

Enrolled
Senate Bill 928

Sponsored by Senators DEVLIN, ROSENBAUM; Senators ATKINSON, BONAMICI, BURDICK, DINGFELDER, MORRISSETTE, Representatives BARKER, MAURER, OLSON, STIEGLER, TOMEI, WHISNANT

CHAPTER

AN ACT

Relating to unlawful employment practices involving victims of certain crimes; creating new provisions; and amending ORS 659A.885.

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

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

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

(a) "Reasonable safety accommodation" may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, sexual assault or stalking.

(b) "Victim of domestic violence" has the meaning given that term in ORS 659A.270.

(c) "Victim of sexual assault" has the meaning given that term in ORS 659A.270.

(d) "Victim of stalking" has the meaning given that term in ORS 659A.270.

(2) It is an unlawful employment practice for an employer to:

(a) Refuse to hire an otherwise qualified individual because the individual is a victim of domestic violence, sexual assault or stalking.

(b) Discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an individual with regard to promotion, compensation or other terms, conditions or privileges of employment because the individual is a victim of domestic violence, sexual assault or stalking.

(c) Refuse to make a reasonable safety accommodation requested by an individual who is a victim of domestic violence, sexual assault or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer, as determined under ORS 659A.121.

(3)(a) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, sexual assault or stalking.

(b) An individual must provide a certification required under paragraph (a) of this subsection within a reasonable time after receiving the employer's request for certification.

(c) Any of the following constitutes sufficient certification:

(A) A copy of a police report indicating that the individual was or is a victim of domestic violence, sexual assault or stalking.

(B) A copy of a protective order or other evidence from a court or attorney that the individual appeared in or is preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking.

(C) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking.

(d) All records and information kept by an employer regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual, unless otherwise required by law.

SECTION 3. 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, section 13, chapter 903, Oregon Laws 2007, and section 16, chapter 36, Oregon Laws 2008, is amended to read:

659A.885. (1) Any 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 **or section 2 of this 2009 Act.**

(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 **or section 2 of this 2009 Act:**

(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 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 persons in the same manner as a person or group of 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 4. Section 2 of this 2009 Act and the amendments to ORS 659A.885 by section 3 of this 2009 Act first apply to conduct occurring on or after the effective date of this 2009 Act.

Passed by Senate May 5, 2009

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Secretary of Senate

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President of Senate

Passed by House June 2, 2009

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Speaker of House

Received by Governor:

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Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State