

House Bill 2037

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian)

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**.

Requires Commissioner of Bureau of Labor and Industries to award costs and reasonable attorney fees when complainant prevails for cease and desist order. Allows commissioner to award costs and reasonable attorney fees when respondent prevails for cease and desist order only if condition met.

A BILL FOR AN ACT

1
2 Relating to remedies under civil rights laws; creating new provisions; and amending ORS 659A.850.

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

4 **SECTION 1.** ORS 659A.850 is amended to read:

5 659A.850. (1)(a) All proceedings before the Commissioner of the Bureau of Labor and Industries
6 under this section shall be conducted as contested case proceedings under the provisions of ORS
7 chapter 183. Except as provided in paragraph (b) of this subsection, the commissioner may appoint
8 a special tribunal or hearing officer to hear the matter. The commissioner may affirm, reverse,
9 modify or supplement the determinations, conclusions or order of any special tribunal or hearing
10 officer appointed under this subsection. The scheduling of a hearing under this section does not af-
11 fect the ability of the commissioner and any respondent to thereafter settle the matters alleged in
12 the complaint through conference, conciliation and persuasion.

13 (b) In a proceeding under this section alleging an unlawful practice under ORS 659A.145 or
14 659A.421 or discrimination under federal housing law:

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

17 (B) An aggrieved person may intervene as a party in the proceeding. The commissioner may
18 award prevailing party costs and reasonable attorney fees to a person who intervenes.

19 (2) After considering all the evidence, the commissioner shall cause to be issued findings of facts
20 and conclusions of law.

21 (3) The commissioner shall issue an order dismissing the formal charges against any respondent
22 not found to have engaged in any unlawful practice alleged in the complaint.

23 (4) After a hearing under this section, the commissioner shall issue an appropriate cease and
24 desist order against any respondent found to have engaged in any unlawful practice alleged in the
25 complaint. The order must be signed by the commissioner and must take into account the need to
26 supervise compliance with the terms of order. The order may require that the respondent:

27 (a) Perform an act or series of acts designated in the order that are reasonably calculated to:

28 (A) Carry out the purposes of this chapter;

29 (B) Eliminate the effects of the unlawful practice that the respondent is found to have engaged
30 in, including but not limited to paying an award of actual damages suffered by the complainant and

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 complying with injunctive or other equitable relief; and

2 (C) Protect the rights of the complainant and other persons similarly situated;

3 (b) Submit reports to the commissioner on the manner of compliance with other terms and con-
4 ditions specified in the commissioner's order, and take other action as may be required to ensure
5 compliance with the commissioner's order; and

6 (c) Refrain from any action specified in the order that would jeopardize the rights of the
7 complainant or other persons similarly situated, or that would otherwise frustrate the purposes of
8 this chapter.

9 **(5) When the commissioner issues a cease and desist order under this section, the com-
10 missioner:**

11 **(a) Shall award to a prevailing complainant the costs and reasonable attorney fees in-
12 curred by the complainant for services provided by an attorney to the complainant; and**

13 **(b) May award to a prevailing respondent the costs and reasonable attorney fees incurred
14 by the respondent only if the commissioner determines that there was no objectively rea-
15 sonable basis to issue formal charges.**

16 [(5)] (6) A cease and desist order issued under subsection (4) of this section may be recorded in
17 the County Clerk Lien Record in the manner provided by ORS 205.125 and enforced in the manner
18 provided by ORS 205.126. In addition to enforcement under ORS 205.126, the order may be enforced
19 by writ of mandamus or a civil action to compel specific performance of the order.

20 [(6)] (7) The commissioner may charge a respondent on a cease and desist order the actual col-
21 lection fees charged to the bureau by any other governmental agency or any private collection
22 agency assisting in the collection of the judgment.

23 **SECTION 2. The amendments to ORS 659A.850 by section 1 of this 2011 Act apply only
24 to proceedings commenced on or after the effective date of this 2011 Act.**

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