

House Bill 3256

Sponsored by Representative MATTHEWS

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**.

Establishes as unlawful employment practice certain actions by employer related to service performed by person in uniformed services.

A BILL FOR AN ACT

1
2 Relating to unlawful employment practices involving the uniformed services; creating new pro-
3 visions; and amending ORS 659A.885.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 659A.**

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

7 (a) **"Service" means the performance of duty on a voluntary or involuntary basis in a**
8 **uniformed service that may involve active duty, active duty for training, initial active duty**
9 **for training, inactive duty for training, full-time duty in the National Guard, funeral honors**
10 **duty or an examination to determine fitness for service in a uniformed service.**

11 (b) **"Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard,**
12 **National Guard or military reserve forces.**

13 (2) **It is an unlawful employment practice for an employer to discriminate against a per-**
14 **son because of the person's service in a uniformed service by:**

15 (a) **If the employer is a public body, denying a public officer or public employee the status**
16 **or rights provided by ORS 408.240 to 408.280 and 408.290.**

17 (b) **Denying any of the following because a person is a member of, applies to be a member**
18 **of, performs, has performed, applies to perform or has an obligation to perform service in a**
19 **uniformed service:**

20 (A) **Initial employment;**

21 (B) **Reemployment following a leave from employment taken by reason of service in a**
22 **uniformed service;**

23 (C) **Retention in employment;**

24 (D) **Promotion; or**

25 (E) **Any other term, condition or privilege of employment, including but not limited to**
26 **compensation.**

27 (c) **Discharging, expelling, disciplining, threatening or otherwise retaliating against the**
28 **person for exercising or attempting to exercise the status or rights provided by this section.**

29 (3) **An employer does not commit an unlawful employment practice under subsection**
30 **(2)(b) of this section if the employer acted based on a bona fide occupational requirement**
31 **reasonably necessary to the normal operation of the employer's business and the employer's**

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 **actions could not be avoided by making a reasonable accommodation of the person's service**
 2 **in a uniformed service.**

3 **(4) Subsection (2)(b) and (c) of this section shall be construed to the extent possible in a**
 4 **manner that is consistent with similar provisions of the federal Uniformed Services Em-**
 5 **ployment and Reemployment Rights Act of 1994.**

6 **SECTION 3. Section 2 of this 2009 Act applies to conduct occurring on or after the ef-**
 7 **fective date of this 2009 Act.**

8 **SECTION 4.** ORS 659A.885, as amended by section 12, chapter 100, Oregon Laws 2007, section
 9 8, chapter 180, Oregon Laws 2007, section 3, chapter 278, Oregon Laws 2007, section 1, chapter 280,
 10 Oregon Laws 2007, section 4, chapter 525, Oregon Laws 2007, section 13, chapter 903, Oregon Laws
 11 2007, and section 16, chapter 36, Oregon Laws 2008, is amended to read:

12 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 13 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 14 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 15 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 16 court may order back pay in an action under this subsection only for the two-year period imme-
 17 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 18 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 19 year period immediately preceding the filing of the action. In any action under this subsection, the
 20 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 21 cept as provided in subsection (3) of this section:

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

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

25 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 26 25.337, 25.424, 171.120, 399.235, 408.230, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043,
 27 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203,
 28 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.300, 659A.306,
 29 659A.309, 659A.315, 659A.318 or 659A.421 **or section 2 of this 2009 Act.**

30 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 31 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to
 32 659A.262, 659A.318 or 659A.421 **or section 2 of this 2009 Act:**

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

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

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

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

39 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 40 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 41 compensatory damages or \$200, whichever is greater.

42 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 43 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 44 of this section, compensatory damages or \$250, whichever is greater.

45 (6) Any individual against whom any distinction, discrimination or restriction on account of

1 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 2 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 3 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 4 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 5 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 6 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 7 section:

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

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

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

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

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

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

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

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

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

31 (8) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 32 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 33 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 34 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 35 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 36 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 37 appealing an adverse decision of the trial court.

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

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

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

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

44 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
 45 right in the action. The Attorney General may intervene in the action if the Attorney General cer-

1 tifies that the case is of general public importance. The court may allow an intervenor prevailing
2 party costs and reasonable attorney fees at trial and on appeal.

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