

House Bill 2800

Sponsored by Representative SOSA, Senator PATTERSON, Representative GOMBERG, Senators JAMA, MANNING JR; Representatives GAMBIA, GRAYBER, HARTMAN, HELM, HUDSON, LIVELY, NELSON, NERON, NOSSE, REYNOLDS, VALDERRAMA, Senators CAMPOS, DEMBROW, FREDERICK, GELSER BLOUIN, GOLDEN, GORSEK, MEEK, PROZANSKI, SOLLMAN, TAYLOR, WEBER (at the request of AARP Oregon) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

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

Permits employer to seek age of applicant under certain circumstances.

Removes provision that includes apprentices within scope of unlawful employment discrimination statute.

A BILL FOR AN ACT

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

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

5 **SECTION 1. Sections 2 and 3 of this 2023 Act are added to and made a part of ORS**
6 **chapter 659A.**

7 **SECTION 2. (1) For purposes of ORS 659A.030, the phrase "because of age" includes, but**
8 **is not limited to, characteristics closely associated with, correlated with or used as a proxy**
9 **for age, unless an employer can establish that age was not a factor in the employer's adverse**
10 **employment action.**

11 **(2) Characteristics that are closely associated with, correlated with or used as a proxy**
12 **for age include, but are not limited to:**

13 **(a) Salary;**

14 **(b) Length of service with an employer;**

15 **(c) Higher cost factors relating to pension benefits, other retirement benefits or any in-**
16 **surance benefits; or**

17 **(d) Retirement or pension eligibility and status.**

18 **(3) This section shall be liberally construed to carry out the purpose of eliminating age-**
19 **based employment discrimination under ORS 659A.030.**

20 **SECTION 3. (1) It is an unlawful employment practice under this chapter for an em-**
21 **ployer, prospective employer or employment agency to:**

22 **(a) Prior to completing an initial interview, or if there is no initial interview, prior to**
23 **making a conditional offer of employment, seek the age of an applicant, including by making**
24 **inquiries on an employment application, or otherwise requiring an applicant to disclose the**
25 **applicant's age, the applicant's date of birth or when the applicant attended or graduated**
26 **from any educational institution; or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **(b) Include in a job advertisement words or phrases that would suggest age preferences,**
 2 **including, but not limited to, preferences for “college age” and “digital native” applicants,**
 3 **or any other words or phrases that indicate an age-biased preference.**

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

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

7 **(b) Require an applicant to affirm that the applicant meets age and education require-**
 8 **ments, provided that the requirements are bona fide occupational qualifications; or**

9 **(c) Seek the age of an applicant when such information is required to comply with any**
 10 **provisions of state or federal law, or with the requirements of any regulatory, licensing or**
 11 **certifying body or organization.**

12 **SECTION 4.** ORS 659A.030 is amended to read:

13 659A.030. (1) It is an unlawful employment practice:

14 (a) For an employer, because of an individual’s race, color, religion, sex, sexual orientation,
 15 gender identity, national origin, marital status or age if the individual is 18 years of age or older,
 16 or because of the race, color, religion, sex, sexual orientation, gender identity, national origin,
 17 marital status or age of any other person with whom the individual associates, or because of an
 18 individual’s juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.271, to refuse
 19 to hire or employ the individual or to bar or discharge the individual from employment. However,
 20 discrimination is not an unlawful employment practice if the discrimination results from a bona fide
 21 occupational qualification reasonably necessary to the normal operation of the employer’s business.

22 (b) For an employer, because of an individual’s race, color, religion, sex, sexual orientation,
 23 gender identity, national origin, marital status or age if the individual is 18 years of age or older,
 24 or because of the race, color, religion, sex, sexual orientation, gender identity, national origin,
 25 marital status or age of any other person with whom the individual associates, or because of an
 26 individual’s juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.271, to dis-
 27 criminate against the individual in compensation or in terms, conditions or privileges of employment.

28 (c) For a labor organization, because of an individual’s race, color, religion, sex, sexual orien-
 29 tation, gender identity, national origin, marital status or age if the individual is 18 years of age or
 30 older, or because of an individual’s juvenile record that has been expunged pursuant to ORS
 31 419A.260 to 419A.271, to exclude or to expel from its membership the individual or to discriminate
 32 in any way against the individual or any other person.

33 (d) For any employer or employment agency to print or circulate or cause to be printed or cir-
 34 culated any statement, advertisement or publication, or to use any form of application for employ-
 35 ment or to make any inquiry in connection with prospective employment that expresses directly or
 36 indirectly any limitation, specification or discrimination as to an individual’s race, color, religion,
 37 sex, sexual orientation, gender identity, national origin, marital status or age if the individual is 18
 38 years of age or older, or on the basis of an expunged juvenile record, or any intent to make any such
 39 limitation, specification or discrimination, unless based upon a bona fide occupational qualification.
 40 Identification of prospective employees according to race, color, religion, sex, sexual orientation,
 41 gender identity, national origin, marital status or age does not violate this section unless the Com-
 42 missioner of the Bureau of Labor and Industries, after a hearing conducted pursuant to ORS
 43 659A.805, determines that the designation expresses an intent to limit, specify or discriminate on the
 44 basis of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status
 45 or age.

1 (e) For an employment agency, because of an individual’s race, color, religion, sex, sexual ori-
 2 entation, gender identity, national origin, marital status or age if the individual is 18 years of age
 3 or older, or because of the race, color, religion, sex, sexual orientation, gender identity, national
 4 origin, marital status or age of any other person with whom the individual associates, or because
 5 of an individual’s juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.271, to
 6 classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to dis-
 7 criminate against the individual. However, it is not an unlawful employment practice for an em-
 8 ployment agency to classify or refer for employment an individual when the classification or referral
 9 results from a bona fide occupational qualification reasonably necessary to the normal operation of
 10 the employer’s business.

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

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

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

21 ~~[(3)]~~ (2) The compulsory retirement of employees required by law at any age is not an unlawful
 22 employment practice if lawful under federal law.

23 ~~[(4)(a)]~~ (3)(a) It is not an unlawful employment practice for an employer or labor organization
 24 to provide or make financial provision for child care services of a custodial or other nature to its
 25 employees or members who are responsible for a minor child.

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

28 ~~[(5)]~~ (4) This section does not prohibit an employer from enforcing an otherwise valid dress code
 29 or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation
 30 of an individual based on the health and safety needs of the individual and the dress code or policy
 31 does not have a disproportionate adverse impact on members of a protected class to a greater extent
 32 than the policy impacts persons generally.

33 **SECTION 5.** ORS 659A.885, as amended by section 7, chapter 99, Oregon Laws 2022, is amended
 34 to read:

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

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

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

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

4 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574,
 5 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 6 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 7 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 8 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 9 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 or section 5,
 10 chapter 99, Oregon Laws 2022, **or section 3 of this 2023 Act**; or

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

12 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 13 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 14 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 15 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 3 of this 2023 Act**:

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

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

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

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

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

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

26 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 27 659A.850 for a violation of ORS 652.220.

28 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 29 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 30 tion, compensatory damages or \$200, whichever is greater.

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

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

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

45 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,

1 compensatory and punitive damages;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 **SECTION 6.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 41 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 42 Oregon Laws 2019, section 13, chapter 701, Oregon Laws 2019, section 45, chapter 367, Oregon Laws
 43 2021, and section 8, chapter 99, Oregon Laws 2022, is amended to read:

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

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

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

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

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

13 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574,
 14 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 15 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 16 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 17 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 18 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 or sec-
 19 tion 5, chapter 99, Oregon Laws 2022, **or section 3 of this 2023 Act**; or

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

21 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 22 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 23 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 24 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or section 3 of this 2023**
 25 **Act**:

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

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

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

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

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

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

36 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 37 659A.850 for a violation of ORS 652.220.

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

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

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

1 penalty in the amount of \$720.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **SECTION 7.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 6 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 7 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, section 13, chapter 701, Oregon Laws
 8 2019, section 46, chapter 367, Oregon Laws 2021, and section 9, chapter 99, Oregon Laws 2022, is
 9 amended to read:

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

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

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

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

24 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574,
 25 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
 26 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 27 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
 28 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
 29 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
 30 659A.421 or section 5, chapter 99, Oregon Laws 2022, **or section 3 of this 2023 Act**; or

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

32 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 33 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
 34 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
 35 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
 36 659A.421 **or section 3 of this 2023 Act**:

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

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

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

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

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

45 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted

1 with malice or acted with willful and wanton misconduct; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
45 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing

1 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
2 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
3 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
4 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
5 appealing an adverse decision of the trial court.

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

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

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

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

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

16
