

DRAFT

SUMMARY

Delays date when civil action may be brought alleging violation of certain unlawful employment practices.

A BILL FOR AN ACT

Relating to civil actions alleging certain unlawful employment practices; creating new provisions; amending ORS 659A.885; repealing section 13, chapter 197, Oregon Laws 2017; and declaring an emergency.

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

SECTION 1. Section 13, chapter 197, Oregon Laws 2017, is repealed.

SECTION 2. 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 sub-

1 section (3) of this section:

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

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

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

9 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281,
10 476.574, 652.020, [652.220,] 652.355, 653.060, 653.263, 653.265, 653.547, 653.549,
11 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063,
12 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,
13 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
14 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
15 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, [659A.357] or 659A.421; or

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

18 (3) In any action under subsection (1) of this section alleging a violation
19 of ORS 25.337, 25.424, [652.220, 652.355,] 653.547, 653.549, 659.852, 659A.030,
20 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
21 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
22 659A.318[, 659A.355, 659A.357] or 659A.421:

23 (a) The court may award, in addition to the relief authorized under sub-
24 section (1) of this section, compensatory damages or \$200, whichever is
25 greater, and punitive damages;

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

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

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

31 [(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this

1 *section alleging a violation of ORS 652.220, the court may award punitive*
2 *damages if:]*

3 *[(a) It is proved by clear and convincing evidence that an employer has*
4 *engaged in fraud, acted with malice or acted with willful and wanton mis-*
5 *conduct; or]*

6 *[(b) An employer was previously adjudicated in a proceeding under this*
7 *section or under ORS 659A.850 for a violation of ORS 652.220.]*

8 [(5)] (4) In any action under subsection (1) of this section alleging a vio-
9 lation of ORS 653.060, the court may award, in addition to the relief au-
10 thorized under subsection (1) of this section, compensatory damages or \$200,
11 whichever is greater.

12 [(6)] (5) In any action under subsection (1) of this section alleging a vio-
13 lation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition
14 to the relief authorized under subsection (1) of this section, compensatory
15 damages or \$250, whichever is greater.

16 [(7)] (6) In any action under subsection (1) of this section alleging a vio-
17 lation of ORS 10.090 or 10.092, the court may award, in addition to the relief
18 authorized under subsection (1) of this section, a civil penalty in the amount
19 of \$720.

20 [(8)] (7) Any individual against whom any distinction, discrimination or
21 restriction on account of race, color, religion, sex, sexual orientation, na-
22 tional origin, marital status or age, if the individual is 18 years of age or
23 older, has been made by any place of public accommodation, as defined in
24 ORS 659A.400, by any employee or person acting on behalf of the place or
25 by any person aiding or abetting the place or person in violation of ORS
26 659A.406 may bring an action against the operator or manager of the place,
27 the employee or person acting on behalf of the place or the aider or abettor
28 of the place or person. Notwithstanding subsection (1) of this section, in an
29 action under this subsection:

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

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

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

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

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

11 (f) Upon any appeal of a judgment under this subsection, the appellate
12 court shall review the judgment pursuant to the standard established by ORS
13 19.415 (1).

14 [(9)] (8) When the commissioner or the Attorney General has reasonable
15 cause to believe that a person or group of persons is engaged in a pattern
16 or practice of resistance to the rights protected by ORS 659A.145 or 659A.421
17 or federal housing law, or that a group of persons has been denied any of the
18 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
19 commissioner or the Attorney General may file a civil action on behalf of
20 the aggrieved persons in the same manner as a person or group of persons
21 may file a civil action under this section. In a civil action filed under this
22 subsection, the court may assess against the respondent, in addition to the
23 relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

26 [(10)] (9) In any action under subsection (1) of this section alleging a vi-
27 olation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
28 housing law, when the commissioner is pursuing the action on behalf of an
29 aggrieved complainant, the court shall award reasonable attorney fees to the
30 commissioner if the commissioner prevails in the action. The court may
31 award reasonable attorney fees and expert witness fees incurred by a de-

1 fendant that prevails in the action if the court determines that the commis-
2 sioner had no objectively reasonable basis for asserting the claim or for
3 appealing an adverse decision of the trial court.

4 [(11)] (10) In an action under subsection (1) or [(9)] (8) of this section
5 alleging a violation of ORS 659A.145 or 659A.421 or discrimination under
6 federal housing law:

7 (a) “Aggrieved person” includes a person who believes that the person:

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

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

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

17 **SECTION 3.** ORS 659A.885, as amended by sections 9 and 10, chapter 197,
18 Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, and sec-
19 tion 2 of this 2019 Act, is amended to read:

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

1 section (3) of this section:

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

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

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

9 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281,
10 476.574, 652.020, **652.220**, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549,
11 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063,
12 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,
13 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
14 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
15 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, **659A.357** or 659A.421; or

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

18 (3) In any action under subsection (1) of this section alleging a violation
19 of ORS 25.337, 25.424, **652.220**, **652.355**, 653.547, 653.549, 659.852, 659A.030,
20 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
21 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
22 659A.318, **659A.355**, **659A.357** or 659A.421:

23 (a) The court may award, in addition to the relief authorized under sub-
24 section (1) of this section, compensatory damages or \$200, whichever is
25 greater, and punitive damages;

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

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

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

31 **(4) Notwithstanding ORS 31.730, in an action under subsection (1)**

1 **of this section alleging a violation of ORS 652.220, the court may award**
2 **punitive damages if:**

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

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

8 [(4)] (5) In any action under subsection (1) of this section alleging a vio-
9 lation of ORS 653.060, the court may award, in addition to the relief au-
10 thorized under subsection (1) of this section, compensatory damages or \$200,
11 whichever is greater.

12 [(5)] (6) In any action under subsection (1) of this section alleging a vio-
13 lation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition
14 to the relief authorized under subsection (1) of this section, compensatory
15 damages or \$250, whichever is greater.

16 [(6)] (7) In any action under subsection (1) of this section alleging a vio-
17 lation of ORS 10.090 or 10.092, the court may award, in addition to the relief
18 authorized under subsection (1) of this section, a civil penalty in the amount
19 of \$720.

20 [(7)] (8) Any individual against whom any distinction, discrimination or
21 restriction on account of race, color, religion, sex, sexual orientation, na-
22 tional origin, marital status or age, if the individual is 18 years of age or
23 older, has been made by any place of public accommodation, as defined in
24 ORS 659A.400, by any employee or person acting on behalf of the place or
25 by any person aiding or abetting the place or person in violation of ORS
26 659A.406 may bring an action against the operator or manager of the place,
27 the employee or person acting on behalf of the place or the aider or abettor
28 of the place or person. Notwithstanding subsection (1) of this section, in an
29 action under this subsection:

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

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

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

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

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

11 (f) Upon any appeal of a judgment under this subsection, the appellate
12 court shall review the judgment pursuant to the standard established by ORS
13 19.415 (1).

14 [(8)] **(9)** When the commissioner or the Attorney General has reasonable
15 cause to believe that a person or group of persons is engaged in a pattern
16 or practice of resistance to the rights protected by ORS 659A.145 or 659A.421
17 or federal housing law, or that a group of persons has been denied any of the
18 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
19 commissioner or the Attorney General may file a civil action on behalf of
20 the aggrieved persons in the same manner as a person or group of persons
21 may file a civil action under this section. In a civil action filed under this
22 subsection, the court may assess against the respondent, in addition to the
23 relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

26 [(9)] **(10)** In any action under subsection (1) of this section alleging a vi-
27 olation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
28 housing law, when the commissioner is pursuing the action on behalf of an
29 aggrieved complainant, the court shall award reasonable attorney fees to the
30 commissioner if the commissioner prevails in the action. The court may
31 award reasonable attorney fees and expert witness fees incurred by a de-

1 fendant that prevails in the action if the court determines that the commis-
2 sioner had no objectively reasonable basis for asserting the claim or for
3 appealing an adverse decision of the trial court.

4 [(10)] (11) In an action under subsection (1) or [(8)] (9) of this section
5 alleging a violation of ORS 659A.145 or 659A.421 or discrimination under
6 federal housing law:

7 (a) “Aggrieved person” includes a person who believes that the person:

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

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

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

17 **SECTION 4. The amendments to ORS 659A.885, by section 3 of this**
18 **2019 Act, become operative on January 1, 2024.**

19 **SECTION 5. (1) If an action under ORS 659A.885 alleging a violation**
20 **of ORS 652.220 has been commenced prior to the effective date of this**
21 **2019 Act, the court shall stay the action until January 1, 2024.**

22 **(2) Subject to subsection (1) of this subsection, if a person is enti-**
23 **tled to bring an action under ORS 659A.885 alleging a violation of ORS**
24 **652.220, the period of limitation for a claim shall be tolled until Janu-**
25 **ary 1, 2024.**

26 **SECTION 6. This 2019 Act being necessary for the immediate pres-**
27 **ervation of the public peace, health and safety, an emergency is de-**
28 **clared to exist, and this 2019 Act takes effect on its passage.**

29