

Enrolled Senate Bill 1567

Sponsored by Senators DEMBROW, MANNING JR, FREDERICK, Representatives DEXTER, EVANS, GRAYBER, PHAM; Senators ARMITAGE, GELSER BLOUIN, GORSEK, JAMA, LAWRENCE SPENCE, PATTERSON, STEINER HAYWARD, TAYLOR, WAGNER, Representatives ALONSO LEON, CAMPOS, GOMBERG, HELM, HOLVEY, HUDSON, NATHANSON, NELSON, NOSSE, POWER, REARDON, REYNOLDS, RUIZ, SANCHEZ, SCHOUTEN, WITT (Pre-session filed.)

CHAPTER

AN ACT

Relating to energy infrastructure resilience; creating new provisions; amending ORS 659A.885; and prescribing an effective date.

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

SECTION 1. Sections 2 to 6 of this 2022 Act are added to and made a part of ORS chapter 468B.

SECTION 2. (1) As used in sections 2 to 6 of this 2022 Act, “bulk oils or liquid fuels terminal” means an industrial facility located in Columbia, Multnomah or Lane County that is primarily engaged in the transport or bulk storage of oils or liquid fuel products and is characterized by having:

- (a) Marine, pipeline, railroad or vehicular transport access;**
- (b) Transloading facilities for transferring shipments of oils or liquid fuel products between transportation modes; and**
- (c) One or more bulk storage tanks with a combined capacity of two million gallons or more.**

(2) An owner or operator of a bulk oils or liquid fuels terminal shall conduct and submit to the Department of Environmental Quality a comprehensive seismic vulnerability assessment for the entire bulk oils or liquid fuels terminal. A seismic vulnerability assessment submitted to the department under this section must:

(a) Include a seismic risk assessment, or a series of seismic risk assessments, conducted by qualified professionals using the most recent industry standards for assessing seismic risk to:

- (A) Buildings, structures and ancillary components;**
- (B) Bulk storage tanks;**
- (C) Spill containment structures;**
- (D) Transloading facilities, including wharves, piers, moorings and retaining structures;**
- (E) Loading racks;**
- (F) Control equipment; and**
- (G) Any other structures and related or supporting facilities that constitute the bulk oils or liquid fuels terminal;**

(b) Include a determination of the bulk oils or liquid fuels terminal's vulnerability to liquefaction triggering and liquefaction consequences, such as lateral spreading and coseismic settlement, using standards in accordance with guidance contained in "National Academies of Sciences, Engineering and Medicine, State of the Art and Practice in the Assessment of Earthquake-Induced Soil Liquefaction and Its Consequences, 2016";

(c) Include a determination of whether the existing structures and related or supporting facilities that constitute the bulk oils or liquid fuels terminal have been designed, improved or retrofitted to reduce the potential for significant structural damage to property or harm to people or the environment in or adjacent to the bulk oils or liquid fuels terminal in the event of a magnitude 9.0 Cascadia Subduction Zone earthquake, including impacts from the expected duration of shaking; and

(d) Include a determination of the structures and related or supporting facilities that are most vulnerable to seismic risks and the potential of those structures and facilities to maintain safe operating conditions, or safe shutdown procedures, to protect public health, life safety and environmental safety against releases of oils or liquid fuel products, including information about operational procedures during disasters.

(3) The department shall review a seismic vulnerability assessment submitted under this section and approve the assessment if it meets the requirements of subsection (2) of this section and any other requirements for seismic vulnerability assessments contained in rules adopted under subsection (4) of this section.

(4)(a) The Environmental Quality Commission, in consultation with the State Department of Geology and Mineral Industries, may adopt by rule requirements for seismic vulnerability assessments submitted to the Department of Environmental Quality under this section.

(b) Rules adopted by the commission may require the owner or operator of a bulk oils or liquid fuels terminal to submit seismic vulnerability assessment updates to the department:

(A) Upon the retrofit or reconstruction of all or a part of a bulk oils or liquid fuels terminal; or

(B) Based on new scientific or technical findings, but no more frequently than once every three years.

(c) Notwithstanding subsection (2)(b) of this section, the commission may by rule adopt revised or additional standards for determining a bulk oils or liquid fuels terminal's vulnerability to liquefaction triggering and liquefaction consequences if the commission determines that guidance contained in "National Academies of Sciences, Engineering and Medicine, State of the Art and Practice in the Assessment of Earthquake-Induced Soil Liquefaction and Its Consequences, 2016" no longer represents the most recent industry standards for determining vulnerability to soil liquefaction triggering and liquefaction consequences.

SECTION 3. (1) The owner or operator of a bulk oils or liquid fuels terminal shall properly implement a seismic risk mitigation implementation plan that has been approved by the Department of Environmental Quality. A seismic risk mitigation implementation plan must, at a minimum, identify actions, with timelines, to protect public health, life safety and environmental safety within the facility, in areas adjacent to the facility and in other areas that may be affected as a result of damages to the facility. A seismic risk mitigation implementation plan, as a risk-based assessment, must include consideration of the likelihood of a magnitude 9.0 Cascadia Subduction Zone earthquake, the potential consequences of that event and the resources needed to respond to that event.

(2) The Environmental Quality Commission, in consultation with the State Department of Geology and Mineral Industries, shall adopt by rule a seismic risk mitigation implementation program for bulk oils or liquid fuels terminals that is based on risk. To the extent feasible and appropriate, the program adopted under this section shall be consistent and coordinated with the program established under ORS 468B.345 to 468B.415. Rules adopted under this section shall include, but not be limited to:

(a) Rules for the required content of seismic risk mitigation implementation plans and rules for approval by the Department of Environmental Quality of seismic risk mitigation implementation plans.

(b) Provisions for training, response exercises, external peer reviews, inspections and tests in order to verify the ability of the facility to sustain safe conditions and respond to uncontrolled releases of hazardous materials from the bulk oils or liquid fuels terminal due to an earthquake.

(c) Requirements to minimize harmful impacts to local communities and natural resources due to uncontrolled releases of hazardous materials from the bulk oils or liquid fuels terminal due to an earthquake and its associated direct and indirect impacts, including fires and flooding.

(d) Requirements for the inspection of bulk storage tanks at bulk oils or liquid fuels terminals.

(e) Design and construction standards for new bulk storage tanks constructed at bulk oils or liquid fuels terminals.

(f) Design and construction standards for seismic mitigation of existing bulk storage tanks, piping and related structures constructed at bulk oils or liquid fuels terminals.

(g) Provisions requiring the proper installation of seismically certified generators to power critical operations, or at a minimum, the installation of electrical hookups for emergency generators.

(h) Provisions for the review of seismic vulnerability assessments required under section 2 of this 2022 Act and seismic risk mitigation implementation plans required under subsection (1) of this section by state agencies with expertise in earthquake hazards, risk mitigation or emergency preparedness or management.

(i) Provisions requiring the owner or operator of a bulk oils or liquid fuels terminal to submit seismic vulnerability mitigation implementation plan updates to the department:

(A) According to a schedule established by the commission;

(B) Upon the retrofit or reconstruction of all or a part of a bulk oils or liquid fuels terminal; and

(C) Based on new scientific or technical findings, but no more frequently than once every three years.

(j) Provisions establishing a fee calculated to cover the costs to the department of reviewing seismic risk mitigation implementation plans submitted under this section and seismic risk assessments submitted under section 2 of this 2022 Act, less any federal funds received by the department for those purposes. Fees received by the department under this paragraph shall be deposited in the Seismic Risk Mitigation Fund established under section 6 of this 2022 Act.

(k) Provisions establishing grants or other financial assistance to owners or operators of bulk oils or liquid fuels terminals for improvements to existing infrastructure, provided that federal funds are made available to the department for that purpose.

SECTION 3a. The requirements of sections 2 to 6 of this 2022 Act do not apply to a bulk oils or liquid fuels terminal to the extent those requirements are preempted by the federal Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60101 et seq.

SECTION 4. Confidential business information submitted to the Department of Environmental Quality by the owner or operator of a bulk oils or liquid fuels terminal under section 2 or 3 of this 2022 Act is confidential and not subject to public disclosure under ORS 192.311 to 192.478, except that the department may disclose summarized information or aggregated data if the information or data does not directly or indirectly identify the confidential business information.

SECTION 5. (1) It is an unlawful employment practice for the owner or operator of a bulk oils or liquid fuels terminal to discharge, demote, suspend or in any manner discriminate or retaliate against an employee of the bulk oils or liquid fuels terminal with regard to pro-

motion, compensation or other terms, conditions or privileges of employment because the employee has in good faith:

(a) Reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation; or

(b) Provided information regarding a public health, life safety or environmental safety risk at the bulk oils or liquid fuels terminal to a federal, state or local government official or a person conducting a seismic risk assessment under section 2 of this 2022 Act.

(2) This section is subject to enforcement under ORS chapter 659A.

(3) The remedies provided by ORS chapter 659A 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. (1) The Seismic Risk Mitigation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Seismic Risk Mitigation Fund shall be credited to the fund.

(2) Moneys in the Seismic Risk Mitigation Fund shall consist of:

(a) Money appropriated to the fund by the Legislative Assembly;

(b) Fees deposited in the fund under section 3 of this 2022 Act;

(c) Moneys transferred to the fund from the federal or state government; or

(d) Gifts, grants and donations received from any source.

(3) All moneys in the Seismic Risk Mitigation Fund are continuously appropriated to the Department of Environmental Quality for the purposes of:

(a) Reviewing seismic risk mitigation implementation plans submitted under section 3 of this 2022 Act and seismic risk assessments submitted under section 2 of this 2022 Act; and

(b) Providing grants or other financial assistance to owners or operators of bulk oils or liquid fuels terminals under section 3 (2)(k) of this 2022 Act.

SECTION 7. ORS 659A.885 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), 475C.285, 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 5 of this 2022 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, gender identity, 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 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, section 13, chapter 701, Oregon Laws 2019, and section 45, chapter 367, Oregon Laws 2021, 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), 475C.285, 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.357, 659A.370 or 659A.421 **or section 5 of this 2022 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.357, 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, gender identity, 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, section 13, chapter 701, Oregon Laws 2019, and section 46, chapter 367, Oregon Laws 2021, 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), 475C.285, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and 657B.070, 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.357, 659A.370 or 659A.421 **or section 5 of this 2022 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, 657B.060 and 657B.070, 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.357, 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, gender identity, 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. A person who owns or operates an existing bulk oils or liquid fuels terminal on the effective date of this 2022 Act shall submit the seismic vulnerability assessment required by section 2 of this 2022 Act no later than June 1, 2024.

SECTION 11. (1) Section 3 of this 2022 Act becomes operative June 1, 2024.

(2) The Environmental Quality Commission, the Department of Environmental Quality, and the State Department of Geology and Mineral Industries may adopt rules and take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission, the Department of Environmental Quality and the State Department of Geology and Mineral Industries, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, powers and functions conferred on the commission, the Department of Environmental Quality and the State Department of Geology and Mineral Industries by section 3 of this 2022 Act.

SECTION 12. (1) The State Department of Energy shall develop an energy security plan. The energy security plan must meet the requirements for a state energy security plan described in 42 U.S.C. 6326.

(2) To the extent consistent with the requirements of 42 U.S.C. 6326, the energy security plan must align with strategies in the Oregon Fuel Action Plan developed by the department and must include, but need not be limited to:

(a) An evaluation of the state’s ability to recover quickly from physical threats, including a magnitude 9.0 Cascadia Subduction Zone earthquake, and cybersecurity threats.

(b) Recommendations for increasing the geographic diversity of fuel storage capacity throughout this state.

(c) An assessment of the seismic resilience of existing fuel storage facilities throughout this state.

(d) Consistent with state programs to reduce greenhouse gas emissions associated with transportation fuels, an assessment of the use of renewable fuels and other innovative alternatives to improve disaster resilience.

(e) An evaluation of strategies for mitigating barriers to implementing a geographically distributed fuel network throughout this state, including:

(A) Adoption of Oregon Fuel Action Plan criteria for predesignated fuel points of distribution for receiving emergency fuel supplies at selected fuel diversification sites.

(B) Strategies for expanding storage capacities at public facilities with existing capability to store and dispense unleaded, diesel or aviation fuel, including an evaluation of whether fuel storage sites contain properly installed seismically certified generators and adequate on-site fuel storage capacity to power backup generators so that independent operations can be maintained for three or more weeks after a Cascadia Subduction Zone earthquake.

(C) Partnerships with private-sector companies to build fuel storage capacity at identified, prioritized locations, especially private-sector companies that provide an emergency or essential service mission to save or sustain life or support the restoration of critical lifelines and services in support of the state’s overall response and recovery effort.

(D) Strategies for increasing geographically distributed fuel storage that prioritize areas of this state that are expected to be most vulnerable to a Cascadia Subduction Zone earth-

quake, including local or regional islanding effects that would isolate a region from the rest of this state as a result of road or bridge damage.

(E) An evaluation of potential impacts to communities adjacent to potential locations for emergency fuel storage or expanded fuel storage, including consultation and outreach with those communities.

(3) In developing and implementing the energy security plan, the department shall consult with:

(a) Relevant state government agencies, including the Public Utility Commission, the Department of Environmental Quality, the Department of Transportation, the Oregon Department of Aviation, the Office of Emergency Management, the State Department of Geology and Mineral Industries and the Environmental Justice Task Force;

(b) Local governments;

(c) Tribal governments;

(d) Consumer-owned and investor-owned electric utilities;

(e) Natural gas utilities;

(f) Fuel suppliers;

(g) Qualified technical experts in disaster resilience; and

(h) Any other person with relevant knowledge or experience.

(4) No later than September 15 of each even-numbered year, the State Department or Energy shall provide to the interim committees of the Legislative Assembly related to energy a report in the manner provided under ORS 192.245 describing the implementation or revision of the energy security plan developed under this section.

SECTION 13. Section 12 of this 2022 Act is amended to read:

Sec. 12. (1) The State Department of Energy shall develop an energy security plan. The energy security plan must meet the requirements for a state energy security plan described in 42 U.S.C. 6326.

(2) To the extent consistent with the requirements of 42 U.S.C. 6326, the energy security plan must align with strategies in the Oregon Fuel Action Plan developed by the department and must include, but need not be limited to:

(a) An evaluation of the state's ability to recover quickly from physical threats, including a magnitude 9.0 Cascadia Subduction Zone earthquake, and cybersecurity threats.

(b) Recommendations for increasing the geographic diversity of fuel storage capacity throughout this state.

(c) An assessment of the seismic resilience of existing fuel storage facilities throughout this state.

(d) Consistent with state programs to reduce greenhouse gas emissions associated with transportation fuels, an assessment of the use of renewable fuels and other innovative alternatives to improve disaster resilience.

(e) An evaluation of strategies for mitigating barriers to implementing a geographically distributed fuel network throughout this state, including:

(A) Adoption of Oregon Fuel Action Plan criteria for predesignated fuel points of distribution for receiving emergency fuel supplies at selected fuel diversification sites.

(B) Strategies for expanding storage capacities at public facilities with existing capability to store and dispense unleaded, diesel or aviation fuel, including an evaluation of whether fuel storage sites contain properly installed seismically certified generators and adequate on-site fuel storage capacity to power backup generators so that independent operations can be maintained for three or more weeks after a Cascadia Subduction Zone earthquake.

(C) Partnerships with private-sector companies to build fuel storage capacity at identified, prioritized locations, especially private-sector companies that provide an emergency or essential service mission to save or sustain life or support the restoration of critical lifelines and services in support of the state's overall response and recovery effort.

(D) Strategies for increasing geographically distributed fuel storage that prioritize areas of this state that are expected to be most vulnerable to a Cascadia Subduction Zone earthquake, including local or regional islanding effects that would isolate a region from the rest of this state as a result of road or bridge damage.

(E) An evaluation of potential impacts to communities adjacent to potential locations for emergency fuel storage or expanded fuel storage, including consultation and outreach with those communities.

(3) In developing and implementing the energy security plan, the department shall consult with:

(a) Relevant state government agencies, including the Public Utility Commission, the Oregon Department of Environmental Quality, the Department of Transportation, the Department of Aviation, the [Office] **Oregon Department** of Emergency Management, the State Department of Geology and Mineral Industries and the Environmental Justice Task Force;

(b) Local governments;

(c) Tribal governments;

(d) Consumer-owned and investor-owned electric utilities;

(e) Natural gas utilities;

(f) Fuel suppliers;

(g) Qualified technical experts in disaster resilience; and

(h) Any other person with relevant knowledge or experience.

(4) No later than September 15 of each even-numbered year, the State Department of Energy shall provide to the interim committees of the Legislative Assembly related to energy a report in the manner provided under ORS 192.245 describing the implementation or revision of the energy security plan developed under this section.

SECTION 14. The amendments to section 12 of this 2022 Act by section 13 of this 2022 Act become operative on July 1, 2022.

SECTION 15. No later than November 1, 2024, the Department of Environmental Quality shall provide a report, including recommendations for legislation, to the interim committees of the Legislative Assembly related to energy, in the manner provided under ORS 192.245. The report required under this section must include:

(1) A summary of information received by the department under section 2 of this 2022 Act; and

(2) Policy recommendations for making the provisions of sections 2 to 6 of this 2022 Act applicable to additional regions of this state, based on the risk to each additional region from an earthquake or tsunami.

SECTION 16. The State Department of Energy shall submit the energy security plan developed under section 12 of this 2022 Act in a report to the interim committees of the Legislative Assembly related to energy, in the manner provided under ORS 192.245, no later than June 1, 2024.

SECTION 17. Sections 15 and 16 of this 2022 Act are repealed on January 2, 2025.

SECTION 18. (1) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Environmental Quality by section 1 (3), chapter 673, Oregon Laws 2021, for the biennium ending June 30, 2023, for land quality, is increased by \$712,318 for implementation of the provisions of sections 2 to 6 and 15 of this 2022 Act.

(2) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 4, chapter 423, Oregon Laws 2021, for the biennium ending June 30, 2023, as the maximum limit for payment of expenses from federal funds collected or received by the State Department of Energy, is increased by \$327,996 for implementation of the provisions of sections 12 and 16 of this 2022 Act.

SECTION 19. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate March 1, 2022

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 4, 2022

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2022

Approved:

.....M,....., 2022

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2022

.....
Shemia Fagan, Secretary of State