

Senate Bill 771

Sponsored by Senator KNOPP

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 discrimination against individual based on vaccination history, individual's refusal to obtain vaccination or individual's failure to provide proof of immunity to communicable disease unlawful employment practice. Allows civil action for violation against unlawful employment practice.

A BILL FOR AN ACT

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

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 659A.**

6 **SECTION 2. (1) It is an unlawful employment practice for an employer to refuse to hire
7 or employ an individual, to bar or discharge an individual from employment or to penalize
8 or otherwise discriminate against an individual in compensation or in terms, conditions or
9 privileges of employment:**

10 (a) **Because of the individual's vaccination history;**

11 (b) **Because the individual refuses to obtain a vaccination; or**

12 (c) **Because the individual fails to provide proof of immunity or immunization with re-
13 spect to a communicable disease.**

14 (2) **As used in this section, "communicable disease" has the meaning given that term in
15 ORS 431A.005.**

16 **SECTION 3. ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, section
17 7, chapter 463, Oregon Laws 2019, and section 12, chapter 701, Oregon Laws 2019, is amended to
18 read:**

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

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

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

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.

(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, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 2 of this 2021 Act**; or

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

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

(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

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 4.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
39 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
40 Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

41 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
42 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
43 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
44 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
45 court may order back pay in an action under this subsection only for the two-year period imme-

1 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 2 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 3 year period immediately preceding the filing of the action. In any action under this subsection, the
 4 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 5 cept as provided in subsection (3) of this section:

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

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

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

10 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 11 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 12 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 13 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 14 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 15 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or sec-**
 16 **tion 2 of this 2021 Act;** or

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

18 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 19 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 20 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 21 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421:

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

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

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

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

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

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

32 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 33 659A.850 for a violation of ORS 652.220.

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.

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

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

43 (8) Any individual against whom any distinction, discrimination or restriction on account of
 44 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 45 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS

1 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
2 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
3 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
4 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
5 section:

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

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

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

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

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

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

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

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

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

29 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
30 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
31 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
32 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
33 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
34 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
35 appealing an adverse decision of the trial court.

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

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

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

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

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

1 **SECTION 5.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 2 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 3 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon
 4 Laws 2019, is amended to read:

5 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 6 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 7 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 8 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 9 court may order back pay in an action under this subsection only for the two-year period imme-
 10 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 11 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 12 year period immediately preceding the filing of the action. In any action under this subsection, the
 13 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 14 cept as provided in subsection (3) of this section:

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

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

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

19 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 20 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
 21 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 22 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
 23 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
 24 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
 25 659A.421 **or section 2 of this 2021 Act;** or

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

27 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 28 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
 29 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
 30 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
 31 659A.421:

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

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

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

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

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

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

42 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 43 659A.850 for a violation of ORS 652.220.

44 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 45 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-

1 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11