

WORK DRAFT
NOT FOR DISTRIBUTION

HB 2005-A25
(LC 1431)
4/25/17 (LHF/jas)

Requested by Senator TAYLOR

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2005**

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon de-
2 lete the rest of the line and insert “creating new provisions; amending ORS
3 30.275, 652.210, 652.220, 652.990, 659A.820, 659A.825, 659A.830, 659A.875 and
4 659A.885; repealing ORS 652.230; and prescribing an effective date.”.

5 Delete lines 4 through 20 and delete pages 2 through 6 and insert:

6 **SECTION 1.** ORS 652.210 is amended to read:

7 652.210. As used in ORS 652.210 to 652.230, unless the context requires
8 otherwise:

9 **(1) “Compensation” includes wages, salary, bonuses, benefits, fringe**
10 **benefits and equity-based compensation.**

11 ~~[(1)]~~ **(2)** “Employee” means any individual who, otherwise than as a
12 copartner of the employer, as an independent contractor or as a participant
13 in a work training program administered under the state or federal assist-
14 ance laws, renders personal services wholly or partly in this state to an
15 employer who pays or agrees to pay such individual at a fixed rate. However,
16 when services are rendered only partly in this state, an individual is not an
17 employee unless the contract of employment of the employee has been en-
18 tered into, or payments thereunder are ordinarily made or to be made, within
19 this state.

20 ~~[(2)]~~ **(3)(a)** “Employer” means any person employing one or more employ-
21 ees, including the State of Oregon or any political subdivision thereof or any

1 county, city, district, authority, public corporation or entity and any of their
2 instrumentalities organized and existing under law or charter.

3 (b) "Employer" does not include the federal government.

4 (4) "Equal-pay analysis" means an evaluation process to assess and
5 correct wage disparities among employees who perform work of com-
6 parable character.

7 (5) "Protected class" means a group of persons distinguished by
8 race, color, religion, sex, sexual orientation, national origin, marital
9 status, veteran status, disability or age.

10 [(3)] (6)(a) "Rate" with reference to wages means the basis of compen-
11 sation for services by an employee for an employer [*and*].

12 (b) "Rate" includes compensation based on the time spent in the per-
13 formance of the services, on the number of operations accomplished or on the
14 quantity produced or handled.

15 (7) "Sexual orientation" has the meaning given that term in ORS
16 174.100.

17 [(4)] (8) "Unpaid wages" means the difference between the wages actually
18 paid to an employee and the wages required under ORS 652.220 to be paid
19 to the employee.

20 (9) "Veteran status" means an individual is a veteran as defined in
21 ORS 408.225.

22 [(5)] (10)(a) "Wages" means all compensation for performance of service
23 by an employee for an employer, whether paid by the employer or another
24 person[, *including*].

25 (b) "Wages" includes the cash value of all compensation paid in any
26 medium other than cash.

27 (11) "Working conditions" includes work environment, hours, time
28 of day, physical surroundings and potential hazards encountered by
29 an employee.

30 (12) "Work of comparable character" means work that requires

1 **substantially similar knowledge, skill, effort, responsibility and work-**
2 **ing conditions in the performance of work, regardless of job de-**
3 **scription or job title.**

4 **SECTION 2.** ORS 652.220 is amended to read:

5 652.220. (1) [*No employer shall:*] **It is an unlawful employment practice**
6 **under ORS chapter 659A for an employer to:**

7 (a) In any manner discriminate between [*the sexes*] **employees or appli-**
8 **cants on the basis of a protected class** in the payment of wages **or other**
9 **compensation** for work of comparable character, the performance of which
10 requires comparable skills.

11 (b) Pay wages **or other compensation** to any employee at a rate [*less*]
12 **greater** than that at which the employer pays wages **or other compen-**
13 **sation** to employees of [*the opposite sex*] **a protected class** for work of
14 comparable character, the performance of which requires comparable skills.

15 (c) **Screen job applicants based on current or past compensation.**

16 (d) **Determine compensation for a position based on current or past**
17 **compensation of a prospective employee. This paragraph is not in-**
18 **tended to prevent an employer from considering the compensation of**
19 **a current employee of the employer during a transfer, move or hire**
20 **of the employee to a new position with the same employer.**

21 [(2) *Subsection (1) of this section does not apply where:*]

22 [(a) *Payment is made pursuant to a seniority or merit system which does*
23 *not discriminate on the basis of sex.*]

24 [(b) *A differential in wages between employees is based in good faith on*
25 *factors other than sex.*]

26 (2) **Notwithstanding subsection (1) of this section, an employer may**
27 **pay employees in equivalent jobs at different compensation levels if**
28 **the different compensation levels are based on:**

29 (a) **A seniority system;**

30 (b) **A merit system;**

1 (c) A system that measures earnings by quantity or quality of pro-
2 duction, including piece-rate work;

3 (d) Workplace locations;

4 (e) Travel, if travel is necessary and regular for the employee; or

5 (f) A differential based on a bona fide factor other than a protected
6 class, including education, training or experience, if the employer can
7 reasonably demonstrate that the factor:

8 (A) Is not based on or derived from a protected class;

9 (B) Is not based on perceptions of traditional or appropriate roles
10 associated with a protected class;

11 (C) Is job-related to the position in question;

12 (D) Is based on a business necessity; and

13 (E) Accounts for the entire compensation differential.

14 (3) *[No employer shall]* An employer may not in any manner discrimi-
15 nate in the payment of wages or compensation against any employee be-
16 cause the employee has filed a complaint under ORS 659A.820 or in a
17 proceeding under ORS [652.210 to 652.230,] 659A.885 or has testified, or is
18 about to testify, or because the employer believes that the employee may
19 testify, in any investigation or proceedings pursuant to ORS [652.210 to
20 652.230], 659A.820 or 659A.885 or in a criminal action pursuant to ORS
21 [652.210 to 652.230] 652.990.

22 (4) An employer may not reduce the compensation level of an em-
23 ployee to comply with the provisions of this section.

24 (5) Amounts owed to an employee because of the failure of the
25 employer to comply with the requirements of this section are unpaid
26 wages.

27 (6) An employee who asserts a violation under this section may file
28 a complaint with the Commissioner of the Bureau of Labor and In-
29 dustries under ORS 659A.820 or a civil action under ORS 659A.885.

30 (7) An employer shall post a notice of the requirements of this

1 section in every establishment where employees work. The Bureau of
2 Labor and Industries shall make available to employers a template
3 that meets the required notice provisions of this section.

4 **SECTION 3.** It is an unlawful practice under ORS chapter 659A for
5 an employer to seek the salary history of an applicant or employee
6 from a current or former employer. This section is not intended to
7 prevent an employer from requesting from a prospective employee
8 written authorization to confirm prior compensation after the em-
9 ployer makes an offer of employment to the prospective employee that
10 includes compensation.

11 **SECTION 4.** ORS 30.275 is amended to read:

12 30.275. (1) No action arising from any act or omission of a public body
13 or an officer, employee or agent of a public body within the scope of ORS
14 30.260 to 30.300 shall be maintained unless notice of claim is given as re-
15 quired by this section.

16 (2) Notice of claim shall be given within the following applicable period
17 of time, not including the period, not exceeding 90 days, during which the
18 person injured is unable to give the notice because of the injury or because
19 of minority, incompetency or other incapacity:

20 (a) For wrongful death, within one year after the alleged loss or injury.

21 **(b) For a claim under ORS 652.220 or 659A.355, within one year of**
22 **discovery of the alleged loss or injury.**

23 ~~[(b)]~~ (c) For all other claims, within 180 days after the alleged loss or
24 injury.

25 (3) Notice of claim required by this section is satisfied by:

26 (a) Formal notice of claim as provided in subsections (4) and (5) of this
27 section;

28 (b) Actual notice of claim as provided in subsection (6) of this section;

29 (c) Commencement of an action on the claim by or on behalf of the
30 claimant within the applicable period of time provided in subsection (2) of

1 this section; or

2 (d) Payment of all or any part of the claim by or on behalf of the public
3 body at any time.

4 (4) Formal notice of claim is a written communication from a claimant
5 or representative of a claimant containing:

6 (a) A statement that a claim for damages is or will be asserted against
7 the public body or an officer, employee or agent of the public body;

8 (b) A description of the time, place and circumstances giving rise to the
9 claim, so far as known to the claimant; and

10 (c) The name of the claimant and the mailing address to which corre-
11 spondence concerning the claim may be sent.

12 (5) Formal notice of claim shall be given by mail or personal delivery:

13 (a) If the claim is against the state or an officer, employee or agent
14 thereof, to the office of the Director of the Oregon Department of Adminis-
15 trative Services.

16 (b) If the claim is against a local public body or an officer, employee or
17 agent thereof, to the public body at its principal administrative office, to any
18 member of the governing body of the public body, or to an attorney desig-
19 nated by the governing body as its general counsel.

20 (6) Actual notice of claim is any communication by which any individual
21 to whom notice may be given as provided in subsection (5) of this section
22 or any person responsible for administering tort claims on behalf of the
23 public body acquires actual knowledge of the time, place and circumstances
24 giving rise to the claim, where the communication is such that a reasonable
25 person would conclude that a particular person intends to assert a claim
26 against the public body or an officer, employee or agent of the public body.
27 A person responsible for administering tort claims on behalf of a public body
28 is a person who, acting within the scope of the person's responsibility, as
29 an officer, employee or agent of a public body or as an employee or agent
30 of an insurance carrier insuring the public body for risks within the scope

1 of ORS 30.260 to 30.300, engages in investigation, negotiation, adjustment or
2 defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing
3 or accepting forms for claimants to provide claim information, or in super-
4 vising any of those activities.

5 (7) In an action arising from any act or omission of a public body or an
6 officer, employee or agent of a public body within the scope of ORS 30.260
7 to 30.300, the plaintiff has the burden of proving that notice of claim was
8 given as required by this section.

9 (8) The requirement that a notice of claim be given under subsections (1)
10 to (7) of this section does not apply if:

11 (a)(A) The claimant was under the age of 18 years when the acts or
12 omissions giving rise to a claim occurred;

13 (B) The claim is against the Department of Human Services or the Oregon
14 Youth Authority; and

15 (C) The claimant was in the custody of the Department of Human Services
16 pursuant to an order of a juvenile court under ORS 419B.150, 419B.185,
17 419B.337 or 419B.527, or was in the custody of the Oregon Youth Authority
18 under the provisions of ORS 419C.478, 420.011 or 420A.040, when the acts or
19 omissions giving rise to a claim occurred.

20 (b) The claim is against a private, nonprofit organization that provides
21 public transportation services described under ORS 30.260 (4)(d).

22 (9) Except as provided in ORS 12.120, 12.135 and 659A.875, but notwith-
23 standing any other provision of ORS chapter 12 or other statute providing
24 a limitation on the commencement of an action, an action arising from any
25 act or omission of a public body or an officer, employee or agent of a public
26 body within the scope of ORS 30.260 to 30.300 shall be commenced within two
27 years after the alleged loss or injury.

28 **SECTION 5.** ORS 652.990 is amended to read:

29 652.990. (1) Violation of ORS 652.020 (2) is a Class A violation. Every
30 day's violation is deemed a separate offense.

1 (2) Any person, body corporate, general manager or employer who violates
2 ORS 652.040 or causes ORS 652.040 to be violated commits a Class C
3 misdemeanor.

4 (3) Violation of ORS 652.110 or 652.120 is a Class A violation.

5 (4) Violation of ORS 652.130 by any employer is a Class C misdemeanor.

6 (5) In addition to the civil damages recoverable under ORS [652.230]
7 **659A.885**, violation of ORS [652.210 to 652.230] **652.220** is a Class A
8 misdemeanor.

9 (6) The violation of ORS 652.240 is a Class A misdemeanor.

10 (7) Violation of ORS 652.355 is a Class C misdemeanor.

11 (8) Violation of ORS 652.610 or 652.620 is a Class D violation.

12 (9) Willful violation of ORS 652.635 or 652.640 by a producer or agent of
13 the producer is a Class A misdemeanor.

14 (10) Violation of any of the provisions of ORS 652.710 or 652.720 by any
15 employer is a Class A violation.

16 **SECTION 6.** ORS 659A.820 is amended to read:

17 659A.820. (1) As used in this section, for purposes of a complaint alleging
18 an unlawful practice under ORS 659A.145, [or] 659A.421 or **652.220** or dis-
19 crimination under federal housing law, "aggrieved person" includes a person
20 who believes that the person:

21 (a) Has been injured by an unlawful practice or discriminatory housing
22 practice; or

23 (b) Will be injured by an unlawful practice or a discriminatory housing
24 practice that is about to occur.

25 (2) [*Any person claiming to be aggrieved by an alleged unlawful practice*]
26 **An aggrieved person** may file with the Commissioner of the Bureau of La-
27 bor and Industries a verified written complaint that states the name and
28 address of the person alleged to have committed the unlawful practice. The
29 complaint must be signed by the complainant. The complaint must set forth
30 the acts or omissions alleged to be an unlawful practice. The complainant

1 may be required to set forth in the complaint such other information as the
2 commissioner may require. Except as provided in ORS 654.062, a complaint
3 under this section must be filed no later than one year after the alleged
4 unlawful practice.

5 (3)(a) Except as provided in paragraph (b) of this subsection, a complaint
6 may not be filed under this section if a civil action has been commenced in
7 state or federal court alleging the same matters.

8 (b) The prohibition described in paragraph (a) of this subsection does not
9 apply to a complaint alleging an unlawful practice under ORS 659A.145 or
10 659A.421 or alleging discrimination under federal housing law.

11 (4) If an employer has one or more employees who refuse or threaten to
12 refuse to abide by the provisions of this chapter or to cooperate in carrying
13 out the purposes of this chapter, the employer may file with the commis-
14 sioner a verified complaint requesting assistance by conciliation or other
15 remedial action.

16 (5) Except as provided in subsection (6) of this section, the commissioner
17 shall notify the person against whom a complaint is made within 30 days of
18 the filing of the complaint. The commissioner shall include in the notice the
19 date, place and circumstances of the alleged unlawful practice.

20 (6) The commissioner shall notify the person against whom a complaint
21 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimi-
22 nation under federal housing law is made within 10 days of the filing of the
23 complaint. The commissioner shall include in the notice:

24 (a) The date, place and circumstances of the alleged unlawful practice;
25 and

26 (b) A statement that the person against whom the complaint is made may
27 file an answer to the complaint.

28 **SECTION 7.** ORS 659A.825 is amended to read:

29 659A.825. (1)(a) If the Attorney General or the Commissioner of the Bu-
30 reau of Labor and Industries has reason to believe that any person has

1 committed an unlawful practice, the Attorney General or the commissioner
2 may file a complaint in the same manner as provided for a complaint filed
3 by [a] **an aggrieved** person under ORS 659A.820.

4 (b) If the Attorney General or the commissioner has reason to believe that
5 a violation of ORS 659A.403, 659A.406 or 659A.409 has occurred, the Attorney
6 General or the commissioner may file a complaint under this section against
7 any person acting on behalf of a place of public accommodation and against
8 any person who has aided or abetted in that violation.

9 (c) If the Attorney General or the commissioner has reason to believe that
10 an unlawful practice under ORS 659A.145 or 659A.421 or discrimination un-
11 der federal housing law has occurred or is about to occur, the Attorney
12 General or the commissioner may file a complaint in the same manner as
13 [a] **an aggrieved** person filing a complaint under ORS 659A.820.

14 (2) If the commissioner files a complaint under this section alleging an
15 unlawful practice other than an unlawful employment practice, or if a person
16 files a complaint under ORS 659A.820 alleging an unlawful practice under
17 ORS 659A.145, [or] 659A.421 **or 652.220** or discrimination under federal
18 housing law, the commissioner may also issue a temporary cease and desist
19 order requiring any respondent named in the complaint to refrain from the
20 unlawful practice alleged. A temporary cease and desist order under this
21 section may contain any provision that could be included in a cease and
22 desist order issued after a hearing under ORS 659A.850.

23 **SECTION 8.** ORS 659A.830 is amended to read:

24 659A.830. (1) Except as provided in subsection (5) of this section, all au-
25 thority of the Commissioner of the Bureau of Labor and Industries to con-
26 duct investigations or other proceedings to resolve a complaint filed under
27 ORS 659A.820 ceases upon the filing of a civil action by the complainant
28 alleging the same matters that are the basis of the complaint under ORS
29 659A.820.

30 (2)(a) Except as provided in paragraph (b) of this subsection, the com-

1 commissioner may dismiss a complaint at any time after the complaint is filed.
2 Upon the written request of the **aggrieved** person who filed the complaint
3 under ORS 659A.820, the commissioner shall dismiss the complaint. Upon
4 dismissal of the complaint, the commissioner shall issue a 90-day notice if
5 notice is required under ORS 659A.880.

6 (b) Paragraph (a) of this subsection does not apply to a complaint alleging
7 an unlawful practice under ORS 659A.145 or 659A.421 or discrimination un-
8 der federal housing law. The commissioner shall dismiss a complaint alleging
9 an unlawful practice under ORS 659A.145 or 659A.421 or discrimination un-
10 der federal housing law if the commissioner finds no substantial evidence
11 that an unlawful practice or discriminatory housing practice has occurred
12 or is about to occur.

13 (3) Except as provided in this section, all authority of the commissioner
14 to conduct investigations or other proceedings to resolve a complaint filed
15 under ORS 659A.820 ceases one year after the complaint is filed unless the
16 commissioner has issued a finding of substantial evidence under ORS
17 659A.835 during the one-year period. Unless it is impracticable to do so, the
18 commissioner shall make a final administrative disposition of a complaint
19 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimi-
20 nation under federal housing law no later than one year after receipt of the
21 complaint.

22 (4) The authority of the commissioner to conduct investigations or other
23 proceedings to resolve a complaint filed under ORS 659A.820 alleging an
24 unlawful practice under ORS 659A.403, [*or*] 659A.406 **or 652.220** continues
25 until the filing of a civil action by the complainant or until the commis-
26 sioner dismisses the proceedings, enters into a settlement agreement or en-
27 ters a final order in the matter after a hearing under ORS 659A.850.

28 (5) The authority of the commissioner to conduct investigations or other
29 proceedings to resolve a complaint filed under ORS 659A.820 alleging an
30 unlawful practice under ORS 659A.145 or 659A.421 or discrimination under

1 federal housing law does not cease upon the filing of a civil action by the
2 complainant, but ceases upon the commencement of a trial in the civil
3 action.

4 (6) The authority of the commissioner to conduct investigations or other
5 proceedings to resolve a complaint filed under ORS 659A.820 alleging a vio-
6 lation of ORS 659A.145 or 659A.421 or 659A.406 does not cease under sub-
7 section (3) of this section if the issuance of a finding of substantial evidence
8 under ORS 659A.835 within the time allowed under subsection (3) of this
9 section is not practicable. The commissioner shall notify the parties in
10 writing of the reasons that the issuance of substantial evidence cannot be
11 made within the time allowed.

12 (7) Nothing in this section affects the ability of the commissioner to en-
13 force any order entered by the commissioner or to enforce any settlement
14 agreement signed by a representative of the commissioner.

15 **SECTION 9.** ORS 659A.875 is amended to read:

16 659A.875. (1) Except as provided in subsection (2) of this section, a civil
17 action under ORS 659A.885 alleging an unlawful employment practice must
18 be commenced within one year after the occurrence of the unlawful employ-
19 ment practice unless a complaint has been timely filed under ORS 659A.820.

20 (2) A person who has filed a complaint under ORS 659A.820 must com-
21 mence a civil action under ORS 659A.885 within 90 days after a 90-day notice
22 is mailed to the complainant under ORS 659A.880. This subsection does not
23 apply to a complainant alleging an unlawful practice under ORS 659A.145
24 or 659A.421 or discrimination under federal housing law.

25 (3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must
26 be commenced not later than two years after the occurrence or the termi-
27 nation of the unlawful practice, or within two years after the breach of any
28 settlement agreement entered into under ORS 659A.840, whichever occurs
29 last. The two-year period shall not include any time during which an ad-
30 ministrative proceeding was pending with respect to the unlawful practice.

1 (4) A civil action under ORS 659A.885 alleging an unlawful practice in
2 violation of ORS 659A.403 or 659A.406 must be commenced within one year
3 of the occurrence of the unlawful practice.

4 (5) The notice of claim required under ORS 30.275 must be given in any
5 civil action under ORS 659A.885 against a public body, as defined in ORS
6 30.260, or any officer, employee or agent of a public body as defined in ORS
7 30.260.

8 (6) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885
9 against a public body, as defined in ORS 30.260, or any officer, employee or
10 agent of a public body as defined in ORS 30.260, based on an unlawful em-
11 ployment practice must be commenced within one year after the occurrence
12 of the unlawful employment practice unless a complaint has been timely filed
13 under ORS 659A.820.

14 **(7) For the purpose of time limitations, a compensation practice**
15 **that is unlawful under this chapter occurs each time compensation is**
16 **paid pursuant to a discriminatory compensation decision or other**
17 **practice.**

18 **SECTION 10.** ORS 659A.885, as amended by section 5, chapter 73, Oregon
19 Laws 2016, is amended to read:

20 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice
21 specified in subsection (2) of this section may file a civil action in circuit
22 court. In any action under this subsection, the court may order injunctive
23 relief and any other equitable relief that may be appropriate, including but
24 not limited to reinstatement or the hiring of employees with or without back
25 pay. A court may order back pay in an action under this subsection only for
26 the two-year period immediately preceding the filing of a complaint under
27 ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries,
28 or if a complaint was not filed before the action was commenced, the two-
29 year period immediately preceding the filing of the action. In any action
30 under this subsection, the court may allow the prevailing party costs and

1 reasonable attorney fees at trial and on appeal. Except as provided in sub-
2 section (3) of this section:

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

5 (b) Upon any appeal of a judgment in an action under this subsection, the
6 appellate court shall review the judgment pursuant to the standard estab-
7 lished by ORS 19.415 (3).

8 (2) An action may be brought under subsection (1) of this section alleging
9 a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
10 475B.233, 476.574, **652.220**, 652.355, 653.060, 653.601 to 653.661, 659.852,
11 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082,
12 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199,
13 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to
14 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
15 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

16 (3) In any action under subsection (1) of this section alleging a violation
17 of ORS 25.337, 25.424, **652.220**, **652.355**, 659.852, 659A.030, 659A.040, 659A.043,
18 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203,
19 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, **659A.355**,
20 659A.421, 653.547 or 653.549:

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

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

25 (c) Upon appeal of any judgment finding a violation, the appellate court
26 shall review the judgment pursuant to the standard established by ORS
27 19.415 (1); and

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

29 **(4) Notwithstanding ORS 31.730, in an action under subsection (1)**
30 **of this section alleging a violation of ORS 652.220, the court may award**

1 **punitive damages if:**

2 **(a) It is proven by clear and convincing evidence that an employer**
3 **has engaged in fraud, acted with malice or acted with willful and**
4 **wanton misconduct; and**

5 **(b) An employer was previously found in a proceeding under this**
6 **section or under ORS 659A.850 to have violated ORS 652.220.**

7 **(5) In any action under subsection (1) of this section alleging a vi-**
8 **olation of ORS 652.220, the court may award back pay only for the**
9 **two-year period immediately preceding the filing of the action and may**
10 **allow the costs and reasonable attorney fees, but may not award**
11 **compensatory or punitive damages if an employer can show, within**
12 **three years before the date that the employee files the action, that the**
13 **employer:**

14 **(a) Has completed an equal-pay analysis of its pay practices in good**
15 **faith that was:**

16 **(A) Reasonable in detail and in scope in light of the size of the**
17 **employer; and**

18 **(B) Related to the protected class asserted by the plaintiff in the**
19 **action; and**

20 **(b) Has eliminated wage differentials for the protected class as-**
21 **serted by the plaintiff and any other protected class that were identi-**
22 **fied during the equal-pay analysis.**

23 **(6) Evidence of an equal-pay analysis undertaken in accordance**
24 **with subsection (5) of this section is inadmissible in any other pro-**
25 **ceeding.**

26 **(7) Information that an employer has not completed an equal-pay**
27 **analysis may not be used as evidence of a violation of ORS 652.220 in**
28 **an action under subsection (1) of this section alleging a violation of**
29 **ORS 652.220.**

30 **[(4)] (8) In any action under subsection (1) of this section alleging a vio-**

1 lation of ORS [652.355 or] 653.060, the court may award, in addition to the
2 relief authorized under subsection (1) of this section, compensatory damages
3 or \$200, whichever is greater.

4 [(5)] (9) In any action under subsection (1) of this section alleging a vio-
5 lation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition
6 to the relief authorized under subsection (1) of this section, compensatory
7 damages or \$250, whichever is greater.

8 [(6)] (10) In any action under subsection (1) of this section alleging a vi-
9 olation of ORS 10.090 or 10.092, the court may award, in addition to the relief
10 authorized under subsection (1) of this section, a civil penalty in the amount
11 of \$720.

12 [(7)] (11) Any individual against whom any distinction, discrimination or
13 restriction on account of race, color, religion, sex, sexual orientation, na-
14 tional origin, marital status or age, if the individual is 18 years of age or
15 older, has been made by any place of public accommodation, as defined in
16 ORS 659A.400, by any employee or person acting on behalf of the place or
17 by any person aiding or abetting the place or person in violation of ORS
18 659A.406 may bring an action against the operator or manager of the place,
19 the employee or person acting on behalf of the place or the aider or abettor
20 of the place or person. Notwithstanding subsection (1) of this section, in an
21 action under this subsection:

22 (a) The court may award, in addition to the relief authorized under sub-
23 section (1) of this section, compensatory and punitive damages;

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

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

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

30 (e) The court may award reasonable attorney fees and expert witness fees

1 incurred by a defendant who prevails only if the court determines that the
2 plaintiff had no objectively reasonable basis for asserting a claim or no
3 reasonable basis for appealing an adverse decision of a trial court; and

4 (f) Upon any appeal of a judgment under this subsection, the appellate
5 court shall review the judgment pursuant to the standard established by ORS
6 19.415 (1).

7 [(8)] (12) When the commissioner or the Attorney General has reasonable
8 cause to believe that a person or group of persons is engaged in a pattern
9 or practice of resistance to the rights protected by ORS 659A.145 or 659A.421
10 or federal housing law, or that a group of persons has been denied any of the
11 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
12 commissioner or the Attorney General may file a civil action on behalf of
13 the aggrieved persons in the same manner as a person or group of persons
14 may file a civil action under this section. In a civil action filed under this
15 subsection, the court may assess against the respondent, in addition to the
16 relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

19 [(9)] (13) In any action under subsection (1) of this section alleging a vi-
20 olation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
21 housing law, when the commissioner is pursuing the action on behalf of an
22 aggrieved complainant, the court shall award reasonable attorney fees to the
23 commissioner if the commissioner prevails in the action. The court may
24 award reasonable attorney fees and expert witness fees incurred by a de-
25 fendant that prevails in the action if the court determines that the commis-
26 sioner had no objectively reasonable basis for asserting the claim or for
27 appealing an adverse decision of the trial court.

28 [(10)] (14) In an action under subsection (1) or [(8)] (12) of this section
29 alleging a violation of ORS 659A.145 or 659A.421 or discrimination under
30 federal housing law:

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

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

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

6 (b) An aggrieved person in regard to issues to be determined in an action
7 may intervene as of right in the action. The Attorney General may intervene
8 in the action if the Attorney General certifies that the case is of general
9 public importance. The court may allow an intervenor prevailing party costs
10 and reasonable attorney fees at trial and on appeal.

11 **SECTION 11. An employee may not commence an action under ORS
12 652.230 for a violation of ORS 652.220 on or after January 1, 2019.**

13 **SECTION 12. ORS 652.230 is repealed.**

14 **SECTION 13. The repeal of ORS 652.230 by section 12 of this 2017
15 Act does not relieve an employer of any obligations or an employee
16 of any rights with respect to an action filed under ORS 652.230 before
17 the operative date specified in section 14 of this 2017 Act.**

18 **SECTION 14. The amendments to ORS 30.275, 652.210, 652.220,
19 652.990, 659A.820, 659A.825, 659A.830, 659A.875 and 659A.885 by sections
20 1, 2 and 4 to 10 of this 2017 Act and the repeal of ORS 652.230 by section
21 12 of this 2017 Act become operative on January 1, 2019.**

22 **SECTION 15. This 2017 Act takes effect on the 91st day after the
23 date on which the 2017 regular session of the Seventy-ninth Legislative
24 Assembly adjourns sine die.**

25
26

WORK DRAFT
NOT FOR DISTRIBUTION