

Enrolled
Senate Bill 380

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CHAPTER

AN ACT

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

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

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

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

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

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

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

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

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

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

(3) If a person files a civil action alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the filing does not constitute an election of remedies or a waiver of the right of the person to file a complaint with the commissioner under ORS

659A.820, but the commissioner shall dismiss the complaint upon the commencement of a trial in the civil action.

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

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

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

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

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

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

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

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

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

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

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

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

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

659A.870. (1) Except as provided in this section, the filing of a civil action by a person in circuit court pursuant to ORS 659A.885, or in federal district court under applicable federal law, waives the

right of the person to file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 with respect to the matters alleged in the civil action.

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

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

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

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

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

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

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

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

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

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

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

Passed by Senate April 28, 2015

Repassed by Senate June 18, 2015

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 12, 2015

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State