A-Engrossed

Senate Bill 780

Ordered by the Senate May 4
Including Senate Amendments dated May 4

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Senator Floyd Prozanski)

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.

Limits liability of certain health care entities and providers, health maintenance organizations and hospitals for certain claims arising during COVID-19 emergency period.

Provides that it is unlawful employment practice for hospital or health maintenance organization to take certain action against employee for reason that employee reported violation of standard of care during COVID-19 emergency period or testified or participated in proceeding involving certain claims related to COVID-19.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to civil claims arising during the COVID-19 emergency period; creating new provisions; amending ORS 659A.350 and 659A.885; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 3 of this 2021 Act:

(1)(a) “Covered entity” means a corporation, partnership or association or any other form of legal or business entity that:

(A) Directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a covered provider;

(B) Directs the rendering of health care services by a covered provider;

(C) Owns or operates a hospital, health maintenance organization or health care entity; or

(D) Employs a health care provider.

(b) “Covered entity” does not include:

(A) A long term care facility as defined in ORS 442.015;

(B) A residential care facility as defined in ORS 443.400;

(C) An establishment furnishing primarily domiciliary care as described in ORS 443.205;

(D) A facility licensed or approved under the rules of the Department of Corrections;

(E) A juvenile detention facility, local correctional facility or lockup, as those terms are defined in ORS 169.005;

(F) A regional correctional facility as defined in ORS 169.620; or

(G) A youth correction facility as defined in ORS 420.005.

(2) “Covered provider” means a health care provider, health maintenance organization, hospital or health care entity.

(3) “COVID-19 emergency period” means the time in which any declaration of a state of

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.
emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect.

(4) “COVID-19 emergency rule” means an executive order, order of the Public Health Director, declaration, directive or other state or federal authorization, policy, statement, guidance, rule or regulation that creates a standard or waives, suspends or modifies otherwise applicable state or federal law, regulations or standards regarding the rendering of health care services, including those regarding the standard of care during the COVID-19 emergency period and the use of telemedicine during the COVID-19 emergency period.

(5)(a) “Health care entity” means a corporation, partnership or association or any other form of legal or business entity that renders health care services, including but not limited to:

(A) An ambulatory surgical center as defined in ORS 442.015;
(B) A hospital-affiliated clinic or affiliated clinic as defined in ORS 442.612; or
(C) An outpatient clinic, including a medical clinic, community health clinic, student health center or dental clinic.

(b) “Health care entity” does not include:

(A) A long term care facility as defined in ORS 442.015;
(B) A residential care facility as defined in ORS 443.400;
(C) An establishment furnishing primarily domiciliary care as described in ORS 443.205;
(D) A facility licensed or approved under the rules of the Department of Corrections;
(E) A juvenile detention facility, local correctional facility or lockup, as those terms are defined in ORS 169.005;
(F) A regional correctional facility as defined in ORS 169.620; or
(G) A youth correction facility as defined in ORS 420.005.

(6) “Health care provider” means:

(a) A physician licensed under ORS chapter 677;
(b) An advanced practice registered nurse who meets the requirements of ORS 678.025;
(c) A nurse licensed under ORS 678.040 to 678.101;
(d) A physician assistant licensed under ORS 677.505 to 677.525;
(e) A dentist licensed under ORS 679.060 to 679.180; or
(f) A dental hygienist licensed under ORS 680.010 to 680.205.

(7) “Health care services” means supplies and services, including services provided by telemedicine, that involve the:

(a) Treatment, diagnosis, prevention or mitigation of COVID-19;
(b) Assessment or care of an individual with a confirmed or suspected case of COVID-19; or
(c) Assessment, care or clinically or medically related prevention, diagnostic or treatment services of any other individual during the COVID-19 emergency period and during a time when COVID-19 emergency rules are in effect.

(8) “Health maintenance organization” has the meaning given that term in ORS 750.005.

(9) “Hospital” has the meaning given that term in ORS 442.015 and includes hospital satellites and any location where the Oregon Health Authority allows hospital services to be provided during the COVID-19 emergency period, including but not limited to temporarily licensed additional hospital space on-campus or off-campus and temporary or mobile on-campus locations.
(10) “Telemedicine” means the provision of health care services to a patient by a health care provider from a distance using electronic communications, including synchronous audio and video communication, audio-only telephone communication, store-and-forward technology or any other form of two-way electronic communication.

SECTION 2. (1) A person may not bring a claim against a covered provider arising from acts or omissions performed:
(a) In the course of rendering health care services; and
(b) In order to comply with the COVID-19 emergency rule or rules applicable to the act or omission that are in effect at the time of the act or omission.
(2) The immunity provided in subsection (1) of this section does not apply to:
(a) Acts or omissions constituting gross negligence;
(b) Reckless, wanton or intentional misconduct;
(c) False claims actions brought by or on behalf of the state;
(d) Fraud;
(e) Deceptive acts or practices;
(f) The delay or cancellation of a nonurgent or elective procedure in response to a COVID-19 emergency rule that puts a patient at risk of irreversible harm based on the medical evidence available at the time of the delay or cancellation. Criteria for determining whether a delay or cancellation puts a patient at risk of irreversible harm based on the medical evidence available at the time of the delay or cancellation include, but are not limited to:
(A) Threat to the patient’s life;
(B) Threat of irreversible harm to the patient’s physical or mental health;
(C) Threat of permanent dysfunction of an extremity or organ;
(D) Risk of cancer metastasis or progression of staging; and
(E) Risk of rapidly worsening condition; or
(g) An act or omission performed by a covered provider at a long term care facility as defined in ORS 442.015, a residential care facility as defined in ORS 443.400, an establishment furnishing primarily domiciliary care as described in ORS 443.205, a facility licensed or approved under the rules of the Department of Corrections, a juvenile detention facility, local correctional facility or lockup, as those terms are defined in ORS 169.005, a regional correctional facility as defined in ORS 169.620 or a youth correction facility as defined in ORS 420.005.
(3) A person may not bring a claim against a covered entity arising from acts or omissions performed by a covered provider if the covered provider would have immunity under subsection (1) of this section.
(4) This section does not limit the obligation of a covered provider to comply with any other applicable rule, guidance or law.
(5) This section does not limit any other cause of action or remedy available to any person, including any action for whistleblower protections or discrimination.

SECTION 3. (1) A covered provider or covered entity may move at any time to strike a claim in a civil action that is barred by section 2 of this 2021 Act. A motion to strike under this section shall be treated as a motion to dismiss under ORCP 21 A but is not subject to ORCP 21 F. Upon granting a motion under this section, the court shall enter a judgment of dismissal without prejudice. If the court denies a motion under this section, the court shall
enter a limited judgment denying the motion.

(2)(a) A covered provider or covered entity that moves to strike a claim under this section has the initial burden of making a prima facie showing that the claim is barred under section 2 of this 2021 Act.

(b) If the covered provider or covered entity meets this burden, the burden shifts to the plaintiff in the action to establish that a genuine issue of material fact exists that the claim is not barred under section 2 of this 2021 Act. If the plaintiff meets the burden under this paragraph, the court shall deny the motion.

(c) The court shall only consider the pleadings and supporting and opposing affidavits in making a determination whether a genuine issue of material fact exists. If the court determines that a genuine issue of material fact exists:

(A) The fact that the determination has been made and the substance of the determination may not be admitted in evidence at any later stage of the case; and

(B) The determination does not affect the burden of proof or standard of proof that is applied in the proceeding.

SECTION 4. Section 5 of this 2021 Act is added to and made a part of ORS chapter 659A.

SECTION 5. (1) As used in this section:

(a) “COVID-19 emergency period” means the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect.

(b) “Health care provider” means:

(A) A physician licensed under ORS chapter 677;

(B) An advanced practice registered nurse who meets the requirements of ORS 678.025;

(C) A nurse licensed under ORS 678.040 to 678.101;

(D) A physician assistant licensed under ORS 677.505 to 677.525;

(E) A dentist licensed under ORS 679.060 to 679.180; or

(F) A dental hygienist licensed under ORS 680.010 to 680.205.

(c) “Health maintenance organization” has the meaning given that term in ORS 750.005.

(d) “Hospital” has the meaning given that term in ORS 442.015 and includes hospital satellites and any location where the Oregon Health Authority allows hospital services to be provided during the COVID-19 emergency period, including but not limited to temporarily licensed additional hospital space on-campus or off-campus and temporary or mobile on-campus locations.

(2) It is an unlawful employment practice for a hospital or health maintenance organization to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee, in good faith:

(a) Reported to a direct supervisor or a person who has authority within the hospital or health maintenance organization to take corrective action information that the employee reasonably believes is evidence of a violation of a standard of care during the COVID-19 emergency period by the hospital or health maintenance organization or by a health care provider employed by the hospital or health maintenance organization; or

(b) Testified or participated in any proceeding involving a claim for injuries that a party asserts is barred under section 2 of this 2021 Act.

(3) Subsection (2)(a) of this section applies only to an employee who has sufficient quali-
fications to evaluate the standard of care during the COVID-19 emergency period. Factors relevant to the determination of whether the employee has sufficient qualifications include, but are not limited to, experience, education and professional licensure.

(4) The remedies provided by this chapter are in addition to any common law remedy or other remedy that may be available to an employee for the conduct constituting a violation of this section.

SECTION 6. ORS 659A.350 is amended to read:


(2) Nothing in subsection (1) of this section creates an employment relationship between an employer and an intern for the purposes of ORS chapter 652, 653, 654, 656, 657 or 658.

(3) As used in this section, “intern” means a person who performs work for an employer for the purpose of training if:

(a) The employer is not committed to hire the person performing the work at the conclusion of the training period;

(b) The employer and the person performing the work agree in writing that the person performing the work is not entitled to wages for the work performed; and

(c) The work performed:

(A) Supplements training given in an educational environment that may enhance the employability of the intern;

(B) Provides experience for the benefit of the person performing the work;

(C) Does not displace regular employees;

(D) Is performed under the close supervision of existing staff; and

(E) Provides no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer.

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

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

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

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

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

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
1  652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
3  659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
5  659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 or section 5 of
6  this 2021 Act; or
7
8 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.
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10 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
12  659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
13  659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421 or section 5 of this 2021 Act:
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15 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
16  compensatory damages or $200, whichever is greater, and punitive damages;
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18 (b) At the request of any party, the action shall be tried to a jury;
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20 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
21  ment pursuant to the standard established by ORS 19.415 (1); and
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23 (d) Any attorney fee agreement shall be subject to approval by the court.
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25 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
26  olation of ORS 652.220, the court may award punitive damages if:
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28 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
29  with malice or acted with willful and wanton misconduct; or
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31 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
32  659A.850 for a violation of ORS 652.220.
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34 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
35  659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
36  tion, compensatory damages or $200, whichever is greater.
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38 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574
39  or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this sec-
40  tion, compensatory damages or $250, whichever is greater.
41
42 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
43  the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
44  penalty in the amount of $720.
45
46 (8) Any individual against whom any distinction, discrimination or restriction on account of
47  race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
48  is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
49  659A.400, by any employee or person acting on behalf of the place or by any person aiding or
50  abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
51  or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
52  of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
53  section:
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55 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
56  compensatory and punitive damages;
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58 (b) The operator or manager of the place of public accommodation, the employee or person
59  acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
60  damages awarded in the action;
(c) At the request of any party, the action shall be tried to a jury;
(d) The court shall award reasonable attorney fees to a prevailing plaintiff;
(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and
(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).
(9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:
(a) In an amount not exceeding $50,000 for a first violation; and
(b) In an amount not exceeding $100,000 for any subsequent violation.
(10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.
(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:
(a) “Aggrieved person” includes a person who believes that the person:  
(A) Has been injured by an unlawful practice or discriminatory housing practice; or
(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.
(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.
SECTION 8. ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463, Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:
659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

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

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

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


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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 9.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463, Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

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

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

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

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


(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or $200, whichever is greater, and punitive damages;
(b) At the request of any party, the action shall be tried to a jury;
(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and
(d) Any attorney fee agreement shall be subject to approval by the court.

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

(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or
(b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or $200, whichever is greater.
(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or $250, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. (1) Sections 1 to 3 of this 2021 Act apply to claims arising from acts or omissions that occur at any time during the COVID-19 emergency period, as defined in section 1 of this 2021 Act.

(2) Section 5 of this 2021 Act and the amendments to ORS 659A.350 and 659A.885 by sections 6 to 9 of this 2021 Act apply to actions taken against employees at any time during the COVID-19 emergency period, as defined in section 5 of this 2021 Act.

SECTION 11. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.