

Enrolled Senate Bill 479

Sponsored by Senators GELSER, KNOPP; Senator MONNES ANDERSON, Representatives HAYDEN, KENY-GUYER, NOBLE (Presession filed.)

CHAPTER

AN ACT

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

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

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

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

- (1) “Public employer” has the meaning given that term in ORS 260.432.
- (2) “Sexual assault” means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.
- (3) “Workplace harassment” means conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes conduct prohibited by ORS 659A.082 or 659A.112.

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

(2) The policy must include:

- (a) A statement prohibiting workplace harassment;
- (b) Information explaining that a victim of workplace harassment has a right to seek redress through the employer’s internal process provided under section 3 of this 2019 Act, through the Bureau of Labor and Industries’ complaint resolution process under ORS 659A.820 to 659A.865 or under any other available law, whether civil or criminal, including:
 - (A) The timeline under which relief may be sought;
 - (B) Any available administrative or judicial remedies; and
 - (C) The advance notice of claim against a public body that a claimant must provide as required under ORS 30.275;
- (c) A statement that a person who reports workplace harassment has the right to be protected from retaliation;
- (d) A statement of the scope of the policy, including that the policy applies to elected public officials, volunteers and interns;
- (e) An explanation that a victim of workplace harassment may voluntarily disclose information regarding an incident of workplace harassment that involves the victim;

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

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

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

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

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

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

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

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

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

(2) Establish a process for a victim of workplace harassment to file a complaint, provided that the process allows a victim to file the complaint within four years from the date on which the alleged harassment occurred or within the applicable time limitation on the commencement of an action under ORS 659A.875, whichever is greater.

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

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

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

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

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

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

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

- (a) A provision described in subsection (1) of this section;
- (b) A provision that prevents the disclosure of factual information relating to the claim of discrimination or conduct that constitutes sexual assault; or
- (c) A no-rehire provision that prohibits the employee from seeking reemployment with the employer as a term or condition of the agreement.

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

(b) The agreement may not become effective until after the revocation period has expired.

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

- (a) A provision described in subsection (1) of this section;
- (b) A provision that prevents the disclosure of factual information that relates to the workplace harassment; or
- (c) A no-rehire provision that prohibits the employee from seeking reemployment with the employer as a term or condition of the agreement.

(5) An employee may file a complaint under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS 659A.885 (1) to (3).

(6) This section does not apply to an employee who is tasked by law to receive confidential or privileged reports of discrimination, sexual assault or harassment.

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

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

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

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

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

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

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

[(4)] **(5)** If an employer has one or more employees who refuse or threaten to refuse to abide by the provisions of this chapter or to cooperate in carrying out the purposes of this chapter, the em-

ployer may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

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

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

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

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

SECTION 6. ORS 659A.875, as amended by section 8, chapter 197, Oregon Laws 2017, is amended to read:

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

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

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

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

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

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

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

(6) Notwithstanding ORS 30.275 (9)[,];

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

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

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

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

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

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

(a) A civil action under ORS 659A.885 alleging an unlawful employment practice other than a violation of ORS 659A.030, 659A.082 or 659A.112 or section 2 [of this 2019 Act], **chapter __, Oregon Laws 2019 (Enrolled Senate Bill 726), or section 4 of this 2019 Act** must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

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

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

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

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

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

(6) Notwithstanding ORS 30.275 (9):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or

abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. (1)(a) Sections 1 to 3 of this 2019 Act become operative on January 1, 2020.
(b) Section 4 of this 2019 Act and the amendments to 659A.885 by sections 7 and 8 of this 2019 Act become operative on October 1, 2020.

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

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

Passed by Senate April 24, 2019

Received by Governor:

Repassed by Senate June 12, 2019

.....M,....., 2019

Approved:

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Lori L. Brocker, Secretary of Senate

.....M,....., 2019

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House June 4, 2019

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M,....., 2019

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Bev Clarno, Secretary of State