

A-Engrossed
House Bill 2886

Ordered by the House April 16
Including House Amendments dated April 16

Sponsored by Representative EVANS; Representatives BOSHART DAVIS, WILDE

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.

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 from discharge or release from military service.*] 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 not to 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 and 659A.885; and repealing ORS 408.230, 408.235 and 408.237.

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

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

6 408.225. (1) As used in [*ORS 408.225 to 408.237*] **this section and section 4 of this 2019 Act:**

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

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

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

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

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

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 [(d)] (e) “Honorable conditions” has the meaning given that term in rules adopted by the De-
2 partment of Veterans’ Affairs.

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

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

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

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

21 [(f)] (j) “Veteran” means a person who:

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

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

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

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

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

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

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

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

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

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

43 **SECTION 3. Section 4 of this 2019 Act is added to and made a part of ORS chapter 408.**

44 **SECTION 4. (1) For purposes of this section:**

45 (a) **“Disabled veteran” means:**

1 (A) A disabled veteran as defined in ORS 408.225;

2 (B) A person who is receiving service-connected compensation from the United States
3 Department of Veterans Affairs under 38 U.S.C. 1110 or 1131; or

4 (C) A person who was a reserve officer or member of an organized reserve or a National
5 Guard unit whose discharge or release from active duty as defined in ORS 408.225 or active
6 duty for attendance at a school under military orders or normal military training was for a
7 disability incurred or aggravated in the line of duty.

8 (b) "Veteran" means:

9 (A) A veteran as defined in ORS 408.225; or

10 (B) A person whose periods of service with an organized reserve or National Guard unit
11 totals 20 years or more and who, if discharged or released, was discharged or released under
12 honorable conditions.

13 (2)(a) A veteran or disabled veteran is eligible to use the preference provided for in this
14 section for a civil service position for which the veteran or disabled veteran makes applica-
15 tion.

16 (b) A veteran shall provide evidence of eligibility for the preference at the time the vet-
17 eran makes application for the position. Evidence may include federal DD Form 214 or 215,
18 NGB Form 22 or 22A or other documentation demonstrating preference eligibility. When a
19 veteran is currently serving on active duty and is in the process of discharging or releasing
20 from active duty within the next 12 months under honorable conditions, the veteran may
21 provide as evidence a preseparation draft of federal DD Form 214 or 215. Failure to provide
22 evidence at the time of application will disqualify the veteran from requesting use of the
23 preference in the public employer's consideration of the veteran's application for the posi-
24 tion.

25 (c) A disabled veteran shall provide evidence of disability from the United States De-
26 partment of Veterans Affairs at the time the disabled veteran makes application for the po-
27 sition. Failure to provide evidence of disability at the time of application will disqualify the
28 disabled veteran from requesting use of the preference in the public employer's consideration
29 of the disabled veteran's application for the position.

30 (3) A public employer shall grant a preference to a veteran or disabled veteran who ap-
31 plies for a vacant civil service position or seeks promotion to a civil service position with a
32 higher maximum salary rate in the manner set forth in this section. The public employer
33 shall grant a preference at each stage of the application process.

34 (4)(a) Initial application screenings done by public employers must result in a score on
35 a 100-point scale.

36 (b) Upon completion of an initial application screening and determination that a veteran
37 or disabled veteran applicant meets the minimum and special qualifications for the position
38 and, if applicable, is evaluated to have the necessary skills for the position and adequately
39 responds to any supplemental questions, the public employer shall grant preference as fol-
40 lows:

41 (A) The employer shall add five preference points to a nondisabled veteran's score; or

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

43 (c) After application of preference points under paragraph (b) of this subsection, the
44 public employer shall generate a list of qualified veteran and disabled veteran applicants to
45 consider for appointment.

1 (5)(a) Following the initial application screening under subsection (4) of this section, the
2 public employer shall conduct the employer's application examination process with all quali-
3 fied veteran and disabled veteran applicants on the list and shall apply preferences as de-
4 scribed in subsection (6) of this section.

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

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

11 (A) To interview all veteran and disabled veteran applicants on the list.

12 (B) To interview a selected group of veteran and disabled veteran applicants who most
13 closely match the public employer's purposes in filling the position. This group may be con-
14 sidered along with nonveteran applicants who closely match the purposes of the employer in
15 filling the position.

16 (6) After the application examination process is completed, the preference shall be applied
17 as follows:

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

20 (b) For unscored application examinations, the public employer shall advance a
21 nondisabled veteran one level or advance a disabled veteran two levels.

22 (7) The application of preferences in the manner described in this section is not a re-
23 quirement that the public employer appoint a veteran or disabled veteran to a civil service
24 position.

25 (8)(a) A public employer shall appoint an otherwise qualified veteran or disabled veteran
26 to a vacant civil service position if the results of a veteran's or disabled veteran's application
27 examination, when combined with the veteran's or disabled veteran's preferences, are equal
28 to or higher than the results of an application examination for an applicant who is not a
29 veteran or disabled veteran.

30 (b) Notwithstanding paragraph (a) of this subsection, a public employer may, at the time
31 of making a final hiring or promotion decision in the selection process, exercise discretion
32 not to appoint an otherwise qualified veteran or disabled veteran described in paragraph (a)
33 of this subsection based solely on the veteran's or disabled veteran's merits or qualifications
34 with respect to the vacant civil service position. A public employer that exercises discretion
35 under this paragraph shall provide to the veteran or disabled veteran written reasons for the
36 employer's decision not to appoint the veteran or disabled veteran to the position within a
37 reasonable time after making the decision.

38 (9) Except as otherwise provided in subsection (8)(b) of this section, if a public employer
39 does not appoint a veteran or disabled veteran to a vacant civil service position, upon written
40 request of the veteran or disabled veteran, the employer, in writing, shall provide the
41 employer's reasons for the decision not to appoint the veteran or disabled veteran to the
42 position.

43 (10) Violation of this section is an unlawful employment practice.

44 (11) A veteran or disabled veteran claiming to be aggrieved by a violation of this section
45 may file a verified written complaint with the Commissioner of the Bureau of Labor and In-

1 **dustries in accordance with ORS 659A.820.**

2 **SECTION 5.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and sec-
3 tion 13, chapter 691, Oregon Laws 2017, is amended to read:

4 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
5 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
6 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
7 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
8 court may order back pay in an action under this subsection only for the two-year period imme-
9 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
10 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
11 year period immediately preceding the filing of the action. In any action under this subsection, the
12 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
13 cept as provided in subsection (3) of this section:

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

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

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

18 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, [408.230, 408.237 (2),] 475B.281, 476.574, 652.020,
19 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
20 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
21 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
22 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
23 659A.318, 659A.320, 659A.355 or 659A.421; [or]

24 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450; or

25 (c) **Section 4 of this 2019 Act, except that a person must first exhaust all available non-**
26 **judicial remedies under ORS 659A.820 to 659A.865.**

27 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
28 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
29 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
30 659A.290, 659A.318, 659A.355 or 659A.421:

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

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

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

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

37 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
38 olation of ORS 652.220, the court may award punitive damages if:

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

41 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
42 659A.850 for a violation of ORS 652.220.

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

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

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

7 (8) Any individual against whom any distinction, discrimination or restriction on account of
8 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
9 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
10 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
11 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
12 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
13 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
14 section:

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

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

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

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

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

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

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

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

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

38 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
39 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
40 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
41 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
42 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
43 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
44 appealing an adverse decision of the trial court.

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

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

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

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

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

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

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

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

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

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

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

26 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, [~~408.230, 408.237 (2),~~] 475B.281, 476.574, 652.020,
27 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
28 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
29 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
30 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
31 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421; [~~or~~]

32 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450; **or**

33 **(c) Section 4 of this 2019 Act, except that a person must first exhaust all available non-**
34 **judicial remedies under ORS 659A.820 to 659A.865.**

35 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
36 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
37 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
38 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421:

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

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

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

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

45 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-

1 violation of ORS 652.220, the court may award punitive damages if:

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

4 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
5 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
2 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
3 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
4 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
5 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
6 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
7 appealing an adverse decision of the trial court.

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

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

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

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

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

18 **SECTION 7. Section 4 of this 2019 Act, the amendments to ORS 408.225 and 659A.885 by**
19 **sections 1, 5 and 6 of this 2019 Act and the repeal of ORS 408.230, 408.235 and 408.237 by**
20 **section 2 of this 2019 Act apply to selection processes for civil service positions and eligibility**
21 **lists for civil service positions undertaken by public employers on or after the effective date**
22 **of this 2019 Act.**

23