

A-Engrossed
Senate Bill 479

Ordered by the Senate April 22
Including Senate Amendments dated April 22

Sponsored by Senators GELSER, KNOPP; Senator MONNES ANDERSON (Presession filed.)

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.

Requires public employers to adopt policies to prevent workplace harassment. Requires public employers to establish policies and procedures for addressing reports of workplace harassment. Requires employer to follow up with victim of reported harassment to determine whether harassment has stopped or if victim has experienced retaliation. **Becomes operative January 1, 2020.**

[Prohibits use of public funds to pay for person's silence or inaction related to allegation or investigation of workplace harassment.]

Makes unlawful employment practice for employer to enter into certain agreements with employee that would prevent employee from disclosing or discussing conduct that constitutes workplace harassment. Provides that employer may, in certain circumstances, enter into settlement, separation or severance agreement that includes provision that would prohibit employee from disclosing or discussing such conduct or that would prohibit employee from seeking reemployment with employer as term or condition of agreement. Allows civil and administrative remedies for violation against unlawful practice. Becomes operative October 1, 2020.

Extends timeline for filing complaint with Commissioner of Bureau of Labor and Industries alleging certain unlawful employment practices.

Extends statute of limitations from one year to five years to file civil action for certain violations of law. Provides that extended statute of limitations applies to certain conduct that occurs on or after effective date of Act.

Requires commissioner to adopt any rules necessary to implement certain provisions no later than 90 days after effective date of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to workplace harassment; creating new provisions; amending ORS 659A.820, 659A.875 and
3 659A.885; and prescribing an effective date.

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

5 **SECTION 1. As used in sections 1 to 4 of this 2019 Act:**

6 (1) "Public employer" has the meaning given that term in ORS 260.432.

7 (2) "Sexual assault" means unwanted conduct of a sexual nature that is inflicted upon a
8 person or compelled through the use of physical force, manipulation, threat or intimidation.

9 (3) "Workplace harassment" means conduct that constitutes discrimination prohibited
10 by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes con-
11 duct prohibited by ORS 659A.082 or 659A.112.

12 **SECTION 2. (1) A public employer shall establish and adopt a written policy that seeks**
13 **to prevent workplace harassment that occurs between employees or between an employer**
14 **and an employee in the workplace or at a work-related event that is off the employment**
15 **premises and coordinated by or through the employer, or between an employer and an em-**
16 **ployee off the employment premises.**

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 (2) The policy must include:

2 (a) A statement prohibiting workplace harassment;

3 (b) Information explaining that a victim of workplace harassment has a right to seek
4 redress through the employer's internal process provided under section 3 of this 2019 Act,
5 through the Bureau of Labor and Industries' complaint resolution process under ORS
6 659A.820 to 659A.865 or under any other available law, whether civil or criminal, including:

7 (A) The timeline under which relief may be sought;

8 (B) Any available administrative or judicial remedies; and

9 (C) The advance notice of claim against a public body that a claimant must provide as
10 required under ORS 30.275;

11 (c) A statement that a person who reports workplace harassment has the right to be
12 protected from retaliation;

13 (d) A statement of the scope of the policy, including that the policy applies to elected
14 public officials, volunteers and interns;

15 (e) An explanation that a victim of workplace harassment may voluntarily disclose in-
16 formation regarding an incident of workplace harassment that involves the victim; and

17 (f) Information to connect a victim of workplace harassment with legal resources and
18 counseling and support services, including any available employee assistance services.

19 (3) A public employer shall provide a copy of the policies described in this section to each
20 employee and shall include a copy of the policies in any orientation materials that are pro-
21 vided to new employees at the time of hire.

22 (4) If an employee discloses any concerns about workplace harassment to a supervisor
23 of the employer, the supervisor shall, at the time of the disclosure, provide to the employee
24 a copy of the policies described in this section.

25 **SECTION 3.** A public employer shall develop written policies and procedures for the
26 prompt investigation of a report of workplace harassment. The policies and procedures must:

27 (1) Provide instruction for maintaining records of workplace harassment.

28 (2) Establish a process for a victim of workplace harassment to file a complaint, provided
29 that the process allows a victim to file the complaint within four years from the date on
30 which the alleged harassment occurred or within the applicable time limitation on the com-
31 mencement of an action under ORS 659A.875, whichever is greater.

32 (3) Subject to subsection (4) of this section, require the employer to follow up with the
33 victim of the alleged harassment once every three months for the calendar year following
34 the date on which the employer received a report of harassment, to determine whether the
35 alleged harassment has stopped or if the victim has experienced retaliation.

36 (4) Inform the victim that the employer will follow up in the manner described in sub-
37 section (3) of this section until and unless the victim objects to such action in writing.

38 **SECTION 4.** (1) Except as provided in subsections (2) or (4) of this section, it is an un-
39 lawful employment practice for a public employer to enter into an agreement with an em-
40 ployee or prospective employee, as a condition of employment, continued employment,
41 promotion, compensation or the receipt of benefits, that contains a nondisclosure provision,
42 a nondisparagement provision or any other provision that has the purpose or effect of pre-
43 venting the employee from disclosing or discussing workplace harassment:

44 (a) That occurred between employees or between an employer and an employee in the
45 workplace or at a work-related event that is off the employment premises and coordinated

1 by or through the employer; or

2 (b) That occurred between an employer and an employee off the employment premises.

3 (2) A public employer may enter into a settlement, separation or severance agreement
4 that includes one or more of the following provisions only when an employee claiming to be
5 aggrieved by workplace harassment described under subsection (1) of this section requests
6 to enter into the agreement:

7 (a) A provision described in subsection (1) of this section;

8 (b) A provision that prevents the disclosure of factual information relating to the claim
9 of discrimination or conduct that constitutes sexual assault; or

10 (c) A no-rehire provision that prohibits the employee from seeking reemployment with
11 the employer as a term or condition of the agreement.

12 (3)(a) An agreement entered into under subsection (2) of this section must provide that
13 the employee has at least seven days after executing the agreement to revoke the agree-
14 ment.

15 (b) The agreement may not become effective until after the revocation period has ex-
16 pired.

17 (4) If an employer makes a good faith determination that an employee has engaged in
18 workplace harassment described under subsection (1) of this section, the employer may enter
19 into a settlement, separation or severance agreement that includes one or more of the fol-
20 lowing provisions:

21 (a) A provision described in subsection (1) of this section;

22 (b) A provision that prevents the disclosure of factual information that relates to the
23 workplace harassment; or

24 (c) A no-rehire provision that prohibits the employee from seeking reemployment with
25 the employer as a term or condition of the agreement.

26 (5) An employee may file a complaint under ORS 659A.820 for violations of this section
27 and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS
28 659A.885 (1) to (3).

29 (6) This section does not apply to an employee who is tasked by law to receive confiden-
30 tial or privileged reports of discrimination, sexual assault or harassment.

31 **SECTION 5.** ORS 659A.820, as amended by section 5, chapter 197, Oregon Laws 2017, is
32 amended to read:

33 659A.820. (1) As used in this section, for purposes of a complaint alleging an unlawful practice
34 under ORS 659A.145 or 659A.421 or discrimination under federal housing law, “person claiming to
35 be aggrieved by an unlawful practice” includes, but is not limited to, a person who believes that the
36 person:

37 (a) Has been injured by an unlawful practice under ORS 659A.145 or 659A.421 or a
38 discriminatory housing practice; or

39 (b) Will be injured by an unlawful practice under ORS 659A.145 or 659A.421 or a discriminatory
40 housing practice that is about to occur.

41 (2) Any person claiming to be aggrieved by an unlawful practice may file with the Commissioner
42 of the Bureau of Labor and Industries a verified written complaint that states the name and address
43 of the person alleged to have committed the unlawful practice. The complaint must be signed by the
44 complainant. The complaint must set forth the acts or omissions alleged to be an unlawful practice.
45 The complainant may be required to set forth in the complaint such other information as the com-

1 commissioner may require. Except as provided in **subsection (3) of this section or** ORS 654.062, a
2 complaint under this section must be filed no later than one year after the alleged unlawful practice.

3 **(3) A complaint alleging an unlawful employment practice as described in ORS 659A.030,**
4 **659A.082 or 659A.112 or section 4 of this 2019 Act must be filed no later than five years after**
5 **the occurrence of the alleged unlawful employment practice.**

6 [(3)(a)] **(4)(a)** Except as provided in paragraph (b) of this subsection, a complaint may not be
7 filed under this section if a civil action has been commenced in state or federal court alleging the
8 same matters.

9 (b) The prohibition described in paragraph (a) of this subsection does not apply to a complaint
10 alleging an unlawful practice under ORS 659A.145 or 659A.421 or alleging discrimination under
11 federal housing law.

12 [(4)] **(5)** If an employer has one or more employees who refuse or threaten to refuse to abide by
13 the provisions of this chapter or to cooperate in carrying out the purposes of this chapter, the em-
14 ployer may file with the commissioner a verified complaint requesting assistance by conciliation or
15 other remedial action.

16 [(5)] **(6)** Except as provided in subsection [(6)] **(7)** of this section, the commissioner shall notify
17 the person against whom a complaint is made within 30 days of the filing of the complaint. The
18 commissioner shall include in the notice the date, place and circumstances of the alleged unlawful
19 practice.

20 [(6)] **(7)** The commissioner shall notify the person against whom a complaint alleging an unlawful
21 practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law is made
22 within 10 days of the filing of the complaint. The commissioner shall include in the notice:

23 (a) The date, place and circumstances of the alleged unlawful practice; and

24 (b) A statement that the person against whom the complaint is made may file an answer to the
25 complaint.

26 **SECTION 6.** ORS 659A.875, as amended by section 8, chapter 197, Oregon Laws 2017, is
27 amended to read:

28 659A.875. (1) Except as provided in subsection (2) of this section[,]:

29 **(a)** A civil action under ORS 659A.885 alleging an unlawful employment practice **other than a**
30 **violation of ORS 659A.030, 659A.082 or 659A.112 or section 4 of this 2019 Act** must be com-
31 menced within one year after the occurrence of the unlawful employment practice unless a com-
32 plaint has been timely filed under ORS 659A.820.

33 **(b) A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.082 or**
34 **659A.112 or section 4 of this 2019 Act must be commenced not later than five years after the**
35 **occurrence of the alleged violation unless a complaint has been timely filed under ORS**
36 **659A.820.**

37 (2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under
38 ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880.
39 This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145
40 or 659A.421 or discrimination under federal housing law.

41 (3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must be commenced not later
42 than two years after the occurrence or the termination of the unlawful practice, or within two years
43 after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs
44 last. The two-year period shall not include any time during which an administrative proceeding was
45 pending with respect to the unlawful practice.

1 (4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS
2 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful prac-
3 tice.

4 (5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS
5 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a
6 public body as defined in ORS 30.260.

7 (6) Notwithstanding ORS 30.275 (9)[,]:

8 (a) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any
9 officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employ-
10 ment practice **other than a violation of ORS 659A.030, 659A.082 or 659A.112 or section 4 of this**
11 **2019 Act** must be commenced within one year after the occurrence of the unlawful employment
12 practice unless a complaint has been timely filed under ORS 659A.820.

13 (b) **A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.082 or**
14 **659A.112 or section 4 of this 2019 Act must be commenced not later than five years after the**
15 **occurrence of the alleged violation unless a complaint has been timely filed under ORS**
16 **659A.820.**

17 (7) For the purpose of time limitations, a compensation practice that is unlawful under ORS
18 652.220 occurs each time compensation is paid under a discriminatory compensation decision or
19 other practice.

20 (8) Notwithstanding ORS 30.275 (2)(b), notice of claim against a public body under ORS 652.220
21 or 659A.355 must be given within 300 days of discovery of the alleged loss or injury.

22 **SECTION 7.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and sec-
23 tion 13, chapter 691, Oregon Laws 2017, is amended to read:

24 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
25 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
26 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
27 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
28 court may order back pay in an action under this subsection only for the two-year period imme-
29 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
30 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
31 year period immediately preceding the filing of the action. In any action under this subsection, the
32 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
33 cept as provided in subsection (3) of this section:

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

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

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

38 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
39 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
40 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
41 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
42 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
43 659A.318, 659A.320, 659A.355 or 659A.421 **or section 4 of this 2019 Act;** or

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

45 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,

1 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
2 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
3 659A.290, 659A.318, 659A.355 or 659A.421 **or section 4 of this 2019 Act:**

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

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

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

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

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

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

14 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
15 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
45 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,

1 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
2 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
3 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
4 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 4 of this 2019 Act**; or

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

6 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
7 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
8 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
9 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 4 of this 2019 Act**:

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

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

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

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

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

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

20 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
21 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 **SECTION 9. The Commissioner of the Bureau of Labor and Industries shall adopt any**
35 **rules necessary to administer and enforce the provisions of sections 1 to 4 of this 2019 Act**
36 **no later than 90 days after the effective date of this 2019 Act.**

37 **SECTION 10. The amendments to ORS 659A.820 and 659A.875 by sections 5 and 6 of this**
38 **2019 Act apply to:**

39 **(1) Conduct prohibited by ORS 659A.030, 659A.082 or 659A.112 occurring on or after the**
40 **effective date of this 2019 Act.**

41 **(2) Conduct prohibited by section 4 of this 2019 Act occurring on or after October 1, 2020.**

42 **SECTION 11. (1)(a) Sections 1 to 3 of this 2019 Act become operative on January 1, 2020.**

43 **(b) Section 4 of this 2019 Act and the amendments to 659A.885 by sections 7 and 8 of this**
44 **2019 Act become operative on October 1, 2020.**

45 **(2) The Commissioner of the Bureau of Labor and Industries may adopt rules and take**

1 any other action before the operative date specified in subsection (1) of this section that is
2 necessary to enable the Bureau of Labor and Industries to exercise, on and after the opera-
3 tive date specified in subsection (1) of this section, all of the duties, functions and powers
4 conferred on the bureau by sections 2 to 4 of this 2019 Act and the amendments to ORS
5 659A.820, 659A.875 and 659A.885 by sections 5 to 8 of this 2019 Act.

6 SECTION 12. This 2019 Act takes effect on the 91st day after the date on which the 2019
7 regular session of the Eightieth Legislative Assembly adjourns sine die.

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