

House Bill 2483

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Delays date when civil action may be brought alleging violation of certain unlawful employment practices.

A BILL FOR AN ACT

1
2 Relating to civil actions alleging certain unlawful employment practices; creating new provisions;
3 amending ORS 659A.885; repealing section 13, chapter 197, Oregon Laws 2017; and declaring an
4 emergency.

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

6 **SECTION 1. Section 13, chapter 197, Oregon Laws 2017, is repealed.**

7 **SECTION 2.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
8 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

9 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
10 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
11 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
12 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
13 court may order back pay in an action under this subsection only for the two-year period imme-
14 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
15 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
16 year period immediately preceding the filing of the action. In any action under this subsection, the
17 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
18 cept as provided in subsection (3) of this section:

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

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

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

23 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
24 [652.220,] 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
25 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
26 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
27 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
28 659A.318, 659A.320, 659A.355, [659A.357] or 659A.421; or

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

30 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
31 [652.220, 652.355,] 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,

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 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 2 659A.290, 659A.318, *659A.355, 659A.357* or 659A.421:

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

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

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

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

9 *[(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vio-*
 10 *lation of ORS 652.220, the court may award punitive damages if:]*

11 *[(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted*
 12 *with malice or acted with willful and wanton misconduct; or]*

13 *[(b) An employer was previously adjudicated in a proceeding under this section or under ORS*
 14 *659A.850 for a violation of ORS 652.220.]*

15 *[(5)]* (4) In any action under subsection (1) of this section alleging a violation of ORS 653.060,
 16 the court may award, in addition to the relief authorized under subsection (1) of this section,
 17 compensatory damages or \$200, whichever is greater.

18 *[(6)]* (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
 19 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 20 of this section, compensatory damages or \$250, whichever is greater.

21 *[(7)]* (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or
 22 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
 23 a civil penalty in the amount of \$720.

24 *[(8)]* (7) Any individual against whom any distinction, discrimination or restriction on account
 25 of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individ-
 26 ual is 18 years of age or older, has been made by any place of public accommodation, as defined in
 27 ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 28 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 29 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 30 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 31 section:

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

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

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

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

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

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

45 *[(9)]* (8) When the commissioner or the Attorney General has reasonable cause to believe that

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

- 8 (a) In an amount not exceeding \$50,000 for a first violation; and
- 9 (b) In an amount not exceeding \$100,000 for any subsequent violation.

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

17 [(11)] (10) In an action under subsection (1) or [(9)] (8) of this section alleging a violation of ORS
 18 659A.145 or 659A.421 or discrimination under federal housing law:

- 19 (a) “Aggrieved person” includes a person who believes that the person:
 - 20 (A) Has been injured by an unlawful practice or discriminatory housing practice; or
 - 21 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
 22 occur.

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

27 **SECTION 3.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
 28 and section 13, chapter 691, Oregon Laws 2017, and section 2 of this 2019 Act, is amended to read:

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

- 39 (a) The judge shall determine the facts in an action under this subsection; and
- 40 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
 41 review the judgment pursuant to the standard established by ORS 19.415 (3).

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

- 43 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
 44 **652.220**, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
 45 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,

1 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 2 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 3 659A.318, 659A.320, 659A.355, **659A.357** or 659A.421; or

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

5 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 6 **652.220, 652.355**, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 7 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 8 659A.290, 659A.318, **659A.355, 659A.357** or 659A.421:

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

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

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

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

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

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

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

21 [(4)] (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060,
 22 the court may award, in addition to the relief authorized under subsection (1) of this section,
 23 compensatory damages or \$200, whichever is greater.

24 [(5)] (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
 25 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 26 of this section, compensatory damages or \$250, whichever is greater.

27 [(6)] (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or
 28 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
 29 a civil penalty in the amount of \$720.

30 [(7)] (8) Any individual against whom any distinction, discrimination or restriction on account
 31 of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individ-
 32 ual is 18 years of age or older, has been made by any place of public accommodation, as defined in
 33 ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 34 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 35 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 36 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 37 section:

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

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

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

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

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

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

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

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

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

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

16 [(9)] (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145
 17 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 18 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 19 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 20 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 21 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 22 appealing an adverse decision of the trial court.

23 [(10)] (11) In an action under subsection (1) or [(8)] (9) of this section alleging a violation of ORS
 24 659A.145 or 659A.421 or discrimination under federal housing law:

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

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

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

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

33 **SECTION 4. The amendments to ORS 659A.885 by section 3 of this 2019 Act become op-**
 34 **erative on January 1, 2024.**

35 **SECTION 5. (1) If an action under ORS 659A.885 alleging a violation of ORS 652.220 has**
 36 **been commenced prior to the effective date of this 2019 Act, the court shall stay the action**
 37 **until January 1, 2024.**

38 **(2) Subject to subsection (1) of this subsection, if a person is entitled to bring an action**
 39 **under ORS 659A.885 alleging a violation of ORS 652.220, the period of limitation for a claim**
 40 **shall be tolled until January 1, 2024.**

41 **SECTION 6. This 2019 Act being necessary for the immediate preservation of the public**
 42 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
 43 **on its passage.**