

Enrolled
House Bill 2036

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian)

CHAPTER

AN ACT

Relating to discriminatory practices; creating new provisions; amending ORS 659A.106, 659A.194, 659A.303 and 659A.855 and section 2, chapter 102, Oregon Laws 2010; and declaring an emergency.

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

SECTION 1. ORS 659A.106 is amended to read:

659A.106. The requirements of [ORS 659A.103 to 659A.145] **ORS 659A.112 to 659A.139** apply only to employers who employ six or more persons. The requirements of [ORS 659A.103 to 659A.145] **ORS 659A.112 to 659A.139** do not apply to the Oregon National Guard.

SECTION 2. The amendments to ORS 659A.106 by section 1 of this 2011 Act apply only to conduct occurring on or after the effective date of this 2011 Act.

SECTION 3. ORS 659A.194 is amended to read:

659A.194. [(1)] A covered employer who denies leave to an eligible employee or who discharges, threatens to discharge, intimidates or coerces because the employee takes leave to attend a criminal proceeding commits an unlawful employment practice.

[(2) *Any person claiming to be aggrieved by an unlawful employment practice specified in subsection (1) of this section may file a civil action under ORS 659A.885. The provisions of ORS 659A.800 to 659A.865 do not apply to an unlawful employment practice specified in subsection (1) of this section.*]

SECTION 4. ORS 659A.303 is amended to read:

659A.303. (1) It is an unlawful employment practice for an employer to seek to obtain, to obtain or to use genetic information of an employee or a prospective employee, or of a blood relative of the employee or prospective employee, to distinguish between or discriminate against or restrict any right or benefit otherwise due or available to an employee or a prospective employee.

[(2) *An employee or prospective employee may bring a civil action under ORS 659A.885 for a violation of this section.*]

[(3)] (2) For purposes of this section, “blood relative,” “genetic information” and “obtain genetic information” have the meanings given those terms in ORS 192.531.

SECTION 5. ORS 659A.855 is amended to read:

659A.855. (1)(a) If the Commissioner of the Bureau of Labor and Industries files a complaint under ORS 659A.825 alleging an unlawful practice other than an unlawful employment practice, and the commissioner finds that the respondent engaged in the unlawful practice, the commissioner may, in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each respondent found to have committed the unlawful practice.

(b) Civil penalties under this subsection may not exceed \$1,000 for each violation.

(2)(a) Notwithstanding subsection (1)(b) of this section, if a complaint is 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 and the commissioner finds that a respondent has engaged in an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the commissioner may assess against the respondent, in addition to any other relief available, a civil penalty:

(A) In an amount not exceeding \$11,000;

(B) Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$27,500 if the respondent has been adjudged to have engaged in one other discriminatory housing practice during the five-year period ending on the date of the filing of the formal charges leading to the hearing; or

(C) Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$55,000 if the respondent has been adjudged to have engaged in two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the formal charges leading to the hearing.

(b) If acts constituting the discriminatory housing practice that is the object of the hearing were committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties listed in paragraph (a)(B) and (C) of this subsection may be imposed regardless of the period of time between the previous discriminatory housing practice and the discriminatory housing practice that is the object of this hearing.

[3] *Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.*

[4] (3) All sums collected as civil penalties under this section must first be applied toward reimbursement of the costs incurred in determining the violations, conducting hearings and assessing and collecting the penalty. The remainder, if any, shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund. The department shall issue a receipt for the money to the commissioner.

SECTION 6. Section 2, chapter 102, Oregon Laws 2010, is amended to read:

Sec. 2. (1) Except as provided in subsection (2) of this section, it is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Subsection (1) of this section does not apply to:

(a) Employers that are federally insured banks or credit unions;

(b) Employers that are required by state or federal law to use individual credit history for employment purposes;

(c) The **application for employment or the** employment of a public safety officer who **will be or who is**:

(A) A member of a law enforcement unit[, *who is*];

(B) Employed as a peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor [*and who is*]; **and**

(C) Responsible for enforcing the criminal laws of this state or laws or ordinances related to airport security; or

(d) The obtainment or use by an employer of information in the credit history of an applicant or employee because the information is substantially job-related and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(3) An employee or an applicant for employment may file a complaint under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover the relief as provided by ORS 659A.885 (1) and (2).

(4) As used in this section, "credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

SECTION 7. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House March 28, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 18, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State