

House Bill 3025

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Oregon AFL-CIO and the Urban League of Portland)

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 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 new provisions; amend-
3 ing ORS 659A.885; and declaring an emergency.

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

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

6 (1) **"Adverse action" means to refuse to hire, to not promote or to discharge an individual**
7 **or to revoke an applicant's conditional offer of employment.**

8 (2) **"Advertisement" means any circulation, mailing, posting or any other form of publi-**
9 **cation, utilizing any media, that promotes the employer or intends to alert its audience, re-**
10 **gardless of size, to the availability of any position of employment.**

11 (3) **"Agency" means the state or any department, agency or office of the state.**

12 (4) **"Applicant" means an individual considered by an employer when identifying potential**
13 **employees, through any means, including, but not limited to, recruitment, solicitation or**
14 **seeking personal information, or an individual who requests to be considered for employment**
15 **by an employer or who requests information from an employer related to seeking employ-**
16 **ment.**

17 (5) **"Conviction" means any sentence arising from a verdict or plea of guilty or nolo**
18 **contendere, including a sentence of incarceration, a suspended sentence, a sentence of pro-**
19 **bation or a sentence of unconditional discharge.**

20 (6) **"Employment" means any occupation, vocation, job, work or other service for an**
21 **employer with or without pay, including temporary or seasonal work, contracted work, con-**
22 **tingent work, work through the services of a temporary or other employment agency or any**
23 **form of workplace vocational or educational training.**

24 (7) **"Employer" means any person, company, corporation, firm, labor organization or as-**
25 **sociation that regularly employs one or more employees, any person acting directly or indi-**
26 **rectly as an agent of an employer or any person undertaking compensation to procure**
27 **employees or opportunities for employment.**

28 (8) **"Vendor" means a contractor or supplier of goods and services to the state.**

29 **SECTION 2. (1) It is an unlawful employment practice for an employer to:**

30 (a) **Inquire into or consider in any way an applicant's conviction history except as au-**

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 **thorized by sections 1 to 3 of this 2015 Act.**

2 **(b) Use job application forms and employment position descriptions that do not inform**
3 **an applicant that, if the position for which the applicant is applying requires a background**
4 **check, the applicant is subject to a background check for any convictions directly related to**
5 **the duties and responsibilities of the position and that, unless otherwise required by law, only**
6 **job-related convictions will be considered and will not automatically disqualify the applicant**
7 **from employment.**

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

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

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

12 **(d) Prior to conducting a background check on an applicant, fail to send the applicant a**
13 **conditional offer letter, notice of rights under this section and a notice that the employer**
14 **has determined a background check is warranted or required by law as provided in paragraph**

15 **(c) of this subsection.**

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

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

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

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

20 **(D) Expunged convictions;**

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

22 **(F) Infractions.**

23 **(f) Disqualify an individual from employment solely or in part because of a prior con-**
24 **viction, unless the conviction is job-related or is a conviction that legally bars the employ-**
25 **ment of the individual. In determining if a conviction is job-related, the employer shall**
26 **consider:**

27 **(A) If the conviction is directly related to the duties and responsibilities of the employ-**
28 **ment position;**

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

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

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

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

35 **(a) Identify the elements of the conviction that may be the basis for adverse action and**
36 **provide that information to the applicant with a written explanation of how the elements**
37 **identified affected the adverse action taken;**

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

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

41 **(3) An applicant shall have four business days after receiving the information specified**
42 **in subsection (2) of this section to voluntarily provide to the employer a response to that**
43 **information. A response may include challenging the accuracy of the information obtained**
44 **through a background check, providing mitigation or rehabilitation evidence as requested by**
45 **the employer, providing evidence that at least five years have passed since the applicant's**

1 release from a correctional institution without subsequent conviction of a crime or providing
 2 evidence that the terms and conditions of probation or parole, if any, have been met.

3 (4) The employer shall hold the position open until making a final employment decision
 4 based on an individualized assessment of any information submitted by an applicant as pro-
 5 vided in subsection (3) of this section.

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

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

11 (7) Any information pertaining to an applicant's background check obtained in conjunc-
 12 tion with the hiring process shall remain confidential and shall not be used, distributed or
 13 disseminated by the employer or any of its agencies or vendors to any other entity, except
 14 as required by law.

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

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

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

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

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

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

34 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 35 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
 36 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 37 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 38 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 39 659A.318, 659A.320 or 659A.421 **and section 2 of this 2015 Act.**

40 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 41 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 42 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

1 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
 2 ment 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 or 10.092,
 11 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
 12 penalty in the amount of \$720.

13 (7) Any individual against whom any distinction, discrimination or restriction on account of
 14 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 15 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 16 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 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 22 compensatory and punitive damages;

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

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

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

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

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

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

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

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

44 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 45 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing

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

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

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

16 **SECTION 5. This 2015 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
18 **on its passage.**