

# House Bill 3371

Sponsored by Representative BUCKLEY

## 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**.

Prohibits retaliation against student of education program who makes good faith report regarding possible violation of state or federal law, rule or regulation.  
Creates private right of action.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to protection for students who make good faith reports; creating new provisions; amending  
3 ORS 659.855 and 659A.885; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 659.**

6 **SECTION 2. (1) As used in this section:**

7 (a) "Education program" means an education program provided by:

8 (A) A school district;

9 (B) A public charter school;

10 (C) An education service district;

11 (D) A long term care or treatment facility, as described in ORS 343.961;

12 (E) The Youth Corrections Education Program;

13 (F) The Oregon School for the Deaf;

14 (G) A community college operated under ORS chapter 341;

15 (H) A public university listed in ORS 352.002;

16 (I) A career school;

17 (J) A private school; or

18 (K) A private college or university.

19 (b) "Retaliation" means suspension, expulsion, disenrollment, grade reduction, denial of  
20 academic or employment opportunities, exclusion from academic or extracurricular activ-  
21 ities, denial of access to transcripts, threats, harassment or other adverse action that sub-  
22 stantially disadvantages a student in academic, employment or extracurricular activities.

23 (2) A student of an education program may not be subjected to retaliation by an educa-  
24 tion program for the reason that the student has in good faith reported information that the  
25 student believes is evidence of a violation of a state or federal law, rule or regulation.

26 (3) Except for causes of action covered by other state or federal law, the State Board of  
27 Education and the Higher Education Coordinating Commission shall establish rules necessary  
28 to ensure compliance with subsection (2) of this section in the manner required by ORS  
29 chapter 183. The rules shall address only public education programs and career schools li-  
30 censed under ORS 345.010 to 345.450.

**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       **(4) In addition to any procedures that may be undertaken as provided by subsection (3)**  
 2 **of this section, a student, or a parent or guardian of a student under 18 years of age, who**  
 3 **alleges a violation of subsection (2) of this section may bring a civil action under ORS**  
 4 **659A.885.**

5       **SECTION 3.** ORS 659.855 is amended to read:

6       659.855. (1) Any public elementary or secondary school **or program** determined by the Super-  
 7 intendent of Public Instruction to be in noncompliance with provisions of ORS 659.850 **and section**  
 8 **2 of this 2015 Act** and this section shall be subject to appropriate sanctions, which may include  
 9 withholding of all or part of state funding, as established by rule of the State Board of Education.

10       (2) Any public community college determined by the Higher Education Coordinating Commission  
 11 to be in noncompliance with provisions of ORS 659.850 **and section 2 of this 2015 Act** and this  
 12 section shall be subject to appropriate sanctions, which may include withholding of all or part of  
 13 state funding, as established by rule of the commission.

14       (3) Any public university listed in ORS 352.002 determined by the Higher Education Coordinat-  
 15 ing Commission to be in noncompliance with provisions of ORS 659.850 **and section 2 of this 2015**  
 16 **Act** and this section shall be subject to appropriate sanctions, which may include withholding of all  
 17 or part of state funding, as established by rule of the commission.

18       (4) Any public charter school determined by the sponsor of the school or the superintendent to  
 19 be in noncompliance with the provisions of ORS 659.850 **and section 2 of this 2015 Act** and this  
 20 section shall be subject to appropriate sanctions, which may include the withholding of all or part  
 21 of state funding by the sponsor or superintendent, as established by rule of the State Board of Ed-  
 22 ucation.

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

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

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

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

37       (2) An action may be brought under subsection (1) of this section alleging a violation of ORS  
 38 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,  
 39 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
 40 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
 41 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
 42 659A.318, 659A.320 or 659A.421 **or section 2 of this 2015 Act.**

43       (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 44 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,  
 45 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 **or section 2 of this 2015**

1 **Act:**

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

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

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

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

8 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or  
9 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,  
10 compensatory damages or \$200, whichever is greater.

11 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,  
12 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)  
13 of this section, compensatory damages or \$250, whichever is greater.

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

17 (7) Any individual against whom any distinction, discrimination or restriction on account of  
18 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
19 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
20 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
21 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
22 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
23 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
24 section:

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

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

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

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

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

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

38 (8) When the commissioner or the Attorney General has reasonable cause to believe that a  
39 person or group of persons is engaged in a pattern or practice of resistance to the rights protected  
40 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied  
41 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner  
42 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same  
43 manner as a person or group of persons may file a civil action under this section. In a civil action  
44 filed under this subsection, the court may assess against the respondent, in addition to the relief  
45 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 of ORS 659A.145 or  
4 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing  
5 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to  
6 the commissioner if the commissioner prevails in the action. The court may award reasonable at-  
7 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court  
8 determines that the commissioner had no objectively reasonable basis for asserting the claim or for  
9 appealing an adverse decision of the trial court.

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

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

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

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

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

20 **SECTION 5. Section 2 of this 2015 Act and the amendments to ORS 659.855 and 659A.885**  
21 **by sections 3 and 4 of this 2015 Act apply to acts of retaliation occurring on or after the ef-**  
22 **fective date of this 2015 Act.**

23 **SECTION 6. This 2015 Act being necessary for the immediate preservation of the public**  
24 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
25 **on its passage.**

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