

Requested by Senator TAYLOR

**PROPOSED AMENDMENTS TO
SENATE BILL 726**

1 On page 1 of the printed bill, delete lines 5 through 15 and delete pages
2 2 through 9 and insert:

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

5 **“SECTION 2. (1) Except as provided in subsections (2) or (4) of this
6 section, it is an unlawful employment practice for an employer to en-
7 ter into an agreement with an employee or prospective employee, as
8 a condition of employment, continued employment, promotion, com-
9 pensation or the receipt of benefits, that contains a nondisclosure
10 provision, a nondisparagement provision or any other provision that
11 has the purpose or effect of preventing the employee from disclosing
12 or discussing conduct:**

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

15 **“(B) That constitutes discrimination prohibited by ORS 659A.082 or
16 659A.112; and**

17 **“(b)(A) That occurred between employees or between an employer
18 and an employee in the workplace or at a work-related event that is
19 off the employment premises and coordinated by or through the em-
20 ployer; or**

21 **“(B) That occurred between an employer and an employee off the**

1 **employment premises.**

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

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

8 **“(b) A provision that prevents the disclosure of factual information**
9 **relating to a claim of discrimination or conduct that constitutes sex-**
10 **ual assault; or**

11 **“(c) A no-rehire provision that prohibits the employee from seeking**
12 **reemployment with the employer as a term or condition of the agree-**
13 **ment.**

14 **“(3)(a) An agreement entered into under subsection (2) of this sec-**
15 **tion must provide that the employee has at least seven days after ex-**
16 **ecuting the agreement to revoke the agreement.**

17 **“(b) The agreement may not become effective until after the revo-**
18 **cation period has expired.**

19 **“(4) If an employer makes a good faith determination that an em-**
20 **ployee has engaged in conduct prohibited by ORS 659A.030, including**
21 **sexual assault, conduct prohibited by ORS 659A.082 or 659A.112 or**
22 **conduct prohibited by this section, the employer may enter into a**
23 **settlement, separation or severance agreement that includes one or**
24 **more of the following provisions:**

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

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

29 **“(c) A no-rehire provision that prohibits the employee from seeking**
30 **reemployment with the employer as a term or condition of the agree-**

1 **ment.**

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

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

8 **“(7) As used in this section, ‘sexual assault’ means unwanted con-**
9 **duct of a sexual nature that is inflicted upon a person or compelled**
10 **through the use of physical force, manipulation, threat or intim-**
11 **idation.**

12 **“SECTION 3. (1) Every employer in this state shall adopt a written**
13 **policy containing procedures and practices for the reduction and pre-**
14 **vention of discrimination prohibited by ORS 659A.030, including sexual**
15 **assault, as defined in section 2 of this 2019 Act, and discrimination**
16 **prohibited by ORS 659A.082 and 659A.112.**

17 **“(2) At a minimum, the policy must:**

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

19 **“(b) Identify the individual designated by the employer who is re-**
20 **sponsible for receiving reports of prohibited conduct, including an in-**
21 **dividual designated as an alternate to receive such reports;**

22 **“(c) Include the statute of limitations period applicable to an**
23 **employee’s right of action for alleging unlawful conduct described in**
24 **subsection (1) of this section;**

25 **“(d) Include a statement that an employer may not require or co-**
26 **erce an employee to enter into a nondisclosure or nondisparagement**
27 **agreement, including a description of the meaning of those terms;**

28 **“(e) Include an explanation that an employee claiming to be**
29 **aggrieved by conduct described in subsection (1) of this section may**
30 **voluntary request to enter into an agreement described in section 2 (2)**

1 of this 2019 Act, including a statement that explains that the employee
2 has at least seven days to revoke the agreement; and

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

7 “(3) An employer shall:

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

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

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

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

18 “(5) Nothing in this section is intended to relieve an employer of
19 liability for engaging in conduct that is prohibited under ORS chapter
20 659A.

21 **“SECTION 4.** Any agreement entered into between an employer and
22 a person with the authority to hire and fire employees, or the dis-
23 cretion to exercise control over employees, that requires severance or
24 separation payments is voidable by the employer if, after the employer
25 conducts a good faith investigation, the employer determines that the
26 person violated section 2 of this 2019 Act or violated the policy adopted
27 under section 3 of this 2019 Act and that such violations were a sub-
28 stantial contributing factor in causing the separation from employ-
29 ment.

30 **“SECTION 5.** ORS 659A.820, as amended by section 5, chapter 197,

1 Oregon Laws 2017, is amended to read:

2 “659A.820. (1) As used in this section, for purposes of a complaint alleging
3 an unlawful practice under ORS 659A.145 or 659A.421 or discrimination un-
4 der federal housing law, ‘person claiming to be aggrieved by an unlawful
5 practice’ includes, but is not limited to, a person who believes that the per-
6 son:

7 “(a) Has been injured by an unlawful practice under ORS 659A.145 or
8 659A.421 or a discriminatory housing practice; or

9 “(b) Will be injured by an unlawful practice under ORS 659A.145 or
10 659A.421 or a discriminatory housing practice that is about to occur.

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

21 “**(3) A complaint alleging an unlawful employment practice as de-**
22 **scribed in ORS 659A.030, 659A.082 or 659A.112 or section 2 of this 2019**
23 **Act must be filed no later than five years after the occurrence of the**
24 **alleged unlawful employment practice.**

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

28 “(b) The prohibition described in paragraph (a) of this subsection does not
29 apply to a complaint alleging an unlawful practice under ORS 659A.145 or
30 659A.421 or alleging discrimination under federal housing law.

1 “~~[(4)]~~ **(5)** If an employer has one or more employees who refuse or
2 threaten to refuse to abide by the provisions of this chapter or to cooperate
3 in carrying out the purposes of this chapter, the employer may file with the
4 commissioner a verified complaint requesting assistance by conciliation or
5 other remedial action.

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

11 “~~[(6)]~~ **(7)** The commissioner shall notify the person against whom a com-
12 plaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or dis-
13 crimination under federal housing law is made within 10 days of the filing
14 of the complaint. The commissioner shall include in the notice:

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

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

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

21 “659A.875. (1) Except as provided in subsection (2) of this section[,]:

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

27 “**(b)** A civil action under ORS 659A.885 alleging a violation of ORS
28 **659A.030, 659A.082 or 659A.112 or section 2 of this 2019 Act must be**
29 **commenced not later than five years after the occurrence of the al-**
30 **leged violation.**

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

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

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

15 “(5) The notice of claim required under ORS 30.275 must be given in any
16 civil action under ORS 659A.885 against a public body, as defined in ORS
17 30.260, or any officer, employee or agent of a public body as defined in ORS
18 30.260.

19 “(6) Notwithstanding ORS 30.275 (9)[,]:

20 “(a) A civil action under ORS 659A.885 against a public body, as defined
21 in ORS 30.260, or any officer, employee or agent of a public body as defined
22 in ORS 30.260, based on an unlawful employment practice **other than a vi-**
23 **olation of ORS 659A.030, 659A.082 or 659A.112 or section 2 of this 2019**
24 **Act** must be commenced within one year after the occurrence of the unlawful
25 employment practice unless a complaint has been timely filed under ORS
26 659A.820.

27 “(b) **A civil action under ORS 659A.885 alleging a violation of ORS**
28 **659A.030, 659A.082 or 659A.112 or section 2 of this 2019 Act must be**
29 **commenced not later than five years after the occurrence of the al-**
30 **leged violation unless a complaint has been timely filed under ORS**

1 **659A.820.**

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

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

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

11 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
12 tice specified in subsection (2) of this section may file a civil action in cir-
13 cuit court. In any action under this subsection, the court may order
14 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
16 without back pay. A court may order back pay in an action under this sub-
17 section only for the two-year period immediately preceding the filing of a
18 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
19 bor and Industries, or if a complaint was not filed before the action was
20 commenced, the two-year period immediately preceding the filing of the
21 action. In any action under this subsection, the court may allow the pre-
22 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
23 cept as provided in subsection (3) of this section:

24 “(a) The judge shall determine the facts in an action under this sub-
25 section; and

26 “(b) Upon any appeal of a judgment in an action under this subsection,
27 the appellate court shall review the judgment pursuant to the standard es-
28 tablished by ORS 19.415 (3).

29 “(2) An action may be brought under subsection (1) of this section alleg-
30 ing a violation of:

1 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
2 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
3 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
4 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
5 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
6 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
7 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 **or**
8 **section 2 of this 2019 Act**; or

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

11 “(3) In any action under subsection (1) of this section alleging a violation
12 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
13 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
14 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
15 659A.318, 659A.355 or 659A.421 **or section 2 of this 2019 Act**:

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

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

20 “(c) Upon appeal of any judgment finding a violation, the appellate court
21 shall review the judgment pursuant to the standard established by ORS
22 19.415 (1); and

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

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

27 “(a) It is proved by clear and convincing evidence that an employer has
28 engaged in fraud, acted with malice or acted with willful and wanton mis-
29 conduct; or

30 “(b) An employer was previously adjudicated in a proceeding under this

1 section or under ORS 659A.850 for a violation of ORS 652.220.

2 “(5) In any action under subsection (1) of this section alleging a violation
3 of ORS 653.060, the court may award, in addition to the relief authorized
4 under subsection (1) of this section, compensatory damages or \$200, which-
5 ever is greater.

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

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

14 “(8) Any individual against whom any distinction, discrimination or re-
15 striction on account of race, color, religion, sex, sexual orientation, national
16 origin, marital status or age, if the individual is 18 years of age or older,
17 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
19 person aiding or abetting the place or person in violation of ORS 659A.406
20 may bring an action against the operator or manager of the place, the em-
21 ployee or person acting on behalf of the place or the aider or abettor of the
22 place or person. Notwithstanding subsection (1) of this section, in an action
23 under this subsection:

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

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

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

30 “(d) The court shall award reasonable attorney fees to a prevailing

1 plaintiff;

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

6 “(f) Upon any appeal of a judgment under this subsection, the appellate
7 court shall review the judgment pursuant to the standard established by ORS
8 19.415 (1).

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

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

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

21 “(10) In any action under subsection (1) of this section alleging a vio-
22 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
23 housing law, when the commissioner is pursuing the action on behalf of an
24 aggrieved complainant, the court shall award reasonable attorney fees to the
25 commissioner if the commissioner prevails in the action. The court may
26 award reasonable attorney fees and expert witness fees incurred by a de-
27 fendant that prevails in the action if the court determines that the commis-
28 sioner had no objectively reasonable basis for asserting the claim or for
29 appealing an adverse decision of the trial court.

30 “(11) In an action under subsection (1) or (9) of this section alleging a

1 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
2 ing law:

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

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

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

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

13 **“SECTION 8.** ORS 659A.885, as amended by sections 9 and 10, chapter
14 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is
15 amended to read:

16 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
17 tice specified in subsection (2) of this section may file a civil action in cir-
18 cuit court. In any action under this subsection, the court may order
19 injunctive relief and any other equitable relief that may be appropriate, in-
20 cluding but not limited to reinstatement or the hiring of employees with or
21 without back pay. A court may order back pay in an action under this sub-
22 section only for the two-year period immediately preceding the filing of a
23 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
24 bor and Industries, or if a complaint was not filed before the action was
25 commenced, the two-year period immediately preceding the filing of the
26 action. In any action under this subsection, the court may allow the pre-
27 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
28 cept as provided in subsection (3) of this section:

29 “(a) The judge shall determine the facts in an action under this sub-
30 section; and

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

4 “(2) An action may be brought under subsection (1) of this section alleg-
5 ing a violation of:

6 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
7 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
8 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
9 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
10 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
11 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
12 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.357 or
13 **659A.421 or section 2 of this 2019 Act; or**

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

16 “(3) In any action under subsection (1) of this section alleging a violation
17 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
18 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
19 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
20 659A.318, 659A.355, 659A.357 or **659A.421 or section 2 of this 2019 Act:**

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

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

25 “(c) Upon appeal of any judgment finding a violation, the appellate court
26 shall review the judgment pursuant to the standard established by ORS
27 19.415 (1); and

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

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

1 damages if:

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

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

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

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

15 “(7) In any action under subsection (1) of this section alleging a violation
16 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
17 thorized under subsection (1) of this section, a civil penalty in the amount
18 of \$720.

19 “(8) Any individual against whom any distinction, discrimination or re-
20 striction on account of race, color, religion, sex, sexual orientation, national
21 origin, marital status or age, if the individual is 18 years of age or older,
22 has been made by any place of public accommodation, as defined in ORS
23 659A.400, by any employee or person acting on behalf of the place or by any
24 person aiding or abetting the place or person in violation of ORS 659A.406
25 may bring an action against the operator or manager of the place, the em-
26 ployee or person acting on behalf of the place or the aider or abettor of the
27 place or person. Notwithstanding subsection (1) of this section, in an action
28 under this subsection:

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

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

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

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

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

11 “(f) Upon any appeal of a judgment under this subsection, the appellate
12 court shall review the judgment pursuant to the standard established by ORS
13 19.415 (1).

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

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

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

26 “(10) In any action under subsection (1) of this section alleging a vio-
27 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
28 housing law, when the commissioner is pursuing the action on behalf of an
29 aggrieved complainant, the court shall award reasonable attorney fees to the
30 commissioner if the commissioner prevails in the action. The court may

1 award reasonable attorney fees and expert witness fees incurred by a de-
2 fendant that prevails in the action if the court determines that the commis-
3 sioner had no objectively reasonable basis for asserting the claim or for
4 appealing an adverse decision of the trial court.

5 “(11) In an action under subsection (1) or (9) of this section alleging a
6 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
7 ing law:

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

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

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

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

18 **“SECTION 9. The Commissioner of the Bureau of Labor and In-**
19 **dustries shall adopt any rules necessary to administer and enforce the**
20 **provisions of sections 2 to 4 of this 2019 Act no later than 90 days after**
21 **the effective date of this 2019 Act.**

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

24 **“(1) Conduct prohibited by ORS 659A.030, 659A.082 or 659A.112 oc-**
25 **curring on or after the effective date of this 2019 Act.**

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

28 **“SECTION 11. (1) Sections 2 to 4 of this 2019 Act and the amend-**
29 **ments to ORS 659A.885 by sections 7 and 8 of this 2019 Act become**
30 **operative on October 1, 2020.**

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

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

12
