

A-Engrossed
House Bill 2828

Ordered by the House March 31
Including House Amendments dated March 31

Sponsored by Representative WITT (Presession filed.)

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.

Creates unlawful employment practice if employer **who employs 10 or more persons** ceases to provide health, disability, life or other insurance during period employee is serving or is scheduled to serve as juror **and employee notified employer of election to have coverage continue.**

Provides that employer commits unlawful employment practice if employer discharges, threatens to discharge, intimidates or coerces employee by reason of employee's service or scheduled service as juror.

A BILL FOR AN ACT

1
2 Relating to service as a juror; creating new provisions; amending ORS 10.090 and 659A.885; and re-
3 pealing ORS 10.992.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 10.**

6 **SECTION 2. (1) An employer who employs 10 or more persons commits an unlawful em-
7 ployment practice under ORS chapter 659A if:**

8 (a) **The employer ceases to provide health, disability, life or other insurance coverage for
9 an employee during times when the employee serves or is scheduled to serve as a juror; and**

10 (b) **The employee elected to have coverage continued while the employee served or was
11 scheduled to serve as a juror, and the employee provided notice of that election to the em-
12 ployer in compliance with the employer's policy for notification.**

13 (2) **Notwithstanding ORS 652.610 (3), if, following an election described in subsection (1)
14 of this section, an employer is required or elects to pay any part of the costs of providing
15 health, disability, life or other insurance coverage for the employee that should have been
16 paid by the employee, the employer may deduct from the employee's pay such amounts upon
17 the employee's return to work until the amount the employer advanced toward the payments
18 is paid. The total amount deducted for insurance under this subsection may not exceed 10
19 percent of the employee's gross pay each pay period.**

20 (3) **Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of pro-
21 viding health, disability, life or other insurance coverage for an employee under subsection
22 (2) of this section, and the employee ceases to work for the employer before the total amount
23 the employer advanced toward the payments is paid, the employer may deduct the remaining
24 amounts from any amounts owed by the employer to the employee or may seek to recover
25 those amounts by any other legal means.**

26 (4) **An employee who alleges a violation of this section may bring a civil action under ORS**

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 **659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Indus-**
2 **tries in the manner provided by ORS 659A.820.**

3 **SECTION 3.** ORS 10.090 is amended to read:

4 10.090. (1) An employer [*shall not discharge or threaten to discharge, intimidate, or coerce*] **com-**
5 **mits an unlawful employment practice under ORS chapter 659A if the employer discharges,**
6 **threatens to discharge, intimidates or coerces** any employee by reason of the employee's service
7 or scheduled service as a juror on a grand jury, trial jury or jury of inquest.

8 (2) This section [*shall*] **may** not be construed to alter or affect an employer's policies or agree-
9 ments with employees concerning employees' wages during times when an employee serves or is
10 scheduled to serve as a juror.

11 (3) When summoning jurors, the person whose duty it is under the law to summon shall notify
12 each juror of the juror's rights under this section.

13 [*(4) Upon complaint filed by a prospective juror or a juror who has served or upon petition of the*
14 *district attorney, the circuit court shall have jurisdiction to prevent and restrain violations of this sec-*
15 *tion by issuing appropriate orders, including but not limited to, reinstatement of an employee dis-*
16 *charged by reason of service as a juror, with back pay for the time the employee was discharged.*]

17 **(4) An employee who alleges a violation of subsection (1) of this section may bring a civil**
18 **action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of**
19 **Labor and Industries in the manner provided by ORS 659A.820.**

20 **SECTION 4.** ORS 659A.885, as amended by section 3, chapter 102, Oregon Laws 2010, is
21 amended to read:

22 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
23 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
24 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
25 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
26 court may order back pay in an action under this subsection only for the two-year period imme-
27 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
28 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
29 year period immediately preceding the filing of the action. In any action under this subsection, the
30 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
31 cept as provided in subsection (3) of this section:

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

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

35 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
36 **10.090, 25.337, 25.424, 171.120, 408.230, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043,**
37 **659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,**
38 **659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262,**
39 **659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 or section 2,**
40 **chapter 102, Oregon Laws 2010, or section 2 of this 2011 Act.**

41 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
42 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
43 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

2 (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

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

4 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
5 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
6 compensatory damages or \$200, whichever is greater.

7 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
8 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
9 of this section, compensatory damages or \$250, whichever is greater.

10 **(6) In any action under subsection (1) of this section alleging a violation of ORS 10.090**
11 **or section 2 of this 2011 Act, the court may award, in addition to the relief authorized under**
12 **subsection (1) of this section, a civil penalty in the amount of \$720.**

13 [(6)] (7) Any individual against whom any distinction, discrimination or restriction on account
14 of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individ-
15 ual is 18 years of age or older, has been made by any place of public accommodation, as defined in
16 ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
17 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
18 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
19 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
20 section:
21

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

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

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

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

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

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

35 [(7)] (8) When the commissioner or the Attorney General has reasonable cause to believe that
36 a person or group of persons is engaged in a pattern or practice of resistance to the rights protected
37 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
38 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
39 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
40 manner as a person or group of persons may file a civil action under this section. In a civil action
41 filed under this subsection, the court may assess against the respondent, in addition to the relief
42 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

45 [(8)] (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145

1 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
2 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
3 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
4 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
5 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
6 appealing an adverse decision of the trial court.

7 [(9)] (10) In an action under subsection (1) or [(7)] (8) of this section alleging a violation of ORS
8 659A.145 or 659A.421 or discrimination under federal housing law:

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

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

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

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

17 **SECTION 5. ORS 10.992 is repealed.**

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