A-Engrossed
Senate Bill 726

Ordered by the Senate April 17
Including Senate Amendments dated April 17

Sponsored by Senators TAYLOR, KNOPP, GELSER, Representatives SALINAS, WILLIAMSON; Senators BEYER, DEMBROW, FAGAN, FREDERICK, GOLDEN, MANNING JR, MONNES ANDERSON, ROBLAN, STEINER HAYWARD, WAGNER, Representatives ALONSO LEON, GORSEK, HERNANDEZ, HOLVEY, MARSH, MEEK, MITCHELL, POWER, PRUSAK, SMITH WARNER, WILDE, WILLIAMS

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.

Makes unlawful employment practice for employer to [*request employee to*] enter agreement that would prevent employee from disclosing or discussing conduct that constitutes unlawful discrimination, including sexual assault. Allows civil and administrative remedies for violation against unlawful employment practice. **Provides that employer may, in certain circumstances, enter into settlement, separation or severance agreement that includes provision that would prevent 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.**

[*Makes unlawful employment practice for any person to aid, abet, incite, compel, coerce or conceal any acts prohibited under provisions of Act and any acts that constitute certain types of unlawful discrimination. Clarifies that employer's withholding of certain information from person who is owner, president, partner or corporate officer of employer, during course of employer's investigation, is not unlawful employment practice, provided that employer makes person aware of ongoing investigation.*]

[*Allows person who is owner, president, partner or corporate officer to be held individually liable for engaging in prohibited acts.*]

Requires all employers to adopt written policy containing procedures and practices for reduction and prevention of certain types of unlawful discrimination, including sexual assault. Requires employers to [*post notice*] **make policy available to employees** in workplace and provide employees with copy of policy at time of hire.

Requires Bureau of Labor and Industries to make available on bureau's website model procedures or polices that employers may use to establish employer policies. Makes voidable any agreement to pay severance pay to person found to have engaged in conduct that violates employer's policies or provisions of Act **and such violations were substantial contributing factor in causing separation from employment**.

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 [*seven*] **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 of Act no later than 90 days after effective date.

Becomes operative [*January*] **October** 1, 2020.

Permits commissioner to adopt rules and take any action before operative date of Act that is necessary to enable bureau to exercise duties, powers and functions conferred on bureau.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to unlawful conduct in the workplace; creating new provisions; amending ORS 659A.820, 659A.875 and 659A.885; and prescribing an effective date.

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

SECTION 1. Sections 2 to 4 of this 2019 Act are added to and made a part of ORS chapter 659A.

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.

SECTION 2. (1) Except as provided in subsections (2) or (4) of this section, it is an unlawful employment practice for an employer to enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct:

(a)(A) That constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault; or

(B) That constitutes discrimination prohibited by ORS 659A.082 or 659A.112; and

(b)(A) That occurred between employees or between an employer and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer; or

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

(2) An employer may enter into a settlement, separation or severance agreement that includes one or more of the following provisions only when an employee claiming to be aggrieved by conduct described under subsection (1) of this section requests to enter into the agreement:

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

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

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

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

(b) The agreement may not become effective until after the revocation period has expired.

(4) If an employer makes a good faith determination that an employee has engaged in conduct prohibited by ORS 659A.030, including sexual assault, conduct prohibited by ORS 659A.082 or 659A.112 or conduct prohibited by this section, the employer may enter into a settlement, separation or severance agreement that includes one or more of the following provisions:

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

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

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

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

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

(7) As used in this section, "sexual assault" means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

SECTION 3. (1) Every employer in this state shall adopt a written policy containing procedures and practices for the reduction and prevention of discrimination prohibited by ORS 659A.030, including sexual assault, as defined in section 2 of this 2019 Act, and discrimination prohibited by ORS 659A.082 and 659A.112.

(2) At a minimum, the policy must:

(a) Provide a process for an employee to report prohibited conduct;

(b) Identify the individual designated by the employer who is responsible for receiving reports of prohibited conduct, including an individual designated as an alternate to receive such reports;

(c) Include the statute of limitations period applicable to an employee's right of action for alleging unlawful conduct described in subsection (1) of this section;

(d) Include a statement that an employer may not require or coerce an employee to enter into a nondisclosure or nondisparagement agreement, including a description of the meaning of those terms;

(e) Include an explanation that an employee claiming to be aggrieved by conduct described in subsection (1) of this section may voluntarily request to enter into an agreement described in section 2 (2) of this 2019 Act, including a statement that explains that the employee has at least seven days to revoke the agreement; and

(f) Include a statement that advises employers and employees to document any incidents involving conduct prohibited by ORS 659A.030, including sexual assault as defined in section 2 of this 2019 Act, or conduct prohibited by ORS 659A.082 and 659A.112.

(3) An employer shall:

(a) Make the policy available to employees within the workplace;

(b) Provide a copy of the policy to each employee at the time of hire; and

(c) Require any individual who is designated by the employer to receive complaints to provide a copy of the policy to an employee at the time that the employee discloses information regarding prohibited discrimination or harassment.

(4) The Bureau of Labor and Industries shall make available on the bureau's website model procedures or policies that employers may use as guidance to establish the policy described in this section.

(5) Nothing in this section is intended to relieve an employer of liability for engaging in conduct that is prohibited under ORS chapter 659A.

SECTION 4. Any agreement entered into between an employer and a person with the authority to hire and fire employees, or the discretion to exercise control over employees, that requires severance or separation payments is voidable by the employer if, after the employer conducts a good faith investigation, the employer determines that the person violated section 2 of this 2019 Act or violated the policy adopted under section 3 of this 2019 Act and that such violations were a substantial contributing factor in causing the separation from employment.

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

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

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

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

(2) Any person claiming to be aggrieved by an unlawful practice may file with the Commissioner of the Bureau of Labor and Industries a verified written complaint that states the name and address of the person alleged to have committed the unlawful practice. The complaint must be signed by the complainant. The complaint must set forth the acts or omissions alleged to be an unlawful practice. The complainant may be required to set forth in the complaint such other information as the commissioner may require. Except as provided in **subsection (3) of this section or** ORS 654.062, a complaint under this section must be filed no later than one year after the alleged unlawful practice.

(3) A complaint alleging an unlawful employment practice as described in ORS 659A.030, 659A.082 or 659A.112 or section 2 of this 2019 Act must be filed no later than five years after the occurrence of the alleged unlawful employment practice.

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

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

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

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

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

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

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

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

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

(a) A civil action under ORS 659A.885 alleging an unlawful employment practice **other than a violation of ORS 659A.030, 659A.082 or 659A.112 or section 2 of this 2019 Act,** must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(b) A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.082 or 659A.112 or section 2 of this 2019 Act must be commenced not later than five years after the occurrence of the alleged violation.

(2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under

ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880. This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

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

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

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

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

(a) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice **other than a violation of ORS 659A.030, 659A.082 or 659A.112 or section 2 of this 2019 Act** must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(b) A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.082 or 659A.112 or section 2 of this 2019 Act must be commenced not later than five years after the occurrence of the alleged violation unless a complaint has been timely filed under ORS 659A.820.

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

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

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

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

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

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

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

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

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

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355 or 659A.421 **or section 2 of this 2019 Act**:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the

court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

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

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

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

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

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

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 2 of this 2019 Act**:

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

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

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

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

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

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

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

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

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

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

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

section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. The Commissioner of the Bureau of Labor and Industries shall adopt any rules necessary to administer and enforce the provisions of sections 2 to 4 of this 2019 Act no later than 90 days after the effective date of this 2019 Act.

SECTION 10. The amendments to ORS 659A.820 and 659A.875 by sections 5 and 6 of this

2019 Act apply to:

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

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

SECTION 11. (1) Sections 2 to 4 of this 2019 Act and the amendments to ORS 659A.885 by sections 7 and 8 of this 2019 Act become operative on October 1, 2020.

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

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