

# House Bill 3328

Sponsored by Representatives EVANS, ESQUIVEL; Representatives ALONSO LEON, BOONE, BYNUM, LIVELY, MEEK, NOBLE, NOSSE, POWER, WITT

## 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. Limits eligibility for preference to veteran who applies for position within 10 years of discharge or release from service in Armed Forces of United States. Requires evidence of eligibility and disability to be provided at time of application. Sets forth processes for granting one or more preferences.

Allows public employer to exercise discretion to not appoint qualified veteran or disabled veteran to civil service position based solely on veteran's or disabled veteran's merits or qualification in final stage of selection process. Requires public employer to provide written reasons for not appointing veteran or disabled veteran to position under certain circumstances.

Requires aggrieved veteran or disabled veteran to exhaust nonjudicial remedies with Bureau of Labor and Industries before filing civil action for unlawful employment practice.

## 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, 659A.320 and 659A.885; and repealing ORS 408.230, 408.235 and  
4 408.237.

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

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

7 408.225. (1) As used in [*ORS 408.225 to 408.237*] **this section and section 4 of this 2017 Act:**

8 (a) **“Application examination” means the selection process utilized by a public employer**  
9 **after the initial application screening of an applicant. An application examination may be**  
10 **scored or unscored and includes, but is not limited to, formal testing, assessments resulting**  
11 **in a score and unscored examinations or assessments such as interviews and reference**  
12 **checks.**

13 [(a)(A)] (b)(A) “Civil service position” means any position for which a hiring or promotion de-  
14 cision is made or required to be made based on the results of a merit based, competitive process that  
15 includes, but is not limited to, consideration of an applicant's or employee's relative ability, knowl-  
16 edge, experience and other skills.

17 (B) A “civil service position” need not be labeled a “civil service position.”

18 [(b)] (c) “Combat zone” means an area designated by the President of the United States by  
19 executive order in which, on the dates designated by executive order, the Armed Forces of the  
20 United States are or have engaged in combat.

21 [(c)] (d) “Disabled veteran” means a veteran who has a disability rating from the United States  
22 Department of Veterans Affairs, a veteran whose discharge or release from active duty was for a  
23 disability incurred or aggravated in the line of duty or a veteran who was awarded the Purple Heart  
24 for wounds received in combat.

25 [(d)] (e) “Honorable conditions” has the meaning given that term in rules adopted by the De-

**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 partment of Veterans' Affairs.

2 (f) "Initial application screening" means a public employer's process to determine  
 3 whether a veteran or disabled veteran applicant for a civil service position meets the mini-  
 4 mum and special qualifications for the position. "Initial application screening" includes an  
 5 evaluation of skills or assessment of responses to supplemental test questions if required in  
 6 the recruitment announcement for the position.

7 (g) "Minimum qualifications" means baseline education, experience or other require-  
 8 ments that an applicant must have in order to be considered for a civil service position by  
 9 a public employer as set forth in rules adopted by the public employer or in the recruitment  
 10 announcement for the position.

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

14 (i) "Special qualifications" means attributes desired by a public employer in an applicant  
 15 for a civil service position that make an applicant more competitive for a position when  
 16 compared to other applicants for the same position who do not possess the special quali-  
 17 fications at all or to the same degree. Special qualifications may be unique to each position  
 18 and may, but are not required to, be set forth in rules adopted by the public employer or in  
 19 the recruitment announcement for the position.

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

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

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

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

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

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

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

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

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

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

41 **SECTION 2. ORS 408.230, 408.235 and 408.237 are repealed.**

42 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS chapter 408.**

43 **SECTION 4. (1)(a) A veteran or disabled veteran is eligible to use the preference provided**  
 44 **for in this section for a civil service position for which the veteran makes application if the**  
 45 **veteran applies for the position within 10 years after discharge or release from service in the**

1 **Armed Forces of the United States. The veteran shall provide evidence of eligibility for the**  
 2 **preference at the time the veteran makes application for the position. Failure to provide**  
 3 **evidence at the time of application will disqualify the veteran from requesting use of the**  
 4 **preference in the public employer's consideration of the veteran's application for the posi-**  
 5 **tion.**

6 **(b) A disabled veteran shall provide evidence of disability from the United States De-**  
 7 **partment of Veterans Affairs at the time the veteran makes application for the position.**  
 8 **Failure to provide evidence of disability at the time of application will disqualify the disabled**  
 9 **veteran from requesting use of the preference in the public employer's consideration of the**  
 10 **disabled veteran's application for the position.**

11 **(2) A public employer shall grant one or more preferences to a veteran or disabled vet-**  
 12 **eran who applies for a vacant civil service position or seeks promotion to a civil service po-**  
 13 **sition with a higher maximum salary rate in the manner set forth in this section.**

14 **(3)(a) Initial application screenings done by public employers must result in a score.**

15 **(b) Upon completion of an initial application screening and determination that a veteran**  
 16 **applicant meets the minimum and special qualifications for the position and, if applicable, is**  
 17 **evaluated to have the necessary skills for the position and adequately responds to any sup-**  
 18 **plemental questions, the public employer shall grant the preference to the veteran as follows:**

19 **(A) The employer shall add five preference points to a veteran's score.**

20 **(B) The employer shall add 10 preference points to a disabled veteran's score.**

21 **(c) After application of preference points under paragraph (b) of this subsection, the**  
 22 **public employer shall generate a list of qualified veteran applicants to consider for appoint-**  
 23 **ment.**

24 **(4)(a) Following the initial application screening under subsection (3) of this section, the**  
 25 **public employer shall conduct the employer's application examination process with all quali-**  
 26 **fied veteran applicants on the list and shall apply preferences as described in subsection (5)**  
 27 **of this section.**

28 **(b) Application examination processes may be scored or unscored. If scored, applicants**  
 29 **will be ranked on a 100-point scale. If unscored, applicants must be sorted into hierarchical**  
 30 **levels based on the degree to which applicants possess or demonstrate desired attributes or**  
 31 **meet other criteria for the position.**

32 **(c) If the application examination process includes one or more interviews, the public**  
 33 **employer may choose one of the following:**

34 **(A) To interview all veteran applicants on the list.**

35 **(B) To interview a selected group of veteran applicants who most closely match the**  
 36 **public employer's purposes in filling the position. This group may be considered along with**  
 37 **nonveteran applicants who closely match the purposes of the employer in filling the position.**

38 **(5) After the application examination process is completed, the preference shall be applied**  
 39 **as follows:**

40 **(a) For scored application examinations, the public employer shall add five points to a**  
 41 **veteran's score or 10 points to a disabled veteran's score.**

42 **(b) For unscored application examinations, the public employer shall advance a veteran**  
 43 **one level or advance a disabled veteran two levels.**

44 **(6) The application of preferences in the manner described in this section is not a re-**  
 45 **quirement that the public employer appoint a veteran or disabled veteran to a civil service**

1 **position.**

2 **(7)(a) A public employer shall appoint an otherwise qualified veteran or disabled veteran**  
 3 **to a vacant civil service position if the results of a veteran’s or disabled veteran’s application**  
 4 **examination, when combined with the veteran’s or disabled veteran’s preferences, are equal**  
 5 **to or higher than the results of an application examination for an applicant who is not a**  
 6 **veteran or disabled veteran.**

7 **(b) Notwithstanding paragraph (a) of this subsection, a public employer may, at the time**  
 8 **of making a final hiring or promotion decision in the selection process, exercise discretion**  
 9 **to not appoint an otherwise qualified veteran or disabled veteran described in paragraph (a)**  
 10 **of this subsection based solely on the veteran’s or disabled veteran’s merits or qualifications**  
 11 **with respect to the vacant civil service position. A public employer that exercises discretion**  
 12 **under this paragraph shall provide to the veteran or disabled veteran written reasons for the**  
 13 **employer’s decision not to appoint the veteran or disabled veteran to the position within a**  
 14 **reasonable time after making the decision.**

15 **(8) Except as otherwise provided in subsection (7)(b) of this section, if a public employer**  
 16 **does not appoint a veteran or disabled veteran to a vacant civil service position, upon written**  
 17 **request of the veteran or disabled veteran, the employer, in writing, shall provide the**  
 18 **employer’s reasons for the decision not to appoint the veteran or disabled veteran to the**  
 19 **position.**

20 **(9) Violation of this section is an unlawful employment practice.**

21 **(10) A veteran or disabled veteran claiming to be aggrieved by a violation of this section**  
 22 **may file a verified written complaint with the Commissioner of the Bureau of Labor and In-**  
 23 **dustry in accordance with ORS 659A.820.**

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

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

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

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

39 **(2)(a) An action may be brought under subsection (1) of this section alleging a violation of ORS**  
 40 **10.090, 10.092, 25.337, 25.424, 171.120, [408.230, 408.237 (2),] 475B.233, 476.574, 652.355, 653.060,**  
 41 **653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082,**  
 42 **659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,**  
 43 **659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,**  
 44 **659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549 or section**  
 45 **4 of this 2017 Act.**

1           **(b) Before commencing an action under subsection (1) of this section alleging a violation**  
 2 **of section 4 of this 2017 Act, the person shall exhaust all available nonjudicial remedies under**  
 3 **ORS 659A.820 to 659A.865.**

4           (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 5 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,  
 6 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549:

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

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

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

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

13          (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or  
 14 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,  
 15 compensatory damages or \$200, whichever is greater.

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

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

22          (7) Any individual against whom any distinction, discrimination or restriction on account of  
 23 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
 24 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
 25 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
 26 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
 27 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
 28 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
 29 section:

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

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

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

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

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

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

43          (8) When the commissioner or the Attorney General has reasonable cause to believe that a  
 44 person or group of persons is engaged in a pattern or practice of resistance to the rights protected  
 45 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied

1 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner  
 2 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same  
 3 manner as a person or group of persons may file a civil action under this section. In a civil action  
 4 filed under this subsection, the court may assess against the respondent, in addition to the relief  
 5 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

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

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

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

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

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

25 **SECTION 6.** ORS 659A.320 is amended to read:

26 659A.320. (1) Except as provided in subsection (2) of this section, it is an unlawful employment  
 27 practice for an employer to obtain or use for employment purposes information contained in the  
 28 credit history of an applicant for employment or an employee, or to refuse to hire, discharge, de-  
 29 mote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard  
 30 to promotion, compensation or the terms, conditions or privileges of employment based on informa-  
 31 tion in the credit history of the applicant or employee.

32 (2) Subsection (1) of this section does not apply to:

33 (a) Employers that are federally insured banks or credit unions;

34 (b) Employers that are required by state or federal law to use individual credit history for em-  
 35 ployment purposes;

36 (c) The application for employment or the employment of a public safety officer who will be or  
 37 who is:

38 (A) A member of a law enforcement unit;

39 (B) Employed as a peace officer commissioned by a city, port, school district, mass transit dis-  
 40 trict, county, university under ORS 352.121 or 353.125, Indian reservation, the Superintendent of  
 41 State Police under ORS 181A.340, the Criminal Justice Division of the Department of Justice, the  
 42 Oregon State Lottery Commission or the Governor or employed as a regulatory specialist by the  
 43 Oregon Liquor Control Commission; and

44 (C) Responsible for enforcing the criminal laws of this state or laws or ordinances related to  
 45 airport security; or

1 (d) The obtainment or use by an employer of information in the credit history of an applicant  
2 or employee because the information is substantially job-related and the employer's reasons for the  
3 use of such information are disclosed to the employee or prospective employee in writing.

4 (3) An employee or an applicant for employment may file a complaint under ORS 659A.820 for  
5 violations of this section and may bring a civil action under ORS 659A.885 and recover the relief  
6 as provided by ORS 659A.885 (1) and (2)(a).

7 (4) As used in this section, "credit history" means any written or other communication of any  
8 information by a consumer reporting agency that bears on a consumer's creditworthiness, credit  
9 standing or credit capacity.

10 **SECTION 7. Section 4 of this 2017 Act, the amendments to ORS 408.225, 659A.320 and**  
11 **659A.885 by sections 1, 5 and 6 of this 2017 Act and the repeal of ORS 408.230, 408.235 and**  
12 **408.237 by section 2 of this 2017 Act apply to selection processes for civil service positions**  
13 **and eligibility lists for civil service positions undertaken by public employers on or after the**  
14 **effective date of this 2017 Act.**

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