

(Including Amendments to Resolve Conflicts)

B-Engrossed Senate Bill 479

Ordered by the House May 30
Including Senate Amendments dated April 22 and House Amendments
dated May 30

Sponsored by Senators GELSER, KNOPP; Senator MONNES ANDERSON (Pre-session 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.

Requires public employers to adopt policies to prevent workplace harassment. Requires public employers to establish policies and procedures for addressing reports of workplace harassment. Requires employer to follow up with victim of reported harassment to determine whether harassment has stopped or if victim has experienced retaliation. Becomes operative January 1, 2020.

Makes unlawful employment practice for employer to enter into certain agreements with employee that would prevent employee from disclosing or discussing conduct that constitutes workplace harassment. Provides that employer may, in certain circumstances, enter into settlement, separation or severance agreement that includes provision that would prohibit employee from disclosing or discussing such conduct or that would prohibit employee from seeking reemployment with employer as term or condition of agreement. Allows civil and administrative remedies for violation against unlawful practice. Becomes operative October 1, 2020.

Extends timeline for filing complaint with Commissioner of Bureau of Labor and Industries alleging certain unlawful employment practices.

Extends statute of limitations from one year to five years to file civil action for certain violations of law. Provides that extended statute of limitations applies to certain conduct that occurs on or after effective date of Act.

Requires commissioner to adopt any rules necessary to implement certain provisions no later than 90 days after effective date of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to workplace harassment; creating new provisions; amending ORS 659A.820, 659A.875 and
3 659A.885; and prescribing an effective date.

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

5 **SECTION 1. Sections 1a to 4 of this 2019 Act are added to and made a part of ORS**
6 **chapter 243.**

7 **SECTION 1a. As used in sections 1a to 4 of this 2019 Act:**

8 (1) "Public employer" has the meaning given that term in ORS 260.432.

9 (2) "Sexual assault" means unwanted conduct of a sexual nature that is inflicted upon a
10 person or compelled through the use of physical force, manipulation, threat or intimidation.

11 (3) "Workplace harassment" means conduct that constitutes discrimination prohibited
12 by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes con-
13 duct prohibited by ORS 659A.082 or 659A.112.

14 **SECTION 2. (1) A public employer shall establish and adopt a written policy that seeks**
15 **to prevent workplace harassment that occurs between employees or between an employer**
16 **and an employee in the workplace or at a work-related event that is off the employment**

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 premises and coordinated by or through the employer, or between an employer and an em-
2 ployee off the employment premises.

3 (2) The policy must include:

4 (a) A statement prohibiting workplace harassment;

5 (b) Information explaining that a victim of workplace harassment has a right to seek
6 redress through the employer's internal process provided under section 3 of this 2019 Act,
7 through the Bureau of Labor and Industries' complaint resolution process under ORS
8 659A.820 to 659A.865 or under any other available law, whether civil or criminal, including:

9 (A) The timeline under which relief may be sought;

10 (B) Any available administrative or judicial remedies; and

11 (C) The advance notice of claim against a public body that a claimant must provide as
12 required under ORS 30.275;

13 (c) A statement that a person who reports workplace harassment has the right to be
14 protected from retaliation;

15 (d) A statement of the scope of the policy, including that the policy applies to elected
16 public officials, volunteers and interns;

17 (e) An explanation that a victim of workplace harassment may voluntarily disclose in-
18 formation regarding an incident of workplace harassment that involves the victim;

19 (f) Information to connect a victim of workplace harassment with legal resources and
20 counseling and support services, including any available employee assistance services;

21 (g) A statement that an employer may not require or coerce an employee to enter into
22 a nondisclosure or nondisparagement agreement, including a description of the meaning of
23 those terms;

24 (h) An explanation that an employee claiming to be aggrieved by workplace harassment
25 may voluntarily request to enter into an agreement described in section 4 (2) of this 2019
26 Act, including a statement that explains that the employee has at least seven days to revoke
27 the agreement; and

28 (i) A statement that advises employers and employees to document any incidents of
29 workplace harassment.

30 (3) A public employer shall provide a copy of the policies described in this section to each
31 employee and shall include a copy of the policies in any orientation materials that are pro-
32 vided to new employees at the time of hire.

33 (4) If an employee discloses any concerns about workplace harassment to a supervisor
34 of the employer, or to a designated individual as described in section 3 (3) of this 2019 Act,
35 the supervisor or designated individual shall, at the time of the disclosure, provide to the
36 employee a copy of the policy described in this section.

37 (5) A policy established under this section must comply with the requirements for a
38 written policy provided under section 3, chapter ___, Oregon Laws 2019 (Enrolled Senate Bill
39 726).

40 **SECTION 3.** A public employer shall develop written policies and procedures for the
41 prompt investigation of a report of workplace harassment. The policies and procedures must:

42 (1) Provide instruction for maintaining records of workplace harassment.

43 (2) Establish a process for a victim of workplace harassment to file a complaint, provided
44 that the process allows a victim to file the complaint within four years from the date on
45 which the alleged harassment occurred or within the applicable time limitation on the com-

1 **mencement of an action under ORS 659A.875, whichever is greater.**

2 **(3) Identify the individual designated by the employer who is responsible for receiving**
3 **reports of prohibited conduct, including an individual designated as an alternate to receive**
4 **such reports.**

5 **(4) Subject to subsection (5) of this section, require the employer to follow up with the**
6 **victim of the alleged harassment once every three months for the calendar year following**
7 **the date on which the employer received a report of harassment, to determine whether the**
8 **alleged harassment has stopped or if the victim has experienced retaliation.**

9 **(5) Inform the victim that the employer will follow up in the manner described in sub-**
10 **section (4) of this section until and unless the victim objects to such action in writing.**

11 **SECTION 4. (1) Except as provided in subsection (2) or (4) of this section, it is an un-**
12 **lawful employment practice under ORS chapter 659A for a public employer to enter into an**
13 **agreement with an employee or prospective employee, as a condition of employment, con-**
14 **tinued employment, promotion, compensation or the receipt of benefits, that contains a**
15 **nondisclosure provision, a nondisparagement provision or any other provision that has the**
16 **purpose or effect of preventing the employee from disclosing or discussing workplace**
17 **harassment:**

18 **(a) That occurred between employees or between an employer and an employee in the**
19 **workplace or at a work-related event that is off the employment premises and coordinated**
20 **by or through the employer; or**

21 **(b) That occurred between an employer and an employee off the employment premises.**

22 **(2) A public employer may enter into a settlement, separation or severance agreement**
23 **that includes one or more of the following provisions only when an employee claiming to be**
24 **aggrieved by workplace harassment described under subsection (1) of this section requests**
25 **to enter into the agreement:**

26 **(a) A provision described in subsection (1) of this section;**

27 **(b) A provision that prevents the disclosure of factual information relating to the claim**
28 **of discrimination or conduct that constitutes sexual assault; or**

29 **(c) A no-rehire provision that prohibits the employee from seeking reemployment with**
30 **the employer as a term or condition of the agreement.**

31 **(3)(a) An agreement entered into under subsection (2) of this section must provide that**
32 **the employee has at least seven days after executing the agreement to revoke the agree-**
33 **ment.**

34 **(b) The agreement may not become effective until after the revocation period has ex-**
35 **pired.**

36 **(4) If an employer makes a good faith determination that an employee has engaged in**
37 **workplace harassment described under subsection (1) of this section, the employer may enter**
38 **into a settlement, separation or severance agreement that includes one or more of the fol-**
39 **lowing provisions:**

40 **(a) A provision described in subsection (1) of this section;**

41 **(b) A provision that prevents the disclosure of factual information that relates to the**
42 **workplace harassment; or**

43 **(c) A no-rehire provision that prohibits the employee from seeking reemployment with**
44 **the employer as a term or condition of the agreement.**

45 **(5) An employee may file a complaint under ORS 659A.820 for violations of this section**

1 **and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS**
2 **659A.885 (1) to (3).**

3 **(6) This section does not apply to an employee who is tasked by law to receive confiden-**
4 **tial or privileged reports of discrimination, sexual assault or harassment.**

5 **SECTION 5.** ORS 659A.820, as amended by section 5, chapter 197, Oregon Laws 2017, is
6 amended to read:

7 659A.820. (1) As used in this section, for purposes of a complaint alleging an unlawful practice
8 under ORS 659A.145 or 659A.421 or discrimination under federal housing law, “person claiming to
9 be aggrieved by an unlawful practice” includes, but is not limited to, a person who believes that the
10 person:

11 (a) Has been injured by an unlawful practice under ORS 659A.145 or 659A.421 or a
12 discriminatory housing practice; or

13 (b) Will be injured by an unlawful practice under ORS 659A.145 or 659A.421 or a discriminatory
14 housing practice that is about to occur.

15 (2) Any person claiming to be aggrieved by an unlawful practice may file with the Commissioner
16 of the Bureau of Labor and Industries a verified written complaint that states the name and address
17 of the person alleged to have committed the unlawful practice. The complaint must be signed by the
18 complainant. The complaint must set forth the acts or omissions alleged to be an unlawful practice.
19 The complainant may be required to set forth in the complaint such other information as the com-
20 missioner may require. Except as provided in **subsection (3) of this section** or ORS 654.062, a
21 complaint under this section must be filed no later than one year after the alleged unlawful practice.

22 **(3) A complaint alleging an unlawful employment practice as described in ORS 659A.030,**
23 **659A.082 or 659A.112 or section 4 of this 2019 Act must be filed no later than five years after**
24 **the occurrence of the alleged unlawful employment practice.**

25 ~~[(3)(a)]~~ **(4)(a)** Except as provided in paragraph (b) of this subsection, a complaint may not be
26 filed under this section if a civil action has been commenced in state or federal court alleging the
27 same matters.

28 (b) The prohibition described in paragraph (a) of this subsection does not apply to a complaint
29 alleging an unlawful practice under ORS 659A.145 or 659A.421 or alleging discrimination under
30 federal housing law.

31 ~~[(4)]~~ **(5)** If an employer has one or more employees who refuse or threaten to refuse to abide by
32 the provisions of this chapter or to cooperate in carrying out the purposes of this chapter, the em-
33 ployer may file with the commissioner a verified complaint requesting assistance by conciliation or
34 other remedial action.

35 ~~[(5)]~~ **(6)** Except as provided in subsection ~~[(6)]~~ **(7)** of this section, the commissioner shall notify
36 the person against whom a complaint is made within 30 days of the filing of the complaint. The
37 commissioner shall include in the notice the date, place and circumstances of the alleged unlawful
38 practice.

39 ~~[(6)]~~ **(7)** The commissioner shall notify the person against whom a complaint alleging an unlawful
40 practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law is made
41 within 10 days of the filing of the complaint. The commissioner shall include in the notice:

42 (a) The date, place and circumstances of the alleged unlawful practice; and

43 (b) A statement that the person against whom the complaint is made may file an answer to the
44 complaint.

45 **SECTION 6.** ORS 659A.875, as amended by section 8, chapter 197, Oregon Laws 2017, is

1 amended to read:

2 659A.875. (1) Except as provided in subsection (2) of this section[,]:

3 (a) A civil action under ORS 659A.885 alleging an unlawful employment practice **other than a**
4 **violation of ORS 659A.030, 659A.082 or 659A.112 or section 4 of this 2019 Act** must be com-
5 menced within one year after the occurrence of the unlawful employment practice unless a com-
6 plaint has been timely filed under ORS 659A.820.

7 (b) **A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.082 or**
8 **659A.112 or section 4 of this 2019 Act must be commenced not later than five years after the**
9 **occurrence of the alleged violation.**

10 (2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under
11 ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880.
12 This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145
13 or 659A.421 or discrimination under federal housing law.

14 (3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must be commenced not later
15 than two years after the occurrence or the termination of the unlawful practice, or within two years
16 after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs
17 last. The two-year period shall not include any time during which an administrative proceeding was
18 pending with respect to the unlawful practice.

19 (4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS
20 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful prac-
21 tice.

22 (5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS
23 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a
24 public body as defined in ORS 30.260.

25 (6) Notwithstanding ORS 30.275 (9)[,]:

26 (a) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any
27 officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employ-
28 ment practice **other than a violation of ORS 659A.030, 659A.082 or 659A.112 or section 4 of this**
29 **2019 Act** must be commenced within one year after the occurrence of the unlawful employment
30 practice unless a complaint has been timely filed under ORS 659A.820.

31 (b) **A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or**
32 **any officer, employee or agent of a public body as defined in ORS 30.260, alleging a violation**
33 **of ORS 659A.030, 659A.082 or 659A.112 or section 4 of this 2019 Act must be commenced not**
34 **later than five years after the occurrence of the alleged violation unless a complaint has been**
35 **timely filed under ORS 659A.820.**

36 (7) For the purpose of time limitations, a compensation practice that is unlawful under ORS
37 652.220 occurs each time compensation is paid under a discriminatory compensation decision or
38 other practice.

39 (8) Notwithstanding ORS 30.275 (2)(b), notice of claim against a public body under ORS 652.220
40 or 659A.355 must be given within 300 days of discovery of the alleged loss or injury.

41 **SECTION 6a. If Senate Bill 726 becomes law, section 6 of this 2019 Act (amending ORS**
42 **659A.875) is repealed and ORS 659A.875, as amended by section 6, chapter __, Oregon Laws**
43 **2019 (Enrolled Senate Bill 726), is amended to read:**

44 659A.875. (1) Except as provided in subsection (2) of this section:

45 (a) A civil action under ORS 659A.885 alleging an unlawful employment practice other than a

1 violation of ORS 659A.030, 659A.082 or 659A.112 or section 2 [of this 2019 Act], **chapter __, Oregon**
2 **Laws 2019 (Enrolled Senate Bill 726), or section 4 of this 2019 Act** must be commenced within
3 one year after the occurrence of the unlawful employment practice unless a complaint has been
4 timely filed under ORS 659A.820.

5 (b) A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.082 or
6 659A.112 or section 2 [of this 2019 Act], **chapter __, Oregon Laws 2019 (Enrolled Senate Bill**
7 **726), or section 4 of this 2019 Act** must be commenced not later than five years after the occur-
8 rence of the alleged violation.

9 (2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under
10 ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880.
11 This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145
12 or 659A.421 or discrimination under federal housing law.

13 (3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must be commenced not later
14 than two years after the occurrence or the termination of the unlawful practice, or within two years
15 after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs
16 last. The two-year period shall not include any time during which an administrative proceeding was
17 pending with respect to the unlawful practice.

18 (4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS
19 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful prac-
20 tice.

21 (5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS
22 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a
23 public body as defined in ORS 30.260.

24 (6) Notwithstanding ORS 30.275 (9):

25 (a) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any
26 officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employ-
27 ment practice other than a violation of ORS 659A.030, 659A.082 or 659A.112 or section 2 [of this 2019
28 Act], **chapter __, Oregon Laws 2019 (Enrolled Senate Bill 726), or section 4 of this 2019 Act**
29 must be commenced within one year after the occurrence of the unlawful employment practice un-
30 less a complaint has been timely filed under ORS 659A.820.

31 (b) A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.082 or
32 659A.112 or section 2 [of this 2019 Act], **chapter __, Oregon Laws 2019 (Enrolled Senate Bill**
33 **726)**, must be commenced not later than five years after the occurrence of the alleged violation
34 unless a complaint has been timely filed under ORS 659A.820.

35 **(c) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or**
36 **any officer, employee or agent of a public body as defined in ORS 30.260, alleging a violation**
37 **of ORS 659A.030, 659A.082 or 659A.112 or section 4 of this 2019 Act must be commenced not**
38 **later than five years after the occurrence of the alleged violation unless a complaint has been**
39 **timely filed under ORS 659A.820.**

40 (7) For the purpose of time limitations, a compensation practice that is unlawful under ORS
41 652.220 occurs each time compensation is paid under a discriminatory compensation decision or
42 other practice.

43 (8) Notwithstanding ORS 30.275 (2)(b), notice of claim against a public body under ORS 652.220
44 or 659A.355 must be given within 300 days of discovery of the alleged loss or injury.

45 **SECTION 6b.** If Senate Bill 726 becomes law, section 10 of this 2019 Act is amended to read:

1 **Sec. 10.** The amendments to ORS 659A.820 and 659A.875 by sections 5 and [6] **6a** of this 2019
2 Act apply to:

3 (1) Conduct prohibited by ORS 659A.030, 659A.082 or 659A.112 occurring on or after the effec-
4 tive date of this 2019 Act.

5 (2) Conduct prohibited by section 4 of this 2019 Act occurring on or after October 1, 2020.

6 **SECTION 7.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and sec-
7 tion 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

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

22 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
23 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
24 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
25 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
26 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
27 659A.318, 659A.320, 659A.355 or 659A.421 **or section 4 of this 2019 Act**; or

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

29 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
30 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
31 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
32 659A.290, 659A.318, 659A.355 or 659A.421 **or section 4 of this 2019 Act**:

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

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

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

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

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

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

43 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
44 659A.850 for a violation of ORS 652.220.

45 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the

1 court may award, in addition to the relief authorized under subsection (1) of this section,
2 compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 appealing an adverse decision of the trial court.

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

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

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

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

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

12 **SECTION 8.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
13 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

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

28 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
29 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
30 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
31 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
32 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
33 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 4 of this 2019 Act**; or

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

35 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
36 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
37 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
38 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 4 of this 2019 Act**:

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

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

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

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

45 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-

1 violation of ORS 652.220, the court may award punitive damages if:

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

4 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
5 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
2 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
3 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
4 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
5 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
6 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
7 appealing an adverse decision of the trial court.

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

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

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

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

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

18 **SECTION 9. The Commissioner of the Bureau of Labor and Industries shall adopt any**
19 **rules necessary to administer and enforce the provisions of sections 1 to 4 of this 2019 Act**
20 **no later than 90 days after the effective date of this 2019 Act.**

21 **SECTION 10. The amendments to ORS 659A.820 and 659A.875 by sections 5 and 6 of this**
22 **2019 Act apply to:**

23 (1) **Conduct prohibited by ORS 659A.030, 659A.082 or 659A.112 occurring on or after the**
24 **effective date of this 2019 Act.**

25 (2) **Conduct prohibited by section 4 of this 2019 Act occurring on or after October 1, 2020.**

26 **SECTION 11. (1)(a) Sections 1 to 3 of this 2019 Act become operative on January 1, 2020.**

27 (b) **Section 4 of this 2019 Act and the amendments to 659A.885 by sections 7 and 8 of this**
28 **2019 Act become operative on October 1, 2020.**

29 (2) **The Commissioner of the Bureau of Labor and Industries may adopt rules and take**
30 **any other action before the operative date specified in subsection (1) of this section that is**
31 **necessary to enable the Bureau of Labor and Industries to exercise, on and after the opera-**
32 **tive date specified in subsection (1) of this section, all of the duties, functions and powers**
33 **conferred on the bureau by sections 2 to 4 of this 2019 Act and the amendments to ORS**
34 **659A.820, 659A.875 and 659A.885 by sections 5 to 8 of this 2019 Act.**

35 **SECTION 12. This 2019 Act takes effect on the 91st day after the date on which the 2019**
36 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

37