



Oregon Bureau of Labor and Industries

DATE: January 30, 2017
TO: Senate Committee on Workforce, House Committee on Business and Labor
FROM: Paloma Sparks, Legislative Director, Bureau of Labor and Industries
RE: SB 380 (2015) Report

Section 3 of Senate Bill 380 (from the 2015 Regular Session of the 78th Oregon Legislative Assembly) directs the Commissioner of the Bureau of Labor and Industries (BOLI) to 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 the 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 the 2015 Act.

SB 380 addressed the enforcement of housing discrimination complaints alleging an unlawful practice under ORS 659A.145 or 659A.421, and granted the commissioner prosecutorial discretion in determining which housing complaints to pursue in contested case hearings and circuit court litigation.

SB 380 became effective on June 30, 2015. In the two-year period prior to that date, there were 313 complaints before the commissioner alleging an unlawful practice under ORS 659A.145 or 659A.421. (This includes 91 cases filed prior to the two-year period, but remaining open during some portion of the two-year period preceding June 30, 2015.)

Cases resolved prior to the effective date of SB 380

222 of the open cases were resolved prior to the effective date of SB 380. Of those cases, 16 were referred to BOLI's Administrative Prosecution Unit (APU) prior to resolution. Two of the APU referred cases were withdrawn by the complainants, two were settled via final orders on informal disposition, and 12 were elected to court.

117 cases (52.7%) were dismissed by the Civil Rights Division based on a lack of substantial evidence. 56 cases were conciliated prior to an investigative determination; 19 cases were withdrawn by the complainant, 8 cases were closed based on the complainant's failure to cooperate, 5 cases were administratively closed, and one case was conciliated after issuance of an investigative determination.

Cases unresolved as of the effective date of SB 380

Of the 91 cases¹ that remained before the commissioner as of June 30, 2015, 37 cases (40.7%) were dismissed by the Civil Rights Division based on a lack of substantial evidence. 10 cases were conciliated prior to an investigative determination and 5 cases were conciliated after an investigative determination; 11 cases were withdrawn by the complainant, 4 cases were closed based on the complainant's failure to cooperate, and 1 case was administratively closed. 5 cases remain in investigation, while 2 cases have resulted in substantial evidence findings and are currently in conciliation status.

16 cases were referred to the APU prior to resolution. The APU issued formal charges for 14 of those cases, is currently reviewing one case, and declined to issue formal charges in another. Of the cases in which formal charges were issued, the agency is pursuing 3 of those cases in a contested case hearing, while 11 cases were elected to court. All of the cases that elected to court prior to June 30, 2015, were eventually settled, with the exception of one case which is currently pending review by the 9th Circuit Court of Appeals. Two of the cases that had been transferred to the APU after investigation elected to civil court after June 30, 2015. BOLI declined to pursue one of those cases, but is continuing to pursue the other.

Summary

BOLI believes that the amendment made by SB 380 has been a success, and should be made permanent. BOLI continues to receive and investigate a steady number of housing discrimination complaints, and we have continued to pursue enforcement of housing protections under ORS chapter 659A, but now we have the critical discretion to resolve cases objectively, and to determine which cases merit risking the state's resources in litigation.

¹ This number (91) happens to be the same count as the number of cases filed more than two years prior to June 30, 2015, but it represents a separate pool of cases. There is some overlap between the groups, but they are not identical.