House Bill 3050

Sponsored by Representatives MORGAN, OWENS

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.

Prohibits discrimination in places of public accommodation on basis of person’s medical history. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to discrimination based on medical history; amending ORS 659A.403, 659A.406, 659A.409, 659A.805 and 659A.885; and prescribing an effective date.

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

SECTION 1. ORS 659A.403 is amended to read:

659A.403. (1) Except as provided in subsection (2) of this section, all persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, medical history or age if the individual is of age, as described in this section, or older.

(2) Subsection (1) of this section does not prohibit:

(a) The enforcement of laws governing the consumption of alcoholic beverages by minors and the frequenting by minors of places of public accommodation where alcoholic beverages are served;
(b) The enforcement of laws governing the use of marijuana items, as defined in ORS 475C.009, by persons under 21 years of age and the frequenting by persons under 21 years of age of places of public accommodation where marijuana items are sold; or
(c) The offering of special rates or services to persons 50 years of age or older.

(3) It is an unlawful practice for any person to deny full and equal accommodations, advantages, facilities and privileges of any place of public accommodation in violation of this section.

(4) For purposes of this section and ORS 659A.406 and 659A.409, medical history includes immunization status.

SECTION 2. ORS 659A.406 is amended to read:

659A.406. Except as otherwise authorized by ORS 659A.403, it is an unlawful practice for any person to aid or abet any place of public accommodation, as defined in ORS 659A.400, or any employee or person acting on behalf of the place of public accommodation to make any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, medical history or age if the individual is 18 years of age or older.

SECTION 3. ORS 659A.409 is amended to read:

659A.409. Except as provided by laws governing the consumption of alcoholic beverages by mi-
nors, the use of marijuana items, as defined in ORS 475C.009, by persons under 21 years of age, the
frequenting by minors of places of public accommodation where alcoholic beverages are served and
the frequenting by persons under 21 years of age of places of public accommodation where
marijuana items are sold, and except for special rates or services offered to persons 50 years of age
or older, it is an unlawful practice for any person acting on behalf of any place of public accom-
modation as defined in ORS 659A.400 to publish, circulate, issue or display, or cause to be published,
circulated, issued or displayed, any communication, notice, advertisement or sign of any kind to the
effect that any of the accommodations, advantages, facilities, services or privileges of the place of
public accommodation will be refused, withheld from or denied to, or that any discrimination will
be made against, any person on account of race, color, religion, sex, sexual orientation, gender
identity, national origin, marital status, **medical history** or age if the individual is of age, as de-
scribed in this section, or older.

**SECTION 4.** ORS 659A.805 is amended to read:

659A.805. (1) In accordance with any applicable provision of ORS chapter 183, the Commissioner
of the Bureau of Labor and Industries may adopt reasonable rules:

(a) Establishing what acts and communications constitute a notice, sign or advertisement that
public accommodation or real property will be refused, withheld from, or denied to any person or
that the person will be unlawfully discriminated against because of race, color, religion, sex, sexual
orientation, gender identity, national origin, marital status, disability or:

(A) With respect to public accommodation, age or **medical history**.

(B) With respect to real property transactions, familial status or source of income.

(b) Establishing what inquiries in connection with employment and prospective employment ex-
press a limitation, specification or unlawful discrimination as to race, color, religion, sex, sexual
orientation, gender identity, national origin, marital status, age or disability.

(c) Establishing what inquiries in connection with employment and prospective employment so-
lliciting information as to race, color, religion, sex, sexual orientation, gender identity, national ori-
genial status, age or disability are based on bona fide occupational qualifications.

(d) For internal operation and practice and procedure before the commissioner under this
chapter.

(e) Covering any other matter required to carry out the purposes of this chapter.

(2) In adopting rules under this section the commissioner shall consider the following factors,
among others:

(a) The relevance of information requested to job performance in connection with which it is
requested.

(b) Available reasonable alternative ways of obtaining requested information without soliciting
responses as to race, color, religion, sex, sexual orientation, gender identity, national origin, marital
status, age, disability, source of income or, with respect to real property transactions, familial sta-
tus.

(c) Whether a statement or inquiry soliciting information as to race, color, religion, sex, sexual
orientation, gender identity, national origin, marital status, age, disability, source of income or, with respect to real property transactions, familial status, communicates an idea independent of an in-
tention to limit, specify or unlawfully discriminate as to race, color, religion, sex, sexual orientation,
gender identity, national origin, marital status, age, disability, source of income or, with respect to
real property transactions, familial status.

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind
of transaction that it contemplates.

(e) The ease with which the independent idea relating to a legitimate objective of the kind of transaction contemplated could be communicated without connoting an intention to unlawfully discriminate as to race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, disability, source of income or, with respect to real property transactions, familial status.

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

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

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

(2) An action may be brought under subsection (1) of this section alleging a violation of:
(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.
(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or $200, whichever is greater, and punitive damages;
(b) At the request of any party, the action shall be tried to a jury;
(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and
(d) Any attorney fee agreement shall be subject to approval by the court.
(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:
(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or
(b) An employer was previously adjudicated in a proceeding under this section or under ORS
(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, medical history 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 at-
torney 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
   happen.

   (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 cer-
tifies 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 6. 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, section 45, chapter 367, Oregon Laws
2021, and section 8, chapter 99, Oregon Laws 2022, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
section (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, in-
cluding 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 imme-
diately 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. Ex-
cept 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.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 or sec-
tion 5, chapter 99, Oregon Laws 2022; 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,
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, medical history 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 attor-
ey 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 cer-
tifies 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 7. 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, section 46, chapter 367, Oregon Laws 2021, and section 9, chapter 99, Oregon Laws 2022, is
amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
section (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, in-
cluding 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 imme-
diately 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. Ex-
cept 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
659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

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

(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:
  (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or
  (b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

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

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

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

(8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, medical history 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. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.