

# House Bill 2215

Sponsored by Representative PILUSO, Senator DEMBROW; Representatives GREENLICK, NOSSE, POWER, Senator FREDERICK (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 **as introduced**.

Establishes Oregon Right to Rest Act. Makes violation unlawful practice enforceable by Commissioner of Bureau of Labor and Industries or by civil action.

## A BILL FOR AN ACT

1  
2 Relating to rights of persons experiencing homelessness; creating new provisions; and amending ORS  
3 659A.885.

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

5 **SECTION 1. Sections 2 to 6 of this 2017 Act are added to and made a part of ORS chapter**  
6 **659A.**

7 **SECTION 2. Sections 3 to 6 of this 2017 Act shall be known and may be cited as the**  
8 **Oregon Right to Rest Act.**

9 **SECTION 3. (1) The Legislative Assembly finds that:**

10 (a) **Many persons in Oregon have experienced homelessness as a result of economic**  
11 **hardship, a shortage of safe and affordable housing, the inability to obtain gainful employ-**  
12 **ment and a disintegrating social safety net system; and**

13 (b) **Decriminalization of rest allows local governments to redirect resources from local**  
14 **law enforcement activities to activities that address the root causes of homelessness and**  
15 **poverty.**

16 (2) **It is declared to be the public policy of Oregon to guarantee persons experiencing**  
17 **homelessness participation in the social and economic life of this state, remunerative em-**  
18 **ployment, use of and free movement within public spaces, participation in and receipt of the**  
19 **benefits of the services, programs and activities of state government and local governments**  
20 **and housing accommodations of the person's choice, without discrimination.**

21 **SECTION 4. As used in sections 3 to 6 of this 2017 Act:**

22 (1) **"Harassment" means a knowing and willful course of conduct directed at a person**  
23 **experiencing homelessness that a reasonable person would consider as seriously alarming,**  
24 **tormenting or terrorizing of the person experiencing homelessness.**

25 (2) **"Housing status" means the residential status of a person experiencing homelessness.**

26 (3) **"Local government" has the meaning given that term in ORS 174.116.**

27 (4) **"Motor vehicle" has the meaning given that term in ORS 801.360.**

28 (5)(a) **"Persons experiencing homelessness" means persons who lack, or are perceived to**  
29 **lack, a fixed, regular and adequate nighttime residence.**

30 (b) **"Persons experiencing homelessness" includes persons who:**

31 (A) **Share the housing of other persons due to loss of housing, economic hardship or a**

**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 similar reason;

2 (B) Live in motels, hotels, trailer parks or campgrounds due to the lack of alternative  
3 adequate accommodations;

4 (C) Live in emergency or transitional shelters;

5 (D) Are abandoned in hospitals;

6 (E) Are awaiting foster care placement;

7 (F) Have a primary nighttime residence that is a public or private place not designed for  
8 or ordinarily used as a regular sleeping accommodation for human beings;

9 (G) Live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or  
10 train stations or similar settings; or

11 (H) Are migratory and otherwise experiencing homelessness as described in this sub-  
12 section.

13 (6)(a) "Public space" means any property that is owned, in whole or in part, by state  
14 government or a local government, or upon which there is an easement for public use, and  
15 that is held open to the public.

16 (b) "Public space" includes but is not limited to plazas, courtyards, parking lots, side-  
17 walks, public transportation facilities and services, public buildings and parks.

18 (c) "Public space" does not mean a private business establishment.

19 (7) "Recreational vehicle" has the meaning given that term in ORS 446.003.

20 (8) "Rest" means the state of sleeping or not moving or the state of holding certain  
21 postures that include but are not limited to sitting, standing, leaning, kneeling, squatting or  
22 lying on the ground or other surface.

23 (9) "State government" has the meaning given that term in ORS 174.111.

24 **SECTION 5.** (1) In enacting sections 3 to 6 of this 2017 Act, it is the intent of the Legis-  
25 lative Assembly that:

26 (a) Persons experiencing homelessness be permitted to use public spaces in the same  
27 manner as any other person without discrimination based on their housing status;

28 (b) A person experiencing homelessness has a privacy interest and a reasonable expect-  
29 ation of privacy in any property belonging to the person, regardless of whether the property  
30 is located in a public space; and

31 (c) Every person in this state, including persons experiencing homelessness, have the  
32 rights set forth in subsection (2) of this section to be exercised without being subject to  
33 harassment, citation or arrest by law enforcement officers, public or private security per-  
34 sonnel or employees of local governments.

35 (2) Notwithstanding any other law or regulation of state government or local govern-  
36 ment, a person experiencing homelessness has the following rights:

37 (a) To use and move freely in public spaces without discrimination and time limitations  
38 that are based on housing status.

39 (b) To rest in public spaces and seek protection from adverse weather conditions that are  
40 unsuitable for human exposure in a manner that does not obstruct human or vehicle traffic.

41 (c) To eat, share, accept or give food in any public space in which having food is not  
42 prohibited.

43 (d) To pray, meditate, worship or practice religion in public spaces without discrimination  
44 based on housing status.

45 (e) To occupy a motor vehicle or a recreational vehicle provided that the vehicle is legally

1 parked on public property or on private property with the permission of the private property  
 2 owner.

3 (3) Subsection (2) of this section does not apply if the public space is closed to the general  
 4 public or requires a fee for entry. When this subsection applies, and it is legal and reasonable  
 5 to do so, law enforcement or local officials shall clearly designate and provide an appropriate  
 6 alternative place for persons experiencing homelessness to rest without time limitations in  
 7 the near vicinity.

8 (4) An affirmative defense is available to a person experiencing homelessness to a civil  
 9 or criminal charge related to use of public spaces that the person was exercising the rights  
 10 set forth in this section.

11 **SECTION 6.** (1) It is an unlawful practice for any person to deny, refuse, restrict or  
 12 withhold from a person experiencing homelessness any of the rights listed in section 5 of this  
 13 2017 Act.

14 (2) Complaints alleging an unlawful practice under this section may be filed by the  
 15 aggrieved person, or by a person lawfully acting on behalf of the aggrieved person, with the  
 16 Commissioner of the Bureau of Labor and Industries in the manner provided by ORS  
 17 659A.820. The commissioner shall enforce this section in the manner provided in this chapter  
 18 regarding other unlawful practices.

19 (3) Violation of this section subjects the violator to the civil remedies and penalties pro-  
 20 vided in this chapter.

21 **SECTION 7.** ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, is amended  
 22 to read:

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

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

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

36 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS  
 37 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.233, 476.574, 652.355, 653.060, 653.601  
 38 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,  
 39 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,  
 40 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,  
 41 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549 **or section 6 of this**  
 42 **2017 Act.**

43 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 44 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,  
 45 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549:

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

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

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

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

7 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or  
 8 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,  
 9 compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **(11) In any action under subsection (1) of this section alleging a violation of section 6 of**  
20 **this 2017 Act, the court may award, in addition to the relief authorized under subsection (1)**  
21 **of this section:**

22 (a) **Compensatory damages or \$1,000 per violation, whichever is greater; and**

23 (b) **A civil penalty in the amount of \$1,000.**

24