

House Bill 4096

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Veterans and Emergency Preparedness)

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**.

Modifies law regarding requirement that public employer grant preference to veteran or disabled veteran in selection process for civil service position or eligibility list for civil service position. Limits eligibility for preference to veteran who applies within 10 years of discharge or release from service in Armed Forces of United States. Requires public employer to interview veteran who shows evidence of requested skills, required skills and transferable skills and to provide written explanation if interview is not conducted.

A BILL FOR AN ACT

1
2 Relating to preferences for veterans in public employment selection processes; creating new pro-
3 visions; amending ORS 408.225, 408.230, 408.237 and 659A.885; and repealing ORS 408.235.

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

5 **SECTION 1.** ORS 408.225 is amended to read:

6 408.225. (1) As used in ORS 408.225 to 408.237:

7 (a)(A) "Civil service position" means any position for which a hiring or promotion decision is
8 made or required to be made based on the results of a merit based, competitive process that in-
9 cludes, but is not limited to, consideration of an applicant's or employee's relative ability, knowl-
10 edge, experience and other skills.

11 (B) A "civil service position" need not be labeled a "civil service position."

12 (b) "Combat zone" means an area designated by the President of the United States by executive
13 order in which, on the dates designated by executive order, the Armed Forces of the United States
14 are or have engaged in combat.

15 (c) "Disabled veteran" means a veteran who has a disability rating from the United States De-
16 partment of Veterans Affairs, a veteran whose discharge or release from active duty was for a dis-
17 ability incurred or aggravated in the line of duty or a veteran who was awarded the Purple Heart
18 for wounds received in combat.

19 **(d) "Eligibility list" means a list of ranked eligible candidates for a civil service position**
20 **who have become eligible for the position through a test or series of tests and who will be**
21 **considered for the civil service position in ranked order.**

22 [(d)] (e) "Honorable conditions" has the meaning given that term in rules adopted by the De-
23 partment of Veterans' Affairs.

24 [(e)] (f) "Public employer" means a public body, as that term is defined in ORS 174.109, and any
25 person authorized to act on behalf of the public body, with respect to control, management or
26 supervision of any employee.

27 **(g) "Requested skills" means attributes desired by a public employer in a candidate for**
28 **a civil service position or for an eligibility list that are gained through knowledge or experi-**

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 **ence and that make a candidate more competitive for a position when compared to other**
 2 **candidates for the same position who do not possess the requested skills at all or to the same**
 3 **degree, and that are reviewed and considered in determining the candidate's ranking in ac-**
 4 **cordance with ORS 408.230.**

5 **(h) "Required skills" means attributes required by a public employer in a candidate for**
 6 **a civil service position or for an eligibility list that are gained through knowledge or experi-**
 7 **ence, including but not limited to a minimum number of years of experience or education**
 8 **and requirements specific to the position such as certificates or licensure.**

9 **(i) "Transferable skills" means skills that a veteran has obtained, including military ed-**
 10 **ucation or experience, that substantially relate to the civil service position for which the**
 11 **veteran is applying.**

12 [(f)] (j) "Veteran" means a person who:

13 (A) Served on active duty with the Armed Forces of the United States:

14 (i) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and
 15 was discharged or released under honorable conditions;

16 (ii) For a period of more than 178 consecutive days beginning after January 31, 1955, and was
 17 discharged or released from active duty under honorable conditions;

18 (iii) For 178 days or less and was discharged or released from active duty under honorable
 19 conditions because of a service-connected disability;

20 (iv) For 178 days or less and was discharged or released from active duty under honorable
 21 conditions and has a disability rating from the United States Department of Veterans Affairs; or

22 (v) For at least one day in a combat zone and was discharged or released from active duty under
 23 honorable conditions;

24 (B) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed
 25 Forces of the United States and was discharged or released from active duty under honorable con-
 26 ditions; or

27 (C) Is receiving a nonservice-connected pension from the United States Department of Veterans
 28 Affairs.

29 (2) As used in subsection [(1)(f)] (1)(j) of this section, "active duty" does not include attendance
 30 at a school under military orders, except schooling incident to an active enlistment or a regular tour
 31 of duty, or normal military training as a reserve officer or member of an organized reserve or a
 32 National Guard unit.

33 **SECTION 2.** ORS 408.230 is amended to read:

34 408.230. (1) A public employer shall grant a preference to a veteran or disabled veteran who
 35 applies for a vacant civil service position or seeks promotion to a civil service position with a
 36 higher maximum salary rate and who:

37 (a)(A) Successfully completes an initial application screening or an application examination for
 38 the position; or

39 (B) Successfully completes a civil service test the employer administers to establish eligibility
 40 for the position; [and]

41 (b) Meets the minimum qualifications and any special qualifications for the position; **and**

42 **(c) Applies for the position within 10 years after discharge or release from service in the**
 43 **Armed Forces of the United States.**

44 (2) The employer shall grant the preference in the following manner:

45 (a) For an initial application screening used to develop a list of persons for interviews, the em-

1 ployer shall add five preference points to a veteran's score and 10 preference points to a disabled
2 veteran's score.

3 (b) For an application examination, given after the initial application screening, that results in
4 a score, the employer shall add preference points to the total combined examination score without
5 allocating the points to any single feature or part of the examination. The employer shall add five
6 preference points to a veteran's score and 10 preference points to a disabled veteran's score.

7 (c) For an application examination that consists of an interview, an evaluation of the veteran's
8 performance, experience or training, a supervisor's rating or any other method of ranking an appli-
9 cant that does not result in a score, the employer shall give a preference to the veteran or disabled
10 veteran. An employer that uses an application examination of the type described in this paragraph
11 shall devise and apply methods by which the employer gives [*special consideration*] **preference** in
12 the employer's hiring decision to veterans and disabled veterans.

13 (3) Preferences of the type described in subsection (1) of this section are not a requirement that
14 the public employer appoint a veteran or disabled veteran to a civil service position.

15 (4) A public employer shall appoint an otherwise qualified veteran or disabled veteran to a va-
16 cant civil service position if the results of a veteran's or disabled veteran's application examination,
17 when combined with the veteran's or disabled veteran's preference, are equal to or higher than the
18 results of an application examination for an applicant who is not a veteran or disabled veteran.

19 (5) If a public employer does not appoint a veteran or disabled veteran to a vacant civil service
20 position, upon written request of the veteran or disabled veteran, the employer, in writing, shall
21 provide the employer's reasons for the decision not to appoint the veteran or disabled veteran to the
22 position. The employer may base a decision not to appoint the veteran or disabled veteran solely
23 on the veteran's or disabled veteran's merits or qualifications with respect to the vacant civil ser-
24 vice position.

25 (6) Violation of this section is an unlawful employment practice.

26 (7) A veteran or disabled veteran claiming to be aggrieved by a violation of this section may file
27 a verified written complaint with the Commissioner of the Bureau of Labor and Industries in ac-
28 cordance with ORS 659A.820.

29 **SECTION 3.** ORS 408.237 is amended to read:

30 408.237. (1) [*As used in this section:*]

31 [(a) "*Eligibility list*" means a list of ranked eligible candidates for a civil service position who have
32 become eligible for the position through a test or series of tests and who will be considered for the civil
33 service position in ranked order.]

34 [(b) "*Transferable skill*" means a skill that a veteran has obtained through military education or
35 experience that substantially relates, directly or indirectly, to the civil service position for which the
36 veteran is applying.] **Preference granted to veterans under ORS 408.230 shall be applied in ac-**
37 **cordance with this section and ORS 408.225 and 408.230.**

38 (2)(a) When an interview is a component of the selection process for a civil service position or
39 for an eligibility list for a civil service position, a public employer shall interview each veteran **who,**
40 **as determined by the public employer, shows sufficient evidence that the veteran has the**
41 **requested skills, required skills and transferable skills for the civil service position or eligi-**
42 **bility list.**[.]

43 [(a) *Whom the public employer determines meets the minimum qualifications and special qualifica-*
44 *tions for the civil service position or eligibility list; and]*

45 [(b) *Who submits application materials that the public employer determines show sufficient evidence*

1 *that the veteran has the transferable skills required and requested by the public employer for the civil*
 2 *service position or eligibility list.]*

3 **(b) If a public employer conducts interviews under this subsection and does not interview**
 4 **a veteran who has applied for the civil service position or eligibility list, the public employer**
 5 **shall provide the veteran with a written explanation of the reason an interview with the**
 6 **veteran was not conducted. The explanation must set forth in detail the skills that the vet-**
 7 **eran lacked and what further evidence would have been required to show that the veteran**
 8 **has the requested skills, required skills or transferable skills.**

9 (3) A public employer is not required to comply with subsection (2) of this section if the em-
 10 ployer conducts interviews only as part of the process of selecting a candidate for a civil service
 11 position from an eligibility list.

12 (4) A public employer may consult with the Oregon Military Department and the Department
 13 of Veterans' Affairs to determine whether certain military education or experience produces a
 14 transferable skill.

15 (5) The *[Department of Veterans' Affairs]* **Employment Department** shall provide training to
 16 veterans on how to show evidence of transferable skills in an application for a civil service position
 17 or eligibility list.

18 (6) Violation of subsection (2) of this section is an unlawful employment practice under ORS
 19 chapter 659A.

20 (7) A veteran claiming to be aggrieved by a violation of subsection (2) of this section may file
 21 a complaint under ORS 659A.820.

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

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

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

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

36 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 37 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 [(2)], 475B.233, 476.574, 652.355, 653.060,
 38 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082,
 39 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
 40 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
 41 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 or ORS 653.547 and 653.549.

42 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 43 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 44 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 or ORS 653.547 and
 45 653.549:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
3 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
4 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
5 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
6 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
7 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
8 appealing an adverse decision of the trial court.

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

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

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

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

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

19 **SECTION 5. ORS 408.235 is repealed.**

20 **SECTION 6. The amendments to ORS 408.225, 408.230, 408.237 and 659A.885 by sections 1**
21 **to 4 of this 2016 Act and the repeal of ORS 408.235 by section 5 of this 2016 Act apply to se-**
22 **lection processes for civil service positions and eligibility lists for civil service positions**
23 **undertaken by public employers on or after the effective date of this 2016 Act.**

24