawful employment practice or any other practice specifically denominated as an unlawful practice in this chapter. "Unlawful practice" includes a practice that is specifically denominated in another statute of this state as an unlawful practice and that is specifically made subject to enforcement under this chapter, or a practice that violates a rule adopted by the commissioner for the enforcement of the provisions of this chapter.

SECTION 5. ORS 659A.145 is amended to read:

659A.145. (1) **As used in this section:**

(a) **“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 the person if:**

(i) **The modifications may be necessary to afford the person full enjoyment of the premises; and**

(ii) **In the case of a rental, when it is reasonable to do so, the renter agrees to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;**

(B) **A refusal to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford 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.).**

(b) **“Dwelling” has the meaning given that term in ORS 659A.421.**

(c) **“Purchaser” has the meaning given that term in ORS 659A.421.**

[(1)] (2) A person[,] **may not discriminate** 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[.]; **or**

(e) Representing that a dwelling is not available for inspection, sale, rental or lease when the dwelling is in fact available for inspection, sale, rental or lease.

[(2) For purposes of this 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 the person if the modifications may be necessary to afford 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;]

[(b) A refusal to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford 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 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)]* (3), may not discriminate against any person in making a transaction available, or in the terms or conditions of 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.

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

(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.

(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.

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

SECTION 6. ORS 659A.421, as amended by section 8, chapter 100, Oregon Laws 2007, and section 4a, chapter 903, Oregon Laws 2007, is amended to read:

659A.421. (1) **As used in this section:**

(a) **"Dwelling" means:**

(A) **A building or structure, or portion of a building or structure, that is occupied, or designed or intended for occupancy, as a residence by one or more families; or**

(B) **Vacant land offered for sale or lease for the construction or location of a building or structure, or portion of a building or structure, that is occupied, or designed or intended for occupancy, as a residence by one or more families.**

(b) **"Purchaser" includes an occupant, prospective occupant, renter, prospective renter, lessee, prospective lessee, buyer or prospective buyer.**

(c) **"Real property" includes a dwelling.**

(d) **"Source of income" does not include federal rent subsidy payments under 42 U.S.C. 1437f, income derived from a specific occupation or income derived in an illegal manner.**

[(1)] (2) 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 section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of **the person** having **exercised or enjoyed or having** aided or encouraged any other person in the exercise **or enjoyment** 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)] **(3)(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] **Secured by** residential real estate; or

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

[(3)] **(4)** 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)] **(5)** 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 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) This section does not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application 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 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) The provisions of subsection [(1)(a)] **(2)(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.

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

SECTION 7. ORS 659A.820 is amended to read:

659A.820. (1) **As used in this section, for purposes of a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, "aggrieved person" includes a person who believes that the person:**

(a) Has been injured by an unlawful practice or discriminatory housing practice; or

(b) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

[(1)] (2) 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)] (3)(a) **Except as provided in paragraph (b) of this subsection,** 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.

(b) The prohibition described in paragraph (a) of this subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law.

[(3)] (4) If an employer has one or more employees 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)] (5) Except as provided in subsection [(5)] (6) 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 commissioner shall include in the notice the date, place and circumstances of the alleged unlawful practice.

[(5)] (6) 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 8. ORS 659A.825 is amended to read:

659A.825. (1)(a) If the Attorney General or the Commissioner of the Bureau of Labor and Industries has reason to believe that any person has committed an unlawful practice, the Attorney General or the commissioner may file a complaint in the same manner as provided for a complaint filed by a person under ORS 659A.820.

(b) If the Attorney General or the commissioner has reason to believe that a violation of ORS 659A.403, 659A.406 or 659A.409 has occurred, the Attorney General or the commissioner may file a complaint under this section against any person acting on behalf of a place of public accommodation and against any person who has aided or abetted in that violation.

(c) If the Attorney General or the commissioner has reason to believe that an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law has occurred or is about to occur, the Attorney General or the commissioner may file a complaint in the same manner as a person filing a complaint under ORS 659A.820.

(2) If the commissioner files a complaint under this section alleging an unlawful practice other than an unlawful employment practice, **or if a person files a complaint under ORS 659A.820 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal**

housing law, the commissioner may also issue a temporary cease and desist order requiring any respondent named in the complaint to refrain from the unlawful practice alleged. A temporary cease and desist order under this section may contain any provision that could be included in a cease and desist order issued after a hearing under ORS 659A.850.

SECTION 9. 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)(a) **Except as provided in paragraph (b) of this subsection**, 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.

(b) Paragraph (a) of this subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law. The commissioner shall dismiss a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law if the commissioner finds no substantial evidence that an unlawful practice or discriminatory housing practice has occurred or is about to occur.

(3) Except as provided in 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. **Unless it is impracticable to do so, the commissioner shall make a final administrative disposition of a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law no later than one year after receipt of the complaint.**

(4) The authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 alleging 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 an unlawful practice under ORS 659A.145 or 659A.421 or 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] **commissioner shall** notify the parties in writing of the reasons that the issuance of substantial evidence cannot be made within the time allowed.

(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 10. ORS 659A.840 is amended to read:

659A.840. (1) The Commissioner of the Bureau of Labor and Industries and any respondent named in a complaint may enter into a settlement at any time after the filing of a complaint. Upon issuing a finding of substantial evidence under ORS 659A.835, the commissioner may take immediate steps to settle the matter through conference, conciliation and persuasion, to eliminate the effects of the unlawful practice and to otherwise carry out the purposes of this chapter.

(2) The terms of any settlement agreement entered into under this chapter must be contained in a written settlement agreement signed by the complainant, the respondent and a representative of the commissioner. Such agreement may include any or all terms and conditions that may be included in a cease and desist order issued by the commissioner after a hearing under ORS 659A.850.

(3) A complainant may file a complaint with the commissioner at any time after a settlement agreement has been entered into under this chapter to seek enforcement of the terms of the agreement. A complaint under this subsection must be filed within one year after the act or omission alleged to be a violation of the terms of the agreement. The commissioner shall investigate and resolve the complaint in the same manner as provided in this chapter for a complaint filed under ORS 659A.820.

(4) In addition to the remedy provided under subsection (3) of this section, a complainant may seek to enforce a settlement agreement entered into under this chapter by writ of mandamus or a civil action seeking injunctive relief or specific performance of the agreement.

(5) The commissioner shall enter an order based on the terms of a settlement agreement that is signed by a representative of the commissioner and that is entered into after the issuance of formal charges under ORS 659A.845. In addition to enforcement in the manner provided by subsection (3) or (4) of this section, the order 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.

(6) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may be disclosed in any manner, including but not limited to disclosure under ORS 192.410 to 192.505, or be used as evidence in a subsequent proceeding under this chapter or under federal housing law, without the written consent of the persons concerned.

SECTION 11. 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.

(3) The commissioner may not prepare formal charges alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law after trial has begun in a civil action that the complainant commenced under state or federal law and that seeks relief with respect to that unlawful or discriminatory practice.

SECTION 12. ORS 659A.850 is amended to read:

659A.850. (1)(a) 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. **Except as provided in paragraph (b) of this subsection,** 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.

(b) In a proceeding under this section alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(A) Only an employee of the Bureau of Labor and Industries may be a member of a special tribunal or a hearing officer appointed to hear the matter.

(B) An aggrieved person may intervene as a party in the proceeding.

(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;

(B) Eliminate the effects of the unlawful practice that the respondent is found to have engaged in, 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 13. 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 alleging an unlawful practice under ORS 659A.145 or 659A.421 or 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 alleging an unlawful practice under ORS 659A.145 or 659A.421 or 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 under federal housing law may elect to have the matter heard in circuit court **under ORS 659A.885**. 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 **under ORS 659A.885**.

(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 does not limit or alter in any way the authority or power of the commissioner, or limit or alter in any way any of the rights of an individual complainant, until and unless the complainant commences a civil action.

SECTION 14. ORS 659A.875 is amended to read:

659A.875. (1) Except as provided in subsection (2) of this section, a civil action under ORS 659A.885 alleging an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880. **This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.**

(3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must be commenced not later than two years after the occurrence or the termination of the unlawful practice, or within two years after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs last. The two-year period shall not include any time during which an administrative proceeding was pending with respect to the unlawful practice.

(4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful practice.

(5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260.

(6) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

SECTION 15. ORS 659A.880 is amended to read:

659A.880. (1) If a complaint filed under ORS 659A.820 alleges unlawful practices other than those unlawful practices described in ORS 659A.403 and 659A.406, the Commissioner of the Bureau of Labor and Industries shall issue a 90-day notice to the complainant if the commissioner dismisses the complaint within one year after the filing of the complaint, and the dismissal is for any reason other than the fact that a civil action has been filed by the complainant.

(2) If the complaint filed under ORS 659A.820 alleges unlawful practices other than those unlawful practices described in ORS 659A.145, 659A.403, 659A.406 and 659A.421, the commissioner shall issue a 90-day notice to the complainant on or before the one-year anniversary of the filing of the complaint unless a 90-day notice has previously been issued under subsection (1) of this section or the matter has been resolved by the execution of a settlement agreement.

(3) A 90-day notice under this section must be in writing and must notify the complainant that a civil action against the respondent under ORS 659A.885 may be filed within 90 days after the date of mailing of the 90-day notice, and that any right to bring a civil action against the respondent

under ORS 659A.885 will be lost if the action is not commenced within 90 days after the date of the mailing of the 90-day notice.

(4) This section does not apply to a complainant alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

SECTION 16. ORS 659A.885, as amended by section 12, chapter 100, Oregon Laws 2007, section 8, chapter 180, Oregon Laws 2007, section 3, chapter 278, Oregon Laws 2007, section 1, chapter 280, Oregon Laws 2007, section 4, chapter 525, Oregon Laws 2007, and section 13, chapter 903, Oregon Laws 2007, is amended to read:

659A.885. (1) Any [*individual*] **person** 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 any other equitable relief 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, 408.230, 476.574, 652.355, 653.060, 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.277, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.030, 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:

(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 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(5) 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.

(6) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, 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 employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of 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).

(7) 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]* **persons** 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]* **persons** in the same manner as *[an individual]* **a person** or group of *[individuals]* **persons** 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.

(8) 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.

(9) In an action under subsection (1) or (7) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

SECTION 17. ORS 659A.420 is repealed.

SECTION 18. Section 2 of this 2008 Act, the amendments to ORS 90.390, 659A.001, 659A.145, 659A.421, 659A.820, 659A.825, 659A.830, 659A.840, 659A.845, 659A.850, 659A.870, 659A.875, 659A.880 and 659A.885 by sections 3 to 16 of this 2008 Act and the repeal of ORS 659A.420 by section 17 of this 2008 Act apply to unlawful and discriminatory practices occurring on or after the effective date of this 2008 Act.

SECTION 19. This 2008 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect on its passage.

Passed by House February 21, 2008

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Chief Clerk of House

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Speaker of House

Passed by Senate February 22, 2008

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President of Senate

Received by Governor:

.....M,....., 2008

Approved:

.....M,....., 2008

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2008

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Secretary of State