

## HOUSE AMENDMENTS TO HOUSE BILL 2341

By COMMITTEE ON BUSINESS AND LABOR

April 15

1 On page 1 of the printed bill, delete lines 5 through 26 and delete pages 2 through 7 and insert:  
2 **“SECTION 1. Sections 2 to 4 of this 2019 Act are added to and made a part of ORS**  
3 **chapter 659A.**

4 **“SECTION 2. For purposes of section 3 of this 2019 Act, reasonable accommodation may**  
5 **include, but need not be limited to:**

6 **“(1) Acquisition or modification of equipment or devices;**

7 **“(2) More frequent or longer break periods or periodic rest;**

8 **“(3) Assistance with manual labor; or**

9 **“(4) Modification of work schedules or job assignments.**

10 **“SECTION 3. (1) It is an unlawful employment practice for an employer, because of**  
11 **known limitations related to pregnancy, childbirth or a related medical condition, including**  
12 **but not limited to lactation, of a job applicant or an employee, to:**

13 **“(a) Deny employment opportunities to an applicant or employee if the denial is based**  
14 **on the need of the employer to make reasonable accommodation to the known limitations.**

15 **“(b) Fail or refuse to make reasonable accommodation to the known limitations, unless**  
16 **the employer can demonstrate that the accommodation would impose an undue hardship on**  
17 **the operation of the business of the employer.**

18 **“(c) Take an adverse employment action or in any manner discriminate or retaliate**  
19 **against an applicant or an employee, with respect to hire or tenure, or any other term or**  
20 **condition of employment, because the applicant or employee has inquired about, requested**  
21 **or used a reasonable accommodation under this section.**

22 **“(d) Require an applicant or an employee to accept a reasonable accommodation that is**  
23 **unnecessary for the applicant or the employee to perform the essential duties of the job or**  
24 **to accept a reasonable accommodation if the applicant or employee does not have a known**  
25 **limitation.**

26 **“(e) Require an employee to take family leave under ORS 659A.150 to 659A.186, or any**  
27 **other leave, if the employer can make reasonable accommodation to the known limitations.**

28 **“(2)(a) An employer shall post signs that provide notice informing employees of the em-**  
29 **ployment protections under this section, including the right to be free from discrimination**  
30 **because of pregnancy, childbirth and related medical conditions, and the right to reasonable**  
31 **accommodation under this section.**

32 **“(b) The employer shall post the signs in a conspicuous and accessible location in or**  
33 **about the premises where employees work.**

34 **“(c) In addition to posting the signs, the employer shall provide a written copy of the**  
35 **notice to:**

1       “(A) A new employee, at the time of hire;  
2       “(B) Existing employees, within 180 days after the effective date of this 2019 Act; and  
3       “(C) An employee who informs the employer of the employee’s pregnancy, within 10 days  
4 after the employer receives the information.  
5       “(3) The Commissioner of the Bureau of Labor and Industries shall develop training and  
6 education materials that the Bureau of Labor and Industries may use to train and educate  
7 employers and employees regarding the obligations, rights and protections provided in ORS  
8 659A.030 and under this section.  
9       “(4)(a) For purposes of this section, a reasonable accommodation imposes an undue  
10 hardship on the operation of the business of an employer if the reasonable accommodation  
11 requires significant difficulty or expense.  
12       “(b) Whether a reasonable accommodation requires significant difficulty or expense shall  
13 be determined by considering the factors provided in ORS 659A.121 (2).  
14       “(5) An employee who alleges a violation of this section may bring a civil action under  
15 ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and  
16 Industries in the manner provided by ORS 659A.820.  
17       “(6)(a) Nothing in this section shall be construed to preempt, limit, diminish or otherwise  
18 affect any provision of state or federal law relating to discrimination because of sex.  
19       “(b) Nothing in this section shall be construed to limit the remedies or rights under  
20 federal or state law that provide greater or equal protection for employees who are affected  
21 by pregnancy, childbirth or a related medical condition.  
22       “**SECTION 4.** The requirements of section 3 of this 2019 Act apply only to employers who  
23 employ six or more persons.  
24       “**SECTION 5.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and  
25 section 13, chapter 691, Oregon Laws 2017, is amended to read:  
26       “659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
27 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
28 the court may order injunctive relief and any other equitable relief that may be appropriate, in-  
29 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A  
30 court may order back pay in an action under this subsection only for the two-year period imme-  
31 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau  
32 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-  
33 year period immediately preceding the filing of the action. In any action under this subsection, the  
34 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
35 cept 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) An action may be brought under subsection (1) of this section alleging a violation of:  
40       “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,  
41 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
42 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
43 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
44 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
45 659A.318, 659A.320, 659A.355 or 659A.421 or section 3 of this 2019 Act; or

1 “(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

2 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
3 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
4 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
5 659A.290, 659A.318, 659A.355 or 659A.421:

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

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

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

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

12 “(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a  
13 violation of ORS 652.220, the court may award punitive damages if:

14 “(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted  
15 with malice or acted with willful and wanton misconduct; or

16 “(b) An employer was previously adjudicated in a proceeding under this section or under ORS  
17 659A.850 for a violation of ORS 652.220.

18 “(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 **or**  
19 **section 3 of this 2019 Act**, the court may award, in addition to the relief authorized under sub-  
20 section (1) of this section, compensatory damages or \$200, whichever is greater.

21 “(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120,  
22 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)  
23 of this section, compensatory damages or \$250, whichever is greater.

24 “(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or  
25 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,  
26 a civil penalty in the amount of \$720.

27 “(8) Any individual against whom any distinction, discrimination or restriction on account of  
28 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
29 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
30 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
31 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
32 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
33 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
34 section:

35 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-  
36 tion, compensatory and punitive damages;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “**SECTION 6.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,  
31 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

45 “(2) An action may be brought under subsection (1) of this section alleging a violation of:

1 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,  
2 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
3 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
4 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
5 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
6 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 3 of this 2019 Act**; or

7 “(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

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10 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
11 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421:

12 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-  
13 tion, compensatory damages or \$200, whichever is greater, and punitive damages;

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

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

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22 “(b) An employer was previously adjudicated in a proceeding under this section or under ORS  
23 659A.850 for a violation of ORS 652.220.

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25 **section 3 of this 2019 Act**, the court may award, in addition to the relief authorized under sub-  
26 section (1) of this section, compensatory damages or \$200, whichever is greater.

27 “(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120,  
28 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)  
29 of this section, compensatory damages or \$250, whichever is greater.

30 “(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or  
31 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,  
32 a civil penalty in the amount of \$720.

33 “(8) Any individual against whom any distinction, discrimination or restriction on account of  
34 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
35 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
36 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
37 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
38 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
39 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
40 section:

41 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-  
42 tion, compensatory and punitive damages;

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

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

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

3       “(e) The court may award reasonable attorney fees and expert witness fees incurred by a de-

4       fendant who prevails only if the court determines that the plaintiff had no objectively reasonable

5       basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;

6       and

7       “(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the

8       judgment pursuant to the standard established by ORS 19.415 (1).

9       “(9) When the commissioner or the Attorney General has reasonable cause to believe that a

10      person or group of persons is engaged in a pattern or practice of resistance to the rights protected

11      by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied

12      any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner

13      or the Attorney General may file a civil action on behalf of the aggrieved persons in the same

14      manner as a person or group of persons may file a civil action under this section. In a civil action

15      filed under this subsection, the court may assess against the respondent, in addition to the relief

16      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      “(10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or

20      659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing

21      the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to

22      the commissioner if the commissioner prevails in the action. The court may award reasonable at-

23      torney fees and expert witness fees incurred by a defendant that prevails in the action if the court

24      determines that the commissioner had no objectively reasonable basis for asserting the claim or for

25      appealing an adverse decision of the trial court.

26      “(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145

27      or 659A.421 or discrimination under federal housing law:

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

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

30      “(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to

31      occur.

32      “(b) An aggrieved person in regard to issues to be determined in an action may intervene as of

33      right in the action. The Attorney General may intervene in the action if the Attorney General

34      certifies that the case is of general public importance. The court may allow an intervenor prevailing

35      party costs and reasonable attorney fees at trial and on appeal.”.

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