

House Bill 2401

Sponsored by Representative NERON; Senators FREDERICK, LIEBER (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 **as introduced**.

Makes certain actions taken by employer because of employee's service as member of board, commission, council or committee created by statute unlawful employment practice. Allows employee to bring civil action or file complaint with Commissioner of Bureau of Labor and Industries for violation.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to employment protections; creating new provisions; amending ORS 659A.885; and pre-
3 scribing an effective date.

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

5 **SECTION 1. (1) An employer commits an unlawful employment practice under ORS**
6 **chapter 659A if the employer discharges, threatens to discharge, intimidates or coerces any**
7 **employee by reason of the employee's service as an appointed member of a board, commis-**
8 **sion, council or committee created by statute.**

9 **(2) An employer may not require that an employee use vacation leave, sick leave or an-**
10 **annual leave for time spent by the employee as an appointed member of a board, commission,**
11 **council or committee created by statute, and the employer shall allow the employee to take**
12 **leave without pay for time spent by the employee as an appointed member of a board, com-**
13 **mission, council or committee created by statute.**

14 **(3) This section may not be construed to alter or affect an employer's policies or agree-**
15 **ments with employees concerning employees' wages during times when an employee serves**
16 **as an appointed member of a board, commission, council or committee created by statute.**

17 **(4)(a) An employer who employs 10 or more persons commits an unlawful employment**
18 **practice under ORS chapter 659A if:**

19 **(A) The employer ceases to provide health, disability, life or other insurance coverage for**
20 **an employee during times when the employee serves as an appointed member of a board,**
21 **commission, council or committee created by statute; and**

22 **(B) The employee elected to have coverage continued while the employee served as an**
23 **appointed member of a board, commission, council or committee created by statute, and the**
24 **employee provided notice of that election to the employer in compliance with the employer's**
25 **policy for notification.**

26 **(b) Notwithstanding ORS 652.610 (3), if, following an election described in paragraph (a)**
27 **of this subsection, an employer is required or elects to pay any part of the costs of providing**
28 **health, disability, life or other insurance coverage for the employee that should have been**
29 **paid by the employee, the employer may deduct from the employee's pay such amounts upon**
30 **the employee's return to work until the amount the employer advanced toward the payments**

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 is paid. The total amount deducted for insurance under this subsection may not exceed 10
 2 percent of the employee's gross pay each pay period.

3 (c) Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of pro-
 4 viding health, disability, life or other insurance coverage for an employee under paragraph
 5 (b) of this subsection, and the employee ceases to work for the employer before the total
 6 amount the employer advanced toward the payments is paid, the employer may deduct the
 7 remaining amounts from any amounts owed by the employer to the employee or may seek
 8 to recover those amounts by any other legal means.

9 (5) An employee who alleges a violation of subsection (1) or (4) of this section may bring
 10 a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the
 11 Bureau of Labor and Industries in the manner provided by ORS 659A.820.

12 **SECTION 2.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, section
 13 7, chapter 463, Oregon Laws 2019, and section 12, chapter 701, Oregon Laws 2019, is amended to
 14 read:

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

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

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

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

29 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 30 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 31 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 32 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 33 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 34 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 1 of**
 35 **this 2021 Act;** or

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

37 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 38 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 39 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 40 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421:

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

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

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

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

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

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

6 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
7 659A.850 for a violation of ORS 652.220.

8 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
9 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
10 tion, compensatory damages or \$200, whichever is greater.

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

14 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092
15 **or section 1 of this 2021 Act**, the court may award, in addition to the relief authorized under
16 subsection (1) of this section, [*a civil penalty*] **statutory damages** in the amount of \$720.

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

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

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

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

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

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

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

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

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

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

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

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

12 (a) “Aggrieved person” includes a person who believes that the person:

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

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

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

20 **SECTION 3.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 21 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 22 Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

23 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 24 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 25 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 26 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 27 court may order back pay in an action under this subsection only for the two-year period imme-
 28 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 29 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 30 year period immediately preceding the filing of the action. In any action under this subsection, the
 31 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 32 cept as provided in subsection (3) of this section:

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

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

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

37 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 38 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 39 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 40 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 41 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 42 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or sec-**
 43 **tion 1 of this 2021 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,

1 243.323, 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.343, 659A.355, 659A.357, 659A.370 or 659A.421:

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 or
 17 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 18 tion, 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 **or section 1 of this 2021 Act**, the court may award, in addition to the relief authorized under
 24 subsection (1) of this section, [*a civil penalty*] **statutory damages** 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 4.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 29 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 30 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon
 31 Laws 2019, is amended to read:

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

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

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

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

1 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 2 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
 3 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 4 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
 5 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
 6 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
 7 659A.421 **or section 1 of this 2021 Act**; or

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

9 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 10 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
 11 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
 12 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
 13 659A.421:

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

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

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

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

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

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

24 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 25 659A.850 for a violation of ORS 652.220.

26 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 27 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 28 tion, compensatory damages or \$200, whichever is greater.

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

32 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092
 33 **or section 1 of this 2021 Act**, the court may award, in addition to the relief authorized under
 34 subsection (1) of this section, [*a civil penalty*] **statutory damages** in the amount of \$720.

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

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

45 (b) The operator or manager of the place of public accommodation, the employee or person

1 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
2 damages awarded in the action;

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

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

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

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

11 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
12 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
13 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
14 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
15 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
16 manner as a person or group of persons may file a civil action under this section. In a civil action
17 filed under this subsection, the court may assess against the respondent, in addition to the relief
18 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 violation of ORS 659A.145 or
22 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
23 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
24 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
25 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
26 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
27 appealing an adverse decision of the trial court.

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

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

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

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

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

38 **SECTION 5. This 2021 Act takes effect on the 91st day after the date on which the 2021**
39 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

40