

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 301**

1 In line 2 of the printed bill, after “practices;” delete the rest of the line
2 and insert “creating new provisions; amending ORS 475B.410, 659A.124,
3 659A.139 and 659A.885; and prescribing an effective date.”.

4 Delete lines 4 through 15 and insert:

5 **“SECTION 1. Section 2 of this 2017 Act is added to and made a part**
6 **of ORS chapter 659A.**

7 **“SECTION 2. (1) It is an unlawful employment practice for an em-**
8 **ployer to refuse to employ an individual or to discharge or otherwise**
9 **penalize an individual because:**

10 **“(a) The individual is a registry identification cardholder, as defined**
11 **in ORS 475B.410; or**

12 **“(b) The individual is a registry identification cardholder, as defined**
13 **in ORS 475B.410, and the individual tested positive for cannabis.**

14 **“(2) It is an unlawful employment practice for an employer to dis-**
15 **criminate against an employee with respect to compensating the em-**
16 **ployee or with respect to the terms, conditions or privileges of**
17 **employment because:**

18 **“(a) The employee is a registry identification cardholder, as defined**
19 **in ORS 475B.410; or**

20 **“(b) The employee is a registry identification cardholder, as defined**
21 **in ORS 475B.410, and the employee tested positive for cannabis.**

1 **“(3) This section does not apply to an employment practice related**
2 **to:**

3 **“(a) The performance of work while impaired;**

4 **“(b) The essence of the employer’s business, provided that:**

5 **“(A) All users or substantially all users of cannabis or cannabis-**
6 **derived products would be unable to perform their work duties safely**
7 **and efficiently; or**

8 **“(B) Some users of cannabis or cannabis-derived products would be**
9 **unable to perform their work duties safely and efficiently, and deter-**
10 **mining who is a user of cannabis or cannabis-derived products on an**
11 **individual basis is impossible or impracticable;**

12 **“(c) An applicable collective bargaining agreement that prohibits**
13 **using cannabis or cannabis-derived products during nonworking hours;**

14 **“(d) A federal law or regulation requiring an employer to test em-**
15 **ployees or prospective employees for use of cannabis or cannabis-**
16 **derived products; or**

17 **“(e) A contract between an employer and the federal government**
18 **under which the receipt of federal moneys is contingent on the em-**
19 **ployer having a drug-free workplace.**

20 **“SECTION 3.** ORS 659A.124 is amended to read:

21 **“659A.124. (1) Subject to the provisions of subsection (2) of this section,**
22 **the protections of ORS 659A.112 do not apply to any job applicant or em-**
23 **ployee who is currently engaging in the illegal use of drugs if the employer**
24 **takes action based on that conduct.**

25 **“(2) The protections of ORS 659A.112 apply to the following individuals:**

26 **“(a) An individual who:**

27 **“(A) Has successfully completed a supervised drug rehabilitation**
28 **program; and**

29 **“(B)(i) Is no longer engaging in the illegal use of drugs; or**

30 **“(ii) Has otherwise been rehabilitated successfully and is no longer en-**

1 gaging in the illegal use of drugs.

2 “(b) An individual who is participating in a supervised rehabilitation
3 program and is no longer engaging in the illegal use of drugs.

4 “(c) An individual who is erroneously regarded as engaging in the illegal
5 use of drugs.

6 “(3) An employer may adopt or administer reasonable policies or proce-
7 dures, including but not limited to drug testing, designed to ensure that an
8 individual described in subsection (2)(a) or (b) of this section is no longer
9 engaging in the illegal use of drugs.

10 “(4) **This section does not apply to a registry identification**
11 **cardholder, as that term is defined in ORS 475B.410.**

12 “**SECTION 4.** ORS 659A.139 is amended to read:

13 “659A.139. (1) ORS 659A.103 to 659A.144 shall be construed to the extent
14 possible in a manner that is consistent with any similar provisions of the
15 federal Americans with Disabilities Act of 1990, as amended by the federal
16 ADA Amendments Act of 2008 and as otherwise amended, **except to the**
17 **extent that ORS 659A.103 to 659A.144 conflict with ORS 659A.124 (1).**

18 “(2) The determination of whether an individual has a disability as pro-
19 vided in ORS 659A.104 (1) shall be construed in favor of broad coverage of
20 individuals under ORS 659A.103 to 659A.145, to the maximum extent permit-
21 ted by the terms of ORS 659A.103 to 659A.145.

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

24 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
25 tice specified in subsection (2) of this section may file a civil action in cir-
26 cuit court. In any action under this subsection, the court may order
27 injunctive relief and any other equitable relief that may be appropriate, in-
28 cluding but not limited to reinstatement or the hiring of employees with or
29 without back pay. A court may order back pay in an action under this sub-
30 section only for the two-year period immediately preceding the filing of a

1 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
2 bor and Industries, or if a complaint was not filed before the action was
3 commenced, the two-year period immediately preceding the filing of the
4 action. In any action under this subsection, the court may allow the pre-
5 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
6 cept as provided in subsection (3) of this section:

7 “(a) The judge shall determine the facts in an action under this sub-
8 section; and

9 “(b) Upon any appeal of a judgment in an action under this subsection,
10 the appellate court shall review the judgment pursuant to the standard es-
11 tablished by ORS 19.415 (3).

12 “(2) An action may be brought under subsection (1) of this section alleg-
13 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
14 (2), 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030,
15 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103
16 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
17 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,
18 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320,
19 659A.355, 659A.421, 653.547 or 653.549 **or section 2 of this 2017 Act.**

20 “(3) In any action under subsection (1) of this section alleging a violation
21 of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
22 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
23 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or
24 653.549 **or section 2 of this 2017 Act:**

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

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

29 “(c) Upon appeal of any judgment finding a violation, the appellate court
30 shall review the judgment pursuant to the standard established by ORS

1 19.415 (1); and

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

3 “(4) In any action under subsection (1) of this section alleging a violation
4 of ORS 652.355 or 653.060, the court may award, in addition to the relief
5 authorized under subsection (1) of this section, compensatory damages or
6 \$200, whichever is greater.

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

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

15 “(7) Any individual against whom any distinction, discrimination or re-
16 striction on account of race, color, religion, sex, sexual orientation, national
17 origin, marital status or age, if the individual is 18 years of age or older,
18 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
20 person aiding or abetting the place or person in violation of ORS 659A.406
21 may bring an action against the operator or manager of the place, the em-
22 ployee or person acting on behalf of the place or the aider or abettor of the
23 place or person. Notwithstanding subsection (1) of this section, in an action
24 under this subsection:

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

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

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

1 “(d) The court shall award reasonable attorney fees to a prevailing
2 plaintiff;

3 “(e) The court may award reasonable attorney fees and expert witness fees
4 incurred by a defendant who prevails only if the court determines that the
5 plaintiff had no objectively reasonable basis for asserting a claim or no
6 reasonable basis for appealing an adverse decision of a trial court; and

7 “(f) Upon any appeal of a judgment under this subsection, the appellate
8 court shall review the judgment pursuant to the standard established by ORS
9 19.415 (1).

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

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

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

22 “(9) In any action under subsection (1) of this section alleging a violation
23 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing
24 law, when the commissioner is pursuing the action on behalf of an aggrieved
25 complainant, the court shall award reasonable attorney fees to the commis-
26 sioner if the commissioner prevails in the action. The court may award rea-
27 sonable attorney fees and expert witness fees incurred by a defendant that
28 prevails in the action if the court determines that the commissioner had no
29 objectively reasonable basis for asserting the claim or for appealing an ad-
30 verse decision of the trial court.

1 “(10) In an action under subsection (1) or (8) of this section alleging a
2 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
3 ing law:

4 “(a) ‘Aggrieved person’ includes a person who believes that the person:

5 “(A) Has been injured by an unlawful practice or discriminatory housing
6 practice; or

7 “(B) Will be injured by an unlawful practice or discriminatory housing
8 practice that is about to occur.

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

14 **“SECTION 6.** ORS 475B.410 is amended to read:

15 “475B.410. As used in ORS 475B.400 to 475B.525:

16 “(1) ‘Attending physician’ means a physician licensed under ORS chapter
17 677 who has primary responsibility for the care and treatment of a person
18 diagnosed with a debilitating medical condition.

19 “(2) ‘Cannabinoid’ means any of the chemical compounds that are the
20 active constituents of marijuana.

21 “(3) ‘Cannabinoid concentrate’ means a substance obtained by separating
22 cannabinoids from marijuana by:

23 “(a) A mechanical extraction process;

24 “(b) A chemical extraction process using a nonhydrocarbon-based solvent,
25 such as vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or
26 ethanol;

27 “(c) A chemical extraction process using the hydrocarbon-based solvent
28 carbon dioxide, provided that the process does not involve the use of high
29 heat or pressure; or

30 “(d) Any other process identified by the Oregon Health Authority, in

1 consultation with the Oregon Liquor Control Commission, by rule.

2 “(4) ‘Cannabinoid edible’ means food or potable liquid into which a
3 cannabinoid concentrate, cannabinoid extract or dried leaves or flowers of
4 marijuana have been incorporated.

5 “(5) ‘Cannabinoid extract’ means a substance obtained by separating
6 cannabinoids from marijuana by:

7 “(a) A chemical extraction process using a hydrocarbon-based solvent,
8 such as butane, hexane or propane;

9 “(b) A chemical extraction process using the hydrocarbon-based solvent
10 carbon dioxide, if the process uses high heat or pressure; or

11 “(c) Any other process identified by the Oregon Health Authority, in
12 consultation with the Oregon Liquor Control Commission, by rule.

13 “(6) ‘Debilitating medical condition’ means:

14 “(a) Cancer, glaucoma, a degenerative or pervasive neurological condi-
15 tion, positive status for human immunodeficiency virus or acquired immune
16 deficiency syndrome, or a side effect related to the treatment of those med-
17 ical conditions;

18 “(b) A medical condition or treatment for a medical condition that
19 produces, for a specific patient, one or more of the following:

20 “(A) Cachexia;

21 “(B) Severe pain;

22 “(C) Severe nausea;

23 “(D) Seizures, including seizures caused by epilepsy; or

24 “(E) Persistent muscle spasms, including spasms caused by multiple
25 sclerosis;

26 “(c) Post-traumatic stress disorder; or

27 “(d) Any other medical condition or side effect related to the treatment
28 of a medical condition adopted by the Oregon Health Authority by rule or
29 approved by the authority pursuant to a petition filed under ORS 475B.517.

30 “(7)(a) ‘Delivery’ has the meaning given that term in ORS 475.005.

1 “(b) ‘Delivery’ does not include transfer of marijuana by a registry iden-
2 tification cardholder to another registry identification cardholder if no con-
3 sideration is paid for the transfer.

4 “(8)(a) ‘Designated primary caregiver’ means an individual:

5 “(A) Who is 18 years of age or older;

6 “(B) Who has significant responsibility for managing the well-being of a
7 person who has been diagnosed with a debilitating medical condition; and

8 “(C) Who is designated as the person responsible for managing the well-
9 being of a person who has been diagnosed with a debilitating medical con-
10 dition on that person’s application for a registry identification card or in
11 other written notification submitted to the authority.

12 “(b) ‘Designated primary caregiver’ does not include a person’s attending
13 physician.

14 “(9) ‘High heat’ means a temperature exceeding 180 degrees.

15 “(10) ‘Immature marijuana plant’ means a marijuana plant that is not
16 flowering.

17 “(11)(a) ‘Marijuana’ means the plant Cannabis family Cannabaceae, any
18 part of the plant Cannabis family Cannabaceae and the seeds of the plant
19 Cannabis family Cannabaceae.

20 “(b) ‘Marijuana’ does not include industrial hemp, as defined in ORS
21 571.300.

22 “(12) ‘Marijuana grow site’ means a location registered under ORS
23 475B.420 where marijuana is produced for use by a registry identification
24 cardholder.

25 “(13) ‘Marijuana processing site’ means a marijuana processing site reg-
26 istered under ORS 475B.435 or a site for which an applicant has submitted
27 an application for registration under ORS 475B.435.

28 “(14) ‘Mature marijuana plant’ means a marijuana plant that is not an
29 immature marijuana plant.

30 “(15)(a) ‘Medical cannabinoid product’ means a cannabinoid edible and

1 any other product intended for human consumption or use, including a
2 product intended to be applied to a person’s skin or hair, that contains
3 cannabinoids or dried leaves or flowers of marijuana.

4 “(b) ‘Medical cannabinoid product’ does not include:

5 “(A) Usable marijuana by itself;

6 “(B) A cannabinoid concentrate by itself;

7 “(C) A cannabinoid extract by itself; or

8 “(D) Industrial hemp, as defined in ORS 571.300.

9 “(16) ‘Medical marijuana dispensary’ means a medical marijuana
10 dispensary registered under ORS 475B.450 or a site for which an applicant
11 has submitted an application for registration under ORS 475B.450.

12 “(17) ‘Medical use of marijuana’ means the production, processing, pos-
13 session, delivery or administration of marijuana, or use of paraphernalia
14 used to administer marijuana, to mitigate the symptoms or effects of a de-
15 bilitating medical condition.

16 “(18) ‘Person designated to produce marijuana by a registry identification
17 cardholder’ means a person designated to produce marijuana by a registry
18 identification cardholder under ORS 475B.420 who produces marijuana for a
19 registry identification cardholder at an address other than the address where
20 the registry identification cardholder resides or at an address where more
21 than 12 mature marijuana plants are produced.

22 “(19) ‘Process’ means the compounding or conversion of marijuana into
23 medical cannabinoid products, cannabinoid concentrates or cannabinoid ex-
24 tracts.

25 “(20) ‘Production’ means:

26 “(a) Planting, cultivating, growing, trimming or harvesting marijuana; or

27 “(b) Drying marijuana leaves or flowers.

28 “(21) ‘Registry identification card’ means a document issued by the
29 Oregon Health Authority under ORS 475B.415 that identifies a person [*au-*
30 *thorized to engage in the medical use of marijuana*] **to whom ORS 475B.400**

1 **to 475B.525 apply** and, if the person has a designated primary caregiver
2 under ORS 475B.418, the person’s designated primary caregiver.

3 “(22) ‘Registry identification cardholder’ means a person to whom a reg-
4 istry identification card has been issued under ORS 475B.415.

5 “(23)(a) ‘Usable marijuana’ means the dried leaves and flowers of
6 marijuana.

7 “(b) ‘Usable marijuana’ does not include:

8 “(A) The seeds, stalks and roots of marijuana; or

9 “(B) Waste material that is a by-product of producing marijuana.

10 “(24) ‘Written documentation’ means a statement signed by the attending
11 physician of a person diagnosed with a debilitating medical condition or
12 copies of the person’s relevant medical records.

13 **“SECTION 7. This 2017 Act takes effect on the 91st day after the**
14 **date on which the 2017 regular session of the Seventy-ninth Legislative**
15 **Assembly adjourns sine die.”.**

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