

**B-Engrossed**  
**Senate Bill 380**

Ordered by the House June 10  
Including Senate Amendments dated April 23 and House Amendments  
dated June 10

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

**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.

Makes certain actions based on complaints filed with Commissioner of Bureau of Labor and Industries discretionary on part of commissioner.

**Requires report to appropriate legislative committees by February 1, 2017, on resolution of complaints before commissioner during two-year periods prior to and after effective date of Act.**

**Sunsets provisions October 1, 2017.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to authority of Commissioner of Bureau of Labor and Industries pertaining to complaints  
3 filed with bureau; creating new provisions; amending ORS 659A.845 and 659A.870; and declaring  
4 an emergency.

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

6 **SECTION 1.** ORS 659A.845 is amended to read:

7 659A.845. (1) If the Commissioner of the Bureau of Labor and Industries issues a finding of  
8 substantial evidence under ORS 659A.835 and the matter cannot be settled through conference,  
9 conciliation and persuasion, or if the commissioner determines that the interest of justice requires  
10 that a hearing be held without first seeking settlement, the commissioner [*shall*] **may** prepare formal  
11 charges. Formal charges must contain all information required for a notice under ORS 183.415 and  
12 must specify the allegations of the complaint to which the respondent will be required to make re-  
13 sponse. Formal charges shall also set the time and place for hearing the formal charges.

14 (2)(a) The commissioner shall serve the formal charges on all respondents found to have engaged  
15 in the unlawful practice.

16 (b) If the formal charges allege a violation of ORS 659A.145 or 659A.421 or discrimination under  
17 federal housing law, the commissioner shall serve on the named respondents and complainants the  
18 formal charges and a notice of the right of the respondents and complainants under ORS 659A.870  
19 to opt for a court trial instead of a hearing under ORS 659A.850.

20 (3) The commissioner may not prepare formal charges alleging an unlawful practice under ORS  
21 659A.145 or 659A.421 or discrimination under federal housing law after trial has begun in a civil  
22 action that the complainant commenced under state or federal law and that seeks relief with respect  
23 to that unlawful or discriminatory practice.

**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       **SECTION 2.** ORS 659A.870 is amended to read:

2       659A.870. (1) Except as provided in this section, the filing of a civil action by a person in circuit  
3 court pursuant to ORS 659A.885, or in federal district court under applicable federal law, waives the  
4 right of the person to file a complaint with the Commissioner of the Bureau of Labor and Industries  
5 under ORS 659A.820 with respect to the matters alleged in the civil action.

6       (2) The filing of a complaint under ORS 659A.820 is not a condition precedent to the filing of  
7 any civil action.

8       (3) If a person files a civil action alleging an unlawful practice under ORS 659A.145 or 659A.421  
9 or discrimination under federal housing law, the filing does not constitute an election of remedies  
10 or a waiver of the right of the person to file a complaint with the commissioner under ORS 659A.820,  
11 but the commissioner shall dismiss the complaint upon the commencement of a trial in the civil  
12 action.

13       (4)(a) The filing of a complaint under ORS 659A.820 by a person alleging an unlawful practice  
14 under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not constitute  
15 an election of remedies or a waiver of the right of the person to file a civil action with respect to  
16 the same matters, but a civil action may not be filed after a hearing officer has commenced a  
17 hearing on the record under this chapter with respect to the allegations of the complaint.

18       (b) A respondent or complainant named in a complaint filed under ORS 659A.820 or 659A.825  
19 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal  
20 housing law may elect to have the matter heard in circuit court under ORS 659A.885. The election  
21 must be made in writing and received by the commissioner within 20 days after service of formal  
22 charges under ORS 659A.845. If the respondent or the complainant makes the election, the commis-  
23 sioner *[shall]* **may** pursue the matter in court on behalf of the complainant at no cost to the  
24 complainant.

25       (c) If the Attorney General or the commissioner files a complaint under ORS 659A.825, the At-  
26 torney General or the commissioner may elect to have the matter heard in circuit court under ORS  
27 659A.885.

28       (d) If the respondent, the complainant, the Attorney General or the commissioner do not elect  
29 to have the matter heard in circuit court, the commissioner may conduct a hearing on the formal  
30 charges under ORS 659A.850.

31       (5) A person who has filed a complaint under ORS 659A.820 need not receive a 90-day notice  
32 under ORS 659A.880 before commencing a civil action that is based on the same matters alleged in  
33 the complaint filed with the commissioner.

34       (6) Except as provided in subsections (3) and (4) of this section, this section does not limit or  
35 alter in any way the authority or power of the commissioner, or limit or alter in any way any of the  
36 rights of an individual complainant, until and unless the complainant commences a civil action.

37       **SECTION 3. No later than February 1, 2017, the Commissioner of the Bureau of Labor**  
38 **and Industries shall submit to the appropriate legislative committees a written report on the**  
39 **resolution of complaints before the commissioner in the two-year period prior to the effec-**  
40 **tive date of this 2015 Act and on the resolution of those complaints after the implementation**  
41 **of the amendments to ORS 659A.845 and 659A.870 by sections 1 and 2 of this 2015 Act.**

42       **SECTION 4.** ORS 659A.845, as amended by section 1 of this 2015 Act, is amended to read:

43       659A.845. (1) If the Commissioner of the Bureau of Labor and Industries issues a finding of  
44 substantial evidence under ORS 659A.835 and the matter cannot be settled through conference,  
45 conciliation and persuasion, or if the commissioner determines that the interest of justice requires

1 that a hearing be held without first seeking settlement, the commissioner [*may*] **shall** prepare formal  
2 charges. Formal charges must contain all information required for a notice under ORS 183.415 and  
3 must specify the allegations of the complaint to which the respondent will be required to make re-  
4 sponse. Formal charges shall also set the time and place for hearing the formal charges.

5 (2)(a) The commissioner shall serve the formal charges on all respondents found to have engaged  
6 in the unlawful practice.

7 (b) If the formal charges allege a violation of ORS 659A.145 or 659A.421 or discrimination under  
8 federal housing law, the commissioner shall serve on the named respondents and complainants the  
9 formal charges and a notice of the right of the respondents and complainants under ORS 659A.870  
10 to opt for a court trial instead of a hearing under ORS 659A.850.

11 (3) The commissioner may not prepare formal charges alleging an unlawful practice under ORS  
12 659A.145 or 659A.421 or discrimination under federal housing law after trial has begun in a civil  
13 action that the complainant commenced under state or federal law and that seeks relief with respect  
14 to that unlawful or discriminatory practice.

15 **SECTION 5.** ORS 659A.870, as amended by section 2 of this 2015 Act, is amended to read:

16 659A.870. (1) Except as provided in this section, the filing of a civil action by a person in circuit  
17 court pursuant to ORS 659A.885, or in federal district court under applicable federal law, waives the  
18 right of the person to file a complaint with the Commissioner of the Bureau of Labor and Industries  
19 under ORS 659A.820 with respect to the matters alleged in the civil action.

20 (2) The filing of a complaint under ORS 659A.820 is not a condition precedent to the filing of  
21 any civil action.

22 (3) If a person files a civil action alleging an unlawful practice under ORS 659A.145 or 659A.421  
23 or discrimination under federal housing law, the filing does not constitute an election of remedies  
24 or a waiver of the right of the person to file a complaint with the commissioner under ORS 659A.820,  
25 but the commissioner shall dismiss the complaint upon the commencement of a trial in the civil  
26 action.

27 (4)(a) The filing of a complaint under ORS 659A.820 by a person alleging an unlawful practice  
28 under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not constitute  
29 an election of remedies or a waiver of the right of the person to file a civil action with respect to  
30 the same matters, but a civil action may not be filed after a hearing officer has commenced a  
31 hearing on the record under this chapter with respect to the allegations of the complaint.

32 (b) A respondent or complainant named in a complaint filed under ORS 659A.820 or 659A.825  
33 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal  
34 housing law may elect to have the matter heard in circuit court under ORS 659A.885. The election  
35 must be made in writing and received by the commissioner within 20 days after service of formal  
36 charges under ORS 659A.845. If the respondent or the complainant makes the election, the commis-  
37 sioner [*may*] **shall** pursue the matter in court on behalf of the complainant at no cost to the  
38 complainant.

39 (c) If the Attorney General or the commissioner files a complaint under ORS 659A.825, the At-  
40 torney General or the commissioner may elect to have the matter heard in circuit court under ORS  
41 659A.885.

42 (d) If the respondent, the complainant, the Attorney General or the commissioner do not elect  
43 to have the matter heard in circuit court, the commissioner may conduct a hearing on the formal  
44 charges under ORS 659A.850.

45 (5) A person who has filed a complaint under ORS 659A.820 need not receive a 90-day notice

1 under ORS 659A.880 before commencing a civil action that is based on the same matters alleged in  
2 the complaint filed with the commissioner.

3 (6) Except as provided in subsections (3) and (4) of this section, this section does not limit or  
4 alter in any way the authority or power of the commissioner, or limit or alter in any way any of the  
5 rights of an individual complainant, until and unless the complainant commences a civil action.

6 **SECTION 6. The amendments to ORS 659A.845 and 659A.870 by sections 4 and 5 of this**  
7 **2015 Act become operative on October 1, 2017.**

8 **SECTION 7. Section 3 of this 2015 Act is repealed on October 1, 2017.**

9 **SECTION 8. This 2015 Act being necessary for the immediate preservation of the public**  
10 **peace, health and safety, an emergency is declared to exist and this 2015 Act takes effect on**  
11 **its passage.**

12