

# D R A F T

## SUMMARY

Establishes unlawful employment practice related to misuse of information about criminal charges and convictions of applicant for employment. Delineates exceptions. Creates right of civil action for violation.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to use of information related to certain criminal matters; creating  
3 new provisions; amending ORS 659A.885; and declaring an emergency.

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

### **SECTION 1. As used in sections 1 to 3 of this 2015 Act:**

5  
6 (1) **“Adverse action” means to refuse to hire, to not promote or to**  
7 **discharge an individual or to revoke an applicant’s conditional offer**  
8 **of employment.**

9 (2) **“Advertisement” means any circulation, mailing, posting or any**  
10 **other form of publication, utilizing any media, that promotes the em-**  
11 **ployer or intends to alert its audience, regardless of size, to the**  
12 **availability of any position of employment.**

13 (3) **“Agency” means the state or any department, agency or office**  
14 **of the state.**

15 (4) **“Applicant” means an individual considered by an employer**  
16 **when identifying potential employees, through any means, including,**  
17 **but not limited to, recruitment, solicitation or seeking personal in-**  
18 **formation, or an individual who requests to be considered for employ-**  
19 **ment by an employer or who requests information from an employer**  
20 **related to seeking employment.**

1 (5) “Conviction” means any sentence arising from a verdict or plea  
2 of guilty or nolo contendere, including a sentence of incarceration, a  
3 suspended sentence, a sentence of probation or a sentence of uncon-  
4 ditional discharge.

5 (6) “Employment” means any occupation, vocation, job, work or  
6 other service for an employer with or without pay, including tempo-  
7 rary or seasonal work, contracted work, contingent work, work  
8 through the services of a temporary or other employment agency or  
9 any form of workplace vocational or educational training.

10 (7) “Employer” means any person, company, corporation, firm, la-  
11 bor organization or association that regularly employs one or more  
12 employees, any person acting directly or indirectly as an agent of an  
13 employer or any person undertaking compensation to procure em-  
14 ployees or opportunities for employment.

15 (8) “Vendor” means a contractor or supplier of goods and services  
16 to the state.

17 **SECTION 2.** (1) It is an unlawful employment practice for an em-  
18 ployer to:

19 (a) Inquire into or consider in any way an applicant’s conviction  
20 history except as authorized by sections 1 to 3 of this 2015 Act.

21 (b) Use job application forms and employment position descriptions  
22 that do not inform an applicant that, if the position for which the  
23 applicant is applying requires a background check, the applicant is  
24 subject to a background check for any convictions directly related to  
25 the duties and responsibilities of the position and that, unless other-  
26 wise required by law, only job-related convictions will be considered  
27 and will not automatically disqualify the applicant from employment.

28 (c) Conduct a background check on an applicant unless:

29 (A) The employer has made a good faith determination that the  
30 relevant position is of such sensitivity that a background check is  
31 warranted; or

1       **(B) A background check is required by law.**

2       **(d) Prior to conducting a background check on an applicant, fail to**  
3 **send the applicant a conditional offer letter, notice of rights under this**  
4 **section and a notice that the employer has determined a background**  
5 **check is warranted or required by law as provided in paragraph (c) of**  
6 **this subsection.**

7       **(e) Use or consider, in relation to a background check, records of:**

8       **(A) An arrest not followed by a valid conviction;**

9       **(B) A conviction in which the records have been sealed by the**  
10 **court;**

11       **(C) An action that has been dismissed;**

12       **(D) Expunged convictions;**

13       **(E) Misdemeanor convictions for which no jail sentence may be**  
14 **imposed; or**

15       **(F) Infractions.**

16       **(f) Disqualify an individual from employment solely or in part be-**  
17 **cause of a prior conviction, unless the conviction is job-related or is**  
18 **a conviction that legally bars the employment of the individual. In**  
19 **determining if a conviction is job-related, the employer shall consider:**

20       **(A) If the conviction is directly related to the duties and responsi-**  
21 **bilities of the employment position;**

22       **(B) If the position offers the opportunity for the same or a similar**  
23 **offense to occur;**

24       **(C) If the position offers the opportunity for other circumstances**  
25 **leading to the conduct for which the person was convicted to occur;**  
26 **and**

27       **(D) The length of time since the offense occurred.**

28       **(2) If an applicant's background check contains information that**  
29 **may be the basis for adverse action, the employer shall:**

30       **(a) Identify the elements of the conviction that may be the basis for**  
31 **adverse action and provide that information to the applicant with a**

1 **written explanation of how the elements identified affected the adverse**  
2 **action taken;**

3 **(b) Provide to the applicant a copy of the background check report;**  
4 **and**

5 **(c) Provide to the applicant examples of mitigation or rehabilitation**  
6 **evidence that the applicant may voluntarily provide to be reconsidered**  
7 **for the position.**

8 **(3) An applicant shall have four business days after receiving the**  
9 **information specified in subsection (2) of this section to voluntarily**  
10 **provide to the employer a response to that information. A response**  
11 **may include challenging the accuracy of the information obtained**  
12 **through a background check, providing mitigation or rehabilitation**  
13 **evidence as requested by the employer, providing evidence that at least**  
14 **five years have passed since the applicant's release from a correctional**  
15 **institution without subsequent conviction of a crime or providing evi-**  
16 **dence that the terms and conditions of probation or parole, if any,**  
17 **have been met.**

18 **(4) The employer shall hold the position open until making a final**  
19 **employment decision based on an individualized assessment of any**  
20 **information submitted by an applicant as provided in subsection (3)**  
21 **of this section.**

22 **(5) The employer shall inform all applicants not offered a position**  
23 **of the final decision and of other positions an applicant may be eligible**  
24 **for, if any.**

25 **(6) If an applicant is denied employment by an employer on the**  
26 **basis of a conviction as specified in subsection (2) of this section, the**  
27 **applicant may appeal the adverse decision to the Commissioner of the**  
28 **Bureau of Labor and Industries as provided in ORS 659A.820.**

29 **(7) Any information pertaining to an applicant's background check**  
30 **obtained in conjunction with the hiring process shall remain confi-**  
31 **dential and shall not be used, distributed or disseminated by the em-**

1 **ployer or any of its agencies or vendors to any other entity, except as**  
2 **required by law.**

3 **(8) This section does not abrogate any statutory requirement that**  
4 **a background check must be obtained by applicants for licensure,**  
5 **certification or registration to engage in a profession in this state.**

6 **SECTION 3. Sections 1 to 3 of this 2015 Act shall be known as the**  
7 **Oregon Fair Chance Act.**

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

9 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice  
10 specified in subsection (2) of this section may file a civil action in circuit  
11 court. In any action under this subsection, the court may order injunctive  
12 relief and any other equitable relief that may be appropriate, including but  
13 not limited to reinstatement or the hiring of employees with or without back  
14 pay. A court may order back pay in an action under this subsection only for  
15 the two-year period immediately preceding the filing of a complaint under  
16 ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries,  
17 or if a complaint was not filed before the action was commenced, the two-  
18 year period immediately preceding the filing of the action. In any action  
19 under this subsection, the court may allow the prevailing party costs and  
20 reasonable attorney fees at trial and on appeal. Except as provided in sub-  
21 section (3) of this section:

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

24 (b) Upon any appeal of a judgment in an action under this subsection, the  
25 appellate court shall review the judgment pursuant to the standard estab-  
26 lished by ORS 19.415 (3).

27 (2) An action may be brought under subsection (1) of this section alleging  
28 a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),  
29 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063,  
30 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,  
31 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,

1 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,  
2 659A.309, 659A.315, 659A.318, 659A.320 or 659A.421 **and section 2 of this 2015**  
3 **Act.**

4 (3) In any action under subsection (1) of this section alleging a violation  
5 of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
6 659A.082, 659A.103 to 659A.145, 659A.199, 659A.228, 659A.230, 659A.250 to  
7 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

12 (c) Upon appeal of any judgment finding a violation, the appellate court  
13 shall review the judgment pursuant to the standard established by ORS  
14 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  
17 of ORS 652.355 or 653.060, the court may award, in addition to the relief  
18 authorized under subsection (1) of this section, compensatory damages or  
19 \$200, whichever is greater.

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

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

28 (7) Any individual against whom any distinction, discrimination or re-  
29 striction on account of race, color, religion, sex, sexual orientation, national  
30 origin, marital status or age, if the individual is 18 years of age or older,  
31 has been made by any place of public accommodation, as defined in ORS

1 659A.400, by any employee or person acting on behalf of the place or by any  
2 person aiding or abetting the place or person in violation of ORS 659A.406  
3 may bring an action against the operator or manager of the place, the em-  
4 ployee or person acting on behalf of the place or the aider or abettor of the  
5 place or person. Notwithstanding subsection (1) of this section, in an action  
6 under this subsection:

7 (a) The court may award, in addition to the relief authorized under sub-  
8 section (1) of this section, compensatory and punitive damages;

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

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

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

15 (e) The court may award reasonable attorney fees and expert witness fees  
16 incurred by a defendant who prevails only if the court determines that the  
17 plaintiff had no objectively reasonable basis for asserting a claim or no  
18 reasonable basis for appealing an adverse decision of a trial court; and

19 (f) Upon any appeal of a judgment under this subsection, the appellate  
20 court shall review the judgment pursuant to the standard established by ORS  
21 19.415 (1).

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

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

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

3 (9) In any action under subsection (1) of this section alleging a violation  
4 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing  
5 law, when the commissioner is pursuing the action on behalf of an aggrieved  
6 complainant, the court shall award reasonable attorney fees to the commis-  
7 sioner if the commissioner prevails in the action. The court may award rea-  
8 sonable attorney fees and expert witness fees incurred by a defendant that  
9 prevails in the action if the court determines that the commissioner had no  
10 objectively reasonable basis for asserting the claim or for appealing an ad-  
11 verse decision of the trial court.

12 (10) In an action under subsection (1) or (8) of this section alleging a vi-  
13 olation of ORS 659A.145 or 659A.421 or discrimination under federal housing  
14 law:

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

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

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

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

25 **SECTION 5. This 2015 Act being necessary for the immediate pres-**  
26 **ervation of the public peace, health and safety, an emergency is de-**  
27 **clared to exist, and this 2015 Act takes effect on its passage.**