

House Bill 3097

Sponsored by Representative BENTZ

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**.

Makes inquiring after applicant's conviction history and certain activities related to conducting criminal records check on prospective employee unlawful employment practice.

Applies on and after January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to a prospective employee's criminal information; creating new provisions; amending ORS
3 659A.885; and declaring an emergency.

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

SECTION 1. (1) As used in this section:

5
6 (a) **"Applicant" means an individual who:**

7 (A) **Is being considered by an employer for employment;**

8 (B) **Requests an employer to consider the individual for employment; or**

9 (C) **Requests to be considered by an employer for employment.**

10 (b) **"Conviction" means a sentence arising from a verdict or plea of guilty or nolo
11 contendere, including a sentence of incarceration, a suspended sentence, a sentence of pro-
12 bation and a sentence of unconditional discharge.**

13 (c) **"Employer" means:**

14 (A) **A person, company, corporation, firm, labor organization or association that regu-
15 larly employs five or more employees;**

16 (B) **A person acting directly or indirectly as an agent of a person, company, corporation,
17 firm, labor organization or association that regularly employs five or more employees; or**

18 (C) **A person that is compensated for procuring employees or opportunities for employ-
19 ment.**

20 (d) **"Employment" means any service performed, with or without pay, for an employer.**

21 (2) **It is an unlawful employment practice for an employer to:**

22 (a) **Use job application forms that inquire into an applicant's conviction history.**

23 (b) **Use job application forms and employment position descriptions that do not inform
24 an applicant that, if the employer conducts criminal records checks pursuant to paragraph**

25 (c) **of this subsection, the applicant is subject to a criminal records check pursuant to rules
26 adopted by the Oregon Department of Administrative Services under ORS 181.547.**

27 (c) **Conduct criminal records checks for a position, unless the employer makes a good
28 faith determination that the position is for a category of individuals subject to criminal re-
29 cords checks pursuant to rules adopted by the Oregon Department of Administrative Ser-
30 vices under ORS 181.547.**

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 (d) Prior to conducting a criminal records check on an applicant, fail to send the appli-
 2 cant a conditional offer letter, a notice of the applicant's rights under this section and a
 3 notice that the employer is conducting a criminal records check pursuant to rules adopted
 4 by the Oregon Department of Administrative Services under ORS 181.547.

5 (e) When conducting a criminal records check, use or access records related to an arrest
 6 for which the court has not entered a conviction, records that the court has sealed, records
 7 of an action that the court has dismissed, records of a conviction that the court has
 8 expunged, records of a misdemeanor conviction if a jail sentence cannot be imposed for the
 9 misdemeanor crime or records of infractions.

10 (f) Disqualify an applicant from employment because of a prior conviction, unless the
 11 conviction is for a type of crime for which an applicant may be disqualified pursuant to rules
 12 adopted by the Oregon Department of Administrative Services under ORS 181.547.

13 (3) If an applicant's criminal records check report contains information that may be the
 14 basis for refusing to hire the applicant, the employer shall:

15 (a) Identify the elements of the conviction that may be the basis for refusing to hire the
 16 applicant and provide that information to the applicant;

17 (b) Provide the applicant with a copy of the criminal records check report; and

18 (c) Provide the applicant with examples of mitigation or rehabilitation evidence that the
 19 applicant may provide to the employer to be considered for employment.

20 (4) An applicant has 10 business days after receiving the information described in sub-
 21 section (3) of this section to provide a response to the employer. A response may include
 22 challenging the accuracy of the information obtained through a criminal records check,
 23 providing mitigation or rehabilitation evidence for the purpose of being considered for em-
 24 ployment, providing evidence that at least five years have passed since the applicant was
 25 released from a correctional institution and the applicant has not had a subsequent con-
 26 viction, and providing evidence that the terms and conditions of probation or parole, if any,
 27 have been met.

28 (5) An employer may not fill a position until the employer has made a final employment
 29 decision in consideration of any information submitted by an applicant pursuant to sub-
 30 section (4) of this section.

31 (6) An employer shall inform an applicant who responds under subsection (4) of this
 32 section and who is not offered employment of the final decision of the employer and of any
 33 other position for which the applicant may be eligible.

34 (7) If an applicant is denied employment by an employer on the basis of a conviction as
 35 specified in subsection (3) of this section, the applicant may appeal the adverse decision to
 36 the Commissioner of the Bureau of Labor and Industries as provided in ORS 659A.820.

37 (8) Any information pertaining to an applicant's criminal records check obtained in con-
 38 junction with the hiring process is confidential and may not be used, distributed or dissem-
 39 inated, by the employer or any person working for or on behalf of the employer, to any other
 40 entity, except as required by law.

41 (9) This section does not apply to criminal records checks conducted pursuant to ORS
 42 181.534 or 181.537.

43 **SECTION 2.** ORS 659A.885 is amended to read:

44 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 45 section (2) of this section may file a civil action in circuit court. In any action under this subsection,

1 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 2 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 3 court may order back pay in an action under this subsection only for the two-year period imme-
 4 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 5 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 6 year period immediately preceding the filing of the action. In any action under this subsection, the
 7 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 8 cept as provided in subsection (3) of this section:

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

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

12 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 13 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
 14 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 15 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 16 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 17 659A.318, 659A.320 or 659A.421 **and section 1 of this 2015 Act.**

18 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 19 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 20 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

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

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

27 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 28 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 29 compensatory damages or \$200, whichever is greater.

30 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 31 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 32 of this section, compensatory damages or \$250, whichever is greater.

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

36 (7) Any individual against whom any distinction, discrimination or restriction on account of
 37 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 38 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 39 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 40 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 41 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 42 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 43 section:

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

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

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

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

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

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

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

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

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

22 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 23 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 24 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 25 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 26 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 27 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 28 appealing an adverse decision of the trial court.

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

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

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

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

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

39 **SECTION 3. Section 1 of this 2015 Act and the amendments to ORS 659A.885 by section**
 40 **2 of this 2015 Act apply to applicants requesting consideration for employment, and to em-**
 41 **ployers considering applicants for employment, in positions first advertised, or if not adver-**
 42 **tised, first opened for application, on and after January 1, 2016.**

43 **SECTION 4. This 2015 Act being necessary for the immediate preservation of the public**
 44 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 45 **on its passage.**

