

# Senate Bill 767

Sponsored by Senator FERRIOLI, Representative HUFFMAN

## 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 complainant to sign complaint alleging unlawful discrimination under penalty of false swearing.

Permits respondent to be represented by person other than attorney in investigation or proceeding responding to complaint of unlawful discrimination.

Awards fees and costs to respondent if complaint is dismissed following investigation or if formal charge is dismissed following hearing.

Prohibits Commissioner of Bureau of Labor and Industries from questioning or seeking information from respondent in investigation until certain conditions are met.

Permits respondent to question complainant and other witnesses in course of investigation.

Requires hearing within 10 days after formal charges are served on respondent.

## A BILL FOR AN ACT

1  
2 Relating to unlawful discrimination; creating new provisions; and amending ORS 183.457, 659A.820,  
3 659A.835 and 659A.850.

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

5 **SECTION 1.** ORS 659A.820 is amended to read:

6 659A.820. (1) As used in this section, for purposes of a complaint alleging an unlawful practice  
7 under ORS 659A.145 or 659A.421 or discrimination under federal housing law, "aggrieved person"  
8 includes a person who believes that the person:

9 (a) Has been injured by an unlawful practice or discriminatory housing practice; or

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

12 (2) Any person claiming to be aggrieved by an alleged unlawful practice may file with the  
13 Commissioner of the Bureau of Labor and Industries a verified written complaint that states the  
14 name and address of the person alleged to have committed the unlawful practice. The complaint  
15 must be signed by the complainant. The complaint must set forth the acts or omissions alleged to  
16 be an unlawful practice. The complainant may be required to set forth in the complaint such other  
17 information as the commissioner may require. Except as provided in ORS 654.062, a complaint under  
18 this section must be filed no later than one year after the alleged unlawful practice.

19 (3)(a) Except as provided in paragraph (b) of this subsection, a complaint may not be filed under  
20 this section if a civil action has been commenced in state or federal court alleging the same matters.

21 (b) The prohibition described in paragraph (a) of this subsection does not apply to a complaint  
22 alleging an unlawful practice under ORS 659A.145 or 659A.421 or alleging discrimination under  
23 federal housing law.

24 (4) If an employer has one or more employees who refuse or threaten to refuse to abide by the  
25 provisions of this chapter or to cooperate in carrying out the purposes of this chapter, the employer  
26 may file with the commissioner a verified complaint requesting assistance by conciliation or other  
27 remedial action.

**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 (5) Except as provided in subsection (6) of this section, the commissioner shall notify the person  
2 against whom a complaint is made within 30 days of the filing of the complaint. The commissioner  
3 shall include in the notice the date, place and circumstances of the alleged unlawful practice.

4 (6) The commissioner shall notify the person against whom a complaint alleging an unlawful  
5 practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law is made  
6 within 10 days of the filing of the complaint. The commissioner shall include in the notice:

7 (a) The date, place and circumstances of the alleged unlawful practice; and

8 (b) A statement that the person against whom the complaint is made may file an answer to the  
9 complaint.

10 **(7) The complaint shall be signed by the complainant and must contain a written decla-**  
11 **ration that the complaint is made under the penalties for false swearing as provided in ORS**  
12 **162.075.**

13 **SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS chapter 659A.**

14 **SECTION 3. Notwithstanding ORS 9.320, a respondent may be represented by a person**  
15 **other than an attorney in an investigation or proceeding in response to a complaint filed**  
16 **under ORS 659A.820 or 659A.825.**

17 **SECTION 4. ORS 659A.835 is amended to read:**

18 659A.835. (1) Except as provided in subsection (2) of this section, after the filing of any com-  
19 plaint under ORS 659A.820 or 659A.825, the Commissioner of the Bureau of Labor and Industries  
20 may investigate the complaint.

21 (2) The commissioner shall commence an investigation of any complaint filed under ORS  
22 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimi-  
23 nation under federal housing law within 30 days after the filing of the complaint.

24 **(3) The commissioner may not question or seek information from the respondent until**  
25 **the commissioner evaluates all evidence presented by the complainant and determines that**  
26 **there is credible evidence to complete the investigation. If the commissioner determines that**  
27 **there is no credible evidence to complete the investigation, the commissioner shall dismiss**  
28 **the complaint and award reasonable attorney fees, or reasonable fees charged by a repre-**  
29 **sentative other than an attorney, and costs to the respondent. If the commissioner deter-**  
30 **mines that there is credible evidence to complete the investigation, the commissioner shall**  
31 **make all evidence provided by the complainant available to the respondent before requesting**  
32 **information from the respondent.**

33 **(4) During the investigation, the commissioner shall make available to the respondent**  
34 **all evidence collected by the commissioner and the commissioner's notes, correspondence,**  
35 **reports or memoranda made in connection with the investigation.**

36 **(5) At the request of the respondent, the commissioner shall arrange a meeting between**  
37 **the respondent and the complainant and any other witnesses so that the respondent may**  
38 **question the complainant and other witnesses. The respondent may question the complainant**  
39 **or other witnesses only in the presence of the commissioner.**

40 [(3)] (6) If, by reason of an investigation under this section, the commissioner determines that  
41 additional persons should be named as respondents in the complaint, the commissioner may add the  
42 names of those persons to the complaint. The commissioner may name additional persons as re-  
43 spondents under this subsection only during the course of the investigation. Within 10 days after  
44 identifying an additional person who will be named as a respondent, the commission shall serve the  
45 person with a copy of the complaint that identifies the alleged discriminatory housing practice and

1 a notice that advises the person of the procedural rights and obligations of the person, including the  
2 person's right to file an answer to the complaint.

3 [(4)] (7) If an investigation under this section discloses any substantial evidence supporting the  
4 allegations of a complaint, the commissioner shall issue a finding of substantial evidence. The find-  
5 ing must be sent to the respondent and the complainant and must be signed by the commissioner  
6 or the commissioner's designee. The finding must include at least the following information:

7 (a) The names of the complainant and the respondent;

8 (b) The allegations contained in the complaint;

9 (c) Facts found by the commissioner that are related to the allegations of the complaint; and

10 (d) A statement that the investigation of the complaint has disclosed substantial evidence sup-  
11 porting the allegations of the complaint.

12 **(8) If an investigation under this section does not disclose any substantial evidence sup-**  
13 **porting the allegations of a complaint, and the commissioner dismisses the complaint, the**  
14 **commissioner shall pay reasonable attorney fees, or reasonable fees charged by a represen-**  
15 **tative other than an attorney, and all costs incurred by the respondent.**

16 **SECTION 5. Section 6 of this 2013 Act is added to and made a part of ORS chapter 659A.**

17 **SECTION 6. Unless otherwise agreed upon by the parties, the Commissioner of the Bu-**  
18 **reau of Labor and Industries shall conduct a hearing with 10 days of serving formal charges**  
19 **prepared under ORS 659A.845 on all respondents.**

20 **SECTION 7. ORS 659A.850 is amended to read:**

21 659A.850. (1)(a) All proceedings before the Commissioner of the Bureau of Labor and Industries  
22 under this section shall be conducted as contested case proceedings under the provisions of ORS  
23 chapter 183. Except as provided in paragraph (b) of this subsection, the commissioner may appoint  
24 a special tribunal or hearing officer to hear the matter. The commissioner may affirm, reverse,  
25 modify or supplement the determinations, conclusions or order of any special tribunal or hearing  
26 officer appointed under this subsection. The scheduling of a hearing under this section does not af-  
27 fect the ability of the commissioner and any respondent to thereafter settle the matters alleged in  
28 the complaint through conference, conciliation and persuasion.

29 (b) In a proceeding under this section alleging an unlawful practice under ORS 659A.145 or  
30 659A.421 or discrimination under federal housing law:

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

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

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

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

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

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

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

45 (B) Eliminate the effects of the unlawful practice that the respondent is found to have engaged

1 in, including but not limited to paying an award of actual damages suffered by the complainant and  
 2 complying with injunctive or other equitable relief; and

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

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

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

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

14 (6) The commissioner may charge a respondent on a cease and desist order the actual collection  
 15 fees charged to the bureau by any other governmental agency or any private collection agency as-  
 16 sisting in the collection of the judgment.

17 **(7) If the commissioner dismisses the formal charges against a respondent, the commis-**  
 18 **sioner shall pay reasonable attorney fees, or reasonable fees charged by a representative**  
 19 **other than an attorney, and all costs incurred by the respondent.**

20 **SECTION 8.** ORS 183.457 is amended to read:

21 183.457. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by an-  
 22 other law, a person participating in a contested case hearing conducted by an agency described in  
 23 this subsection may be represented by an attorney or by an authorized representative subject to the  
 24 provisions of subsection (2) of this section. The Attorney General shall prepare model rules for  
 25 proceedings with lay representation that do not have the effect of precluding lay representation.  
 26 No rule adopted by a state agency shall have the effect of precluding lay representation. The  
 27 agencies before which an authorized representative may appear are:

28 (a) The State Landscape Contractors Board in the administration of the Landscape Contractors  
 29 Law.

30 (b) The State Department of Energy and the Energy Facility Siting Council.

31 (c) The Environmental Quality Commission and the Department of Environmental Quality.

32 (d) The Department of Consumer and Business Services for proceedings in which an insured  
 33 appears pursuant to ORS 737.505.

34 (e) The Department of Consumer and Business Services and any other agency for the purpose  
 35 of proceedings to enforce the state building code, as defined by ORS 455.010.

36 (f) The State Fire Marshal in the Department of State Police.

37 (g) The Department of State Lands for proceedings regarding the issuance or denial of fill or  
 38 removal permits under ORS 196.800 to 196.825.

39 (h) The Public Utility Commission.

40 (i) The Water Resources Commission and the Water Resources Department.

41 (j) The Land Conservation and Development Commission and the Department of Land Conser-  
 42 vation and Development.

43 (k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

44 (L) The Bureau of Labor and Industries, **except that lay representatives for a hearing con-**  
 45 **ducted under ORS 659A.850 shall be governed by section 3 of this 2013 Act.**

1 (2) A person participating in a contested case hearing as provided in subsection (1) of this sec-  
 2 tion may appear by an authorized representative if:

3 (a) The agency conducting the contested case hearing has determined that appearance of such  
 4 a person by an authorized representative will not hinder the orderly and timely development of the  
 5 record in the type of contested case hearing being conducted;

6 (b) The agency conducting the contested case hearing allows, by rule, authorized representatives  
 7 to appear on behalf of such participants in the type of contested case hearing being conducted; and

8 (c) The officer presiding at the contested case hearing may exercise discretion to limit an au-  
 9 thorized representative's presentation of evidence, examination and cross-examination of witnesses,  
 10 or presentation of factual arguments to ensure the orderly and timely development of the hearing  
 11 record, and shall not allow an authorized representative to present legal arguments except to the  
 12 extent authorized under subsection (3) of this section.

13 (3) The officer presiding at a contested case hearing in which an authorized representative ap-  
 14 pears under the provisions of this section may allow the authorized representative to present evi-  
 15 dence, examine and cross-examine witnesses, and make arguments relating to the:

16 (a) Application of statutes and rules to the facts in the contested case;

17 (b) Actions taken by the agency in the past in similar situations;

18 (c) Literal meaning of the statutes or rules at issue in the contested case;

19 (d) Admissibility of evidence; and

20 (e) Proper procedures to be used in the contested case hearing.

21 (4) Upon judicial review, no limitation imposed by an agency presiding officer on the partic-  
 22 ipation of an authorized representative shall be the basis for reversal or remand of agency action  
 23 unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the  
 24 agency action.

25 (5) For the purposes of this section, "authorized representative" means a member of a partic-  
 26 ipating partnership, an authorized officer or regular employee of a participating corporation, asso-  
 27 ciation or organized group, or an authorized officer or employee of a participating governmental  
 28 authority other than a state agency.

29 **SECTION 9. Sections 3 and 6 of this 2013 Act and the amendments to ORS 183.457,**  
 30 **659A.820, 659A.835 and 659A.850 by sections 1, 4, 7 and 8 of this 2013 Act apply to complaints**  
 31 **filed on or after the effective date of this 2013 Act.**

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