

Senate Bill 344

Sponsored by Senators BURDICK, STEINER HAYWARD; Representative DOHERTY (Pre-session 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 **as introduced**.

Establishes unlawful employment practice for certain actions taken by employer to access employee's or prospective employee's personal account on social networking website for employment purposes.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to online information; creating new provisions; amending ORS 659A.885; and declaring an
3 emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 659A.**

6 **SECTION 2. (1) It is an unlawful employment practice for an employer to seek to obtain,**
7 **to obtain or to use the user name, password or other means for accessing a personal account**
8 **of an employee or a prospective employee on a social networking website for any of the fol-**
9 **lowing purposes:**

10 (a) **As a condition of employment or the continuation of employment.**

11 (b) **In relation to any terms, conditions or privileges of employment.**

12 (2) **Nothing in this section prohibits an employer from accessing publicly-available infor-**
13 **mation about an employee or a prospective employee that may be available through a social**
14 **networking website.**

15 **SECTION 3. Section 2 of this 2013 Act applies to conduct occurring on or after the ef-**
16 **fective date of this 2013 Act.**

17 **SECTION 4. ORS 659A.885 is amended to read:**

18 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
19 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
20 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
21 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
22 court may order back pay in an action under this subsection only for the two-year period imme-
23 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
24 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
25 year period immediately preceding the filing of the action. In any action under this subsection, the
26 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
27 cept as provided in subsection (3) of this section:

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

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

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 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
2 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
3 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
4 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236,
5 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318,
6 659A.320 or 659A.421 **or section 2 of this 2013 Act.**

7 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
8 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
9 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

13 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
14 ment pursuant to the standard established by ORS 19.415 (1); and

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

16 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
17 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
18 compensatory damages or \$200, whichever is greater.

19 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
20 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
21 of this section, compensatory damages or \$250, whichever is greater.

22 (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
23 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
24 penalty in the amount of \$720.

25 (7) Any individual against whom any distinction, discrimination or restriction on account of
26 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
27 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
28 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
29 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
30 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
31 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
32 section:

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

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

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

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

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

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

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

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

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

11 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 12 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 13 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 14 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 15 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 16 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 17 appealing an adverse decision of the trial court.

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

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

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

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

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

28 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
 29 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 30 **on its passage.**