

House Bill 3277

Sponsored by Representatives GOMBERG, NOSSE, Senators DEMBROW, KNOPP (at the request of Stop Age and Disability Discrimination in Employment Coalition)

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**.

Clarifies meaning of "because of age" in employment discrimination law.

Designates as unlawful employment practice for employer to seek age of applicant prior to making conditional offer of employment and to include certain words or phrases in job application that suggest or imply age preferences.

Permits employer to observe terms of bona fide seniority system that does not require employee to retire at certain age.

Allows person to bring civil action alleging certain types of employment discrimination under disparate impact or disparate treatment theory of proof.

Requires additional award of liquidated damages to prevailing plaintiff in civil action alleging age discrimination.

A BILL FOR AN ACT

1
2 Relating to employment discrimination; creating new provisions; and amending ORS 659A.030 and
3 659A.885.

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

5 **SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS chapter**
6 **659A.**

7 **SECTION 2. For purposes of ORS 659A.030, "because of age" includes criteria often as-**
8 **sociated with or used as a proxy for age, including but not limited to:**

9 (1) **Length of service with an employer;**

10 (2) **Higher cost factors relating to pension benefits, other retirement benefits or any in-**
11 **surance benefits; or**

12 (3) **Retirement or pension status.**

13 **SECTION 3. (1) It is an unlawful employment practice under this chapter for an employer**
14 **to:**

15 (a) **Prior to making a conditional offer of employment, seek the age of an applicant by**
16 **making inquiries on an employment application, or otherwise, that would require an appli-**
17 **cant to disclose the applicant's age, the applicant's date of birth or when the applicant at-**
18 **tended or graduated from high school or college; or**

19 (b) **Include in a job advertisement words or phrases that would suggest or imply age**
20 **preferences, including, but not limited to, the phrases "college age" and "digital native" and**
21 **other similar words or phrases that provide that an applicant must be of a particular age**
22 **or education group.**

23 (2) **Notwithstanding subsection (1) of this section, it is not an unlawful employment**
24 **practice for an employer to:**

25 (a) **Seek the age of an applicant, if age is a bona fide occupational qualification; or**

26 (b) **Require an applicant to affirm that the applicant meets age and education require-**

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 **ments, provided that the requirements are bona fide occupational qualifications.**

2 **SECTION 4. (1) A person who files an action under ORS 659A.885 claiming to be aggrieved**
 3 **by unlawful discrimination may bring the claim under a disparate treatment or disparate**
 4 **impact theory of proof.**

5 **(2)(a) A person may establish unlawful discrimination under a disparate treatment theory**
 6 **of proof by demonstrating that the employer treated the person differently than other simi-**
 7 **larly situated persons on the basis of a characteristic that is protected from unlawful dis-**
 8 **crimination.**

9 **(b) A person may establish unlawful discrimination under a disparate impact theory of**
 10 **proof by demonstrating that an employer’s facially neutral policies or employment practices**
 11 **caused a disproportionate, adverse impact on a class of persons who are protected from un-**
 12 **lawful discrimination.**

13 **(3) As used in this section, “unlawful discrimination” means discrimination described in**
 14 **ORS 659A.030, 659A.040, 659A.069, 659A.082, 659A.096, 659A.109, 659A.112, 659A.142, 659A.145,**
 15 **659A.183, 659A.199, 659A.228, 659A.230, 659A.233, 659A.236, 659A.259, 659A.277, 659A.290,**
 16 **659A.309, 659A.318, 659A.320, 659A.355 or 659A.550.**

17 **SECTION 5.** ORS 659A.030 is amended to read:

18 659A.030. (1) It is an unlawful employment practice:

19 (a) For an employer, because of an individual’s race, color, religion, sex, sexual orientation, na-
 20 tional origin, marital status or age if the individual is 18 years of age or older, or because of the
 21 race, color, religion, sex, sexual orientation, national origin, marital status or age of any other
 22 person with whom the individual associates, or because of an individual’s juvenile record that has
 23 been expunged pursuant to ORS 419A.260 and 419A.262, to refuse to hire or employ the individual
 24 or to bar or discharge the individual from employment. However, discrimination is not an unlawful
 25 employment practice if the discrimination results from a bona fide occupational qualification rea-
 26 sonably necessary to the normal operation of the employer’s business.

27 (b) For an employer, because of an individual’s race, color, religion, sex, sexual orientation, na-
 28 tional origin, marital status or age if the individual is 18 years of age or older, or because of the
 29 race, color, religion, sex, sexual orientation, national origin, marital status or age of any other
 30 person with whom the individual associates, or because of an individual’s juvenile record that has
 31 been expunged pursuant to ORS 419A.260 and 419A.262, to discriminate against the individual in
 32 compensation or in terms, conditions or privileges of employment.

33 (c) For a labor organization, because of an individual’s race, color, religion, sex, sexual orien-
 34 tation, national origin, marital status or age if the individual is 18 years of age or older, or because
 35 of an individual’s juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262,
 36 to exclude or to expel from its membership the individual or to discriminate in any way against the
 37 individual or any other person.

38 (d) For any employer or employment agency to print or circulate or cause to be printed or cir-
 39 culated any statement, advertisement or publication, or to use any form of application for employ-
 40 ment or to make any inquiry in connection with prospective employment that expresses directly or
 41 indirectly any limitation, specification or discrimination as to an individual’s race, color, religion,
 42 sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or
 43 older, or on the basis of an expunged juvenile record, or any intent to make any such limitation,
 44 specification or discrimination, unless based upon a bona fide occupational qualification. Identifica-
 45 tion of prospective employees according to race, color, religion, sex, sexual orientation, national

1 origin, marital status or age does not violate this section unless the Commissioner of the Bureau
 2 of Labor and Industries, after a hearing conducted pursuant to ORS 659A.805, determines that the
 3 designation expresses an intent to limit, specify or discriminate on the basis of race, color, religion,
 4 sex, sexual orientation, national origin, marital status or age.

5 (e) For an employment agency, because of an individual’s race, color, religion, sex, sexual ori-
 6 entation, national origin, marital status or age if the individual is 18 years of age or older, or be-
 7 cause of the race, color, religion, sex, sexual orientation, national origin, marital status or age of
 8 any other person with whom the individual associates, or because of an individual’s juvenile record
 9 that has been expunged pursuant to ORS 419A.260 and 419A.262, to classify or refer for employment,
 10 or to fail or refuse to refer for employment, or otherwise to discriminate against the individual.
 11 However, it is not an unlawful employment practice for an employment agency to classify or refer
 12 for employment an individual when the classification or referral results from a bona fide occupa-
 13 tional qualification reasonably necessary to the normal operation of the employer’s business.

14 (f) For any person to discharge, expel or otherwise discriminate against any other person be-
 15 cause that other person has opposed any unlawful practice, or because that other person has filed
 16 a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so.

17 (g) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce
 18 the doing of any of the acts forbidden under this chapter or to attempt to do so.

19 (2) The provisions of this section apply to an apprentice under ORS 660.002 to 660.210, but the
 20 selection of an apprentice on the basis of the ability to complete the required apprenticeship train-
 21 ing before attaining the age of 70 years is not an unlawful employment practice. The commissioner
 22 shall administer this section with respect to apprentices under ORS 660.002 to 660.210 equally with
 23 regard to all employees and labor organizations.

24 (3) The compulsory retirement of employees required by law at any age is not an unlawful em-
 25 ployment practice if lawful under federal law.

26 (4)(a) It is not an unlawful employment practice for an employer or labor organization to provide
 27 or make financial provision for child care services of a custodial or other nature to its employees
 28 or members who are responsible for a minor child.

29 (b) As used in this subsection, “responsible for a minor child” means having custody or legal
 30 guardianship of a minor child or acting in loco parentis to the child.

31 (5)(a) This section does not prohibit an employer from enforcing an otherwise valid dress code
 32 or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation
 33 of an individual based on the health and safety needs of the individual.

34 **(b) An employer or labor organization from observing the terms of a bona fide seniority**
 35 **system, provided that the seniority system:**

36 **(A) Is not intended to evade the requirements of this section; and**

37 **(B) Does not require an employee to retire at a certain age, unless otherwise required**
 38 **by federal law or Article VII (Amended) of the Oregon Constitution.**

39 **(c) An employer from enforcing a seniority system or employee benefit plan that offers**
 40 **voluntary early retirement as an incentive.**

41 **SECTION 6.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, section
 42 7, chapter 463, Oregon Laws 2019, and section 12, chapter 701, Oregon Laws 2019, is amended to
 43 read:

44 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 45 section (2) of this section may file a civil action in circuit court. In any action under this subsection,

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

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

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

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

13 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 14 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 15 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 16 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 17 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 18 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 3 of**
 19 **this 2021 Act;** or

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

21 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 22 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 23 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 24 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 3 of this 2021 Act:**

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

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

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

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

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

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

35 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 36 659A.850 for a violation of ORS 652.220.

37 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 38 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 39 tion, compensatory damages or \$200, whichever is greater.

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

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

1 **(8) In any action under subsection (1) of this section alleging a violation of ORS 659A.030**
 2 **because of age, the court shall award to the prevailing plaintiff, in addition to the relief au-**
 3 **thorized under subsections (1) and (3) of this section, liquidated damages in an amount equal**
 4 **to two times any economic compensatory damages awarded or \$25,000, whichever is greater.**

5 [(8)] **(9)** Any individual against whom any distinction, discrimination or restriction on account
 6 of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individ-
 7 ual is 18 years of age or older, has been made by any place of public accommodation, as defined in
 8 ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 9 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 10 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 11 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 12 section:

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

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

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

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

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

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

26 [(9)] **(10)** When the commissioner or the Attorney General has reasonable cause to believe that
 27 a person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 28 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 29 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 30 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 31 manner as a person or group of persons may file a civil action under this section. In a civil action
 32 filed under this subsection, the court may assess against the respondent, in addition to the relief
 33 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

36 [(10)] **(11)** In any action under subsection (1) of this section alleging a violation of ORS 659A.145
 37 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 38 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 39 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 40 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 41 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 42 appealing an adverse decision of the trial court.

43 [(11)] **(12)** In an action under subsection (1) or [(9)] **(10)** of this section alleging a violation of
 44 ORS 659A.145 or 659A.421 or discrimination under federal housing law:

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

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

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

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

8 **SECTION 7.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 9 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 10 Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

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

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

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

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

25 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 26 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 27 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 28 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 29 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 30 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or sec-**
 31 **tion 3 of this 2021 Act;** or

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

33 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 34 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 35 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 36 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or section 3 of this 2021**
 37 **Act:**

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

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

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

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

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

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

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

5 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 6 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 7 tion, compensatory damages or \$200, whichever is greater.

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

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

14 **(8) In any action under subsection (1) of this section alleging a violation of ORS 659A.030**
 15 **because of age, the court shall award to the prevailing plaintiff, in addition to the relief au-**
 16 **thorized under subsections (1) and (3) of this section, liquidated damages in an amount equal**
 17 **to two times any economic compensatory damages awarded or \$25,000, whichever is greater.**

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

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

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

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

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

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

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

39 [(9)] (10) When the commissioner or the Attorney General has reasonable cause to believe that
 40 a person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 41 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 42 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 43 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 44 manner as a person or group of persons may file a civil action under this section. In a civil action
 45 filed under this subsection, the court may assess against the respondent, in addition to the relief

1 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

4 [(10)] (11) In any action under subsection (1) of this section alleging a violation of ORS 659A.145
5 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
6 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
7 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
8 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
9 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
10 appealing an adverse decision of the trial court.

11 [(11)] (12) In an action under subsection (1) or [(9)] (10) of this section alleging a violation of
12 ORS 659A.145 or 659A.421 or discrimination under federal housing law:

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

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

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

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

21 **SECTION 8.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
22 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
23 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon
24 Laws 2019, is amended to read:

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

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

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

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

39 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
40 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
41 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
42 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
43 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
44 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
45 659A.421 **or section 3 of this 2021 Act;** or

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

2 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
3 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
4 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
5 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
6 659A.421 or **section 3 of this 2021 Act:**

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

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

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

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

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

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

17 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
18 659A.850 for a violation of ORS 652.220.

19 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
20 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
21 tion, compensatory damages or \$200, whichever is greater.

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

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

28 **(8) In any action under subsection (1) of this section alleging a violation of ORS 659A.030**
29 **because of age, the court shall award to the prevailing plaintiff, in addition to the relief au-**
30 **thorized under subsections (1) and (3) of this section, liquidated damages in an amount equal**
31 **to two times any economic compensatory damages awarded or \$25,000, whichever is greater.**

32 [(8)] (9) Any individual against whom any distinction, discrimination or restriction on account
33 of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individ-
34 ual is 18 years of age or older, has been made by any place of public accommodation, as defined in
35 ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
36 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
37 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
38 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
39 section:

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

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

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

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

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

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

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

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

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

18 ~~[(10)]~~ **(11)** In any action under subsection (1) of this section alleging a violation of ORS 659A.145
19 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
20 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
21 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
22 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
23 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
24 appealing an adverse decision of the trial court.

25 ~~[(11)]~~ **(12)** In an action under subsection (1) or ~~[(9)]~~ **(10)** of this section alleging a violation of
26 ORS 659A.145 or 659A.421 or discrimination under federal housing law:

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

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

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

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

35