

A-Engrossed Senate Bill 301

Ordered by the Senate May 4
Including Senate Amendments dated May 4

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Marijuana Legalization)

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.

[Provides that conditioning employment on refraining from using any substance that is lawful to use in this state is unlawful employment practice.]

[Declares emergency, effective on passage.]

Makes unlawful employment practice for employer to refuse to employ, discharge or otherwise penalize individual because individual is registered identification cardholder. Makes unlawful employment practice for employer to discriminate against employee with respect to compensating employee or with respect to terms, conditions or privileges of employment because employee is registry identification cardholder.

Specifies that exception allowing employer to take action based on illegal drug use to provisions of law that protect employees who are disabled from discriminatory action by employer does not apply to use of marijuana items by registry identification cardholder.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to unlawful employment practices; creating new provisions; amending ORS 475B.410,
3 659A.124, 659A.139 and 659A.885; and prescribing an effective date.

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

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

6 **SECTION 2. (1) It is an unlawful employment practice for an employer to refuse to em-**
7 **ploy an individual or to discharge or otherwise penalize an individual because:**

8 (a) **The individual is a registry identification cardholder, as defined in ORS 475B.410; or**

9 (b) **The individual is a registry identification cardholder, as defined in ORS 475B.410, and**
10 **the individual tested positive for cannabis.**

11 (2) **It is an unlawful employment practice for an employer to discriminate against an**
12 **employee with respect to compensating the employee or with respect to the terms, condi-**
13 **tions or privileges of employment because:**

14 (a) **The employee is a registry identification cardholder, as defined in ORS 475B.410; or**

15 (b) **The employee is a registry identification cardholder, as defined in ORS 475B.410, and**
16 **the employee tested positive for cannabis.**

17 (3) **This section does not apply to an employment practice related to:**

18 (a) **The performance of work while impaired;**

19 (b) **The essence of the employer's business, provided that:**

20 (A) **All users or substantially all users of cannabis or cannabis-derived products would**
21 **be unable to perform their work duties safely and efficiently; or**

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 **(B) Some users of cannabis or cannabis-derived products would be unable to perform**
2 **their work duties safely and efficiently, and determining who is a user of cannabis or**
3 **cannabis-derived products on an individual basis is impossible or impracticable;**

4 **(c) An applicable collective bargaining agreement that prohibits using cannabis or**
5 **cannabis-derived products during nonworking hours;**

6 **(d) A federal law or regulation requiring an employer to test employees or prospective**
7 **employees for use of cannabis or cannabis-derived products; or**

8 **(e) A contract between an employer and the federal government under which the receipt**
9 **of federal moneys is contingent on the employer having a drug-free workplace.**

10 **SECTION 3.** ORS 659A.124 is amended to read:

11 659A.124. (1) Subject to the provisions of subsection (2) of this section, the protections of ORS
12 659A.112 do not apply to any job applicant or employee who is currently engaging in the illegal use
13 of drugs if the employer takes action based on that conduct.

14 (2) The protections of ORS 659A.112 apply to the following individuals:

15 (a) An individual who:

16 **(A)** Has successfully completed a supervised drug rehabilitation program; and

17 **(B)(i)** Is no longer engaging in the illegal use of drugs; or

18 **(ii)** Has otherwise been rehabilitated successfully and is no longer engaging in the illegal use
19 of drugs.

20 (b) An individual who is participating in a supervised rehabilitation program and is no longer
21 engaging in the illegal use of drugs.

22 (c) An individual who is erroneously regarded as engaging in the illegal use of drugs.

23 (3) An employer may adopt or administer reasonable policies or procedures, including but not
24 limited to drug testing, designed to ensure that an individual described in subsection (2)(a) or (b)
25 of this section is no longer engaging in the illegal use of drugs.

26 **(4) This section does not apply to the use of marijuana items, as defined in ORS 475B.015,**
27 **by a registry identification cardholder, as that term is defined in ORS 475B.410.**

28 **SECTION 4.** ORS 659A.139 is amended to read:

29 659A.139. (1) ORS 659A.103 to 659A.144 shall be construed to the extent possible in a manner
30 that is consistent with any similar provisions of the federal Americans with Disabilities Act of 1990,
31 as amended by the federal ADA Amendments Act of 2008 and as otherwise amended, **except to the**
32 **extent that ORS 659A.103 to 659A.144 conflict with ORS 659A.124.**

33 (2) The determination of whether an individual has a disability as provided in ORS 659A.104 (1)
34 shall be construed in favor of broad coverage of individuals under ORS 659A.103 to 659A.145, to the
35 maximum extent permitted by the terms of ORS 659A.103 to 659A.145.

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

38 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
39 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
40 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
41 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
42 court may order back pay in an action under this subsection only for the two-year period imme-
43 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
44 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
45 year period immediately preceding the filing of the action. In any action under this subsection, the

1 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
2 cept as provided in subsection (3) of this section:

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

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

6 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
7 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
8 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
9 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
10 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
11 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549 **or section 2 of this**
12 **2017 Act.**

13 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
14 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
15 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549
16 **or section 2 of this 2017 Act:**

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

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

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

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

23 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
24 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
25 compensatory damages or \$200, whichever is greater.

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

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

32 (7) Any individual against whom any distinction, discrimination or restriction on account of
33 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
34 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
35 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
36 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
37 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
38 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
39 section:

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

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

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

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

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

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

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

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

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

18 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
19 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
20 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
21 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
22 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
23 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
24 appealing an adverse decision of the trial court.

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

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

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

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

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

35 **SECTION 6.** ORS 475B.410 is amended to read:

36 475B.410. As used in ORS 475B.400 to 475B.525:

37 (1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary
38 responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

39 (2) "Cannabinoid" means any of the chemical compounds that are the active constituents of
40 marijuana.

41 (3) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from
42 marijuana by:

43 (a) A mechanical extraction process;

44 (b) A chemical extraction process using a nonhydrocarbon-based solvent, such as vegetable
45 glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;

1 (c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided
2 that the process does not involve the use of high heat or pressure; or

3 (d) Any other process identified by the Oregon Health Authority, in consultation with the
4 Oregon Liquor Control Commission, by rule.

5 (4) “Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate,
6 cannabinoid extract or dried leaves or flowers of marijuana have been incorporated.

7 (5) “Cannabinoid extract” means a substance obtained by separating cannabinoids from
8 marijuana by:

9 (a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane
10 or propane;

11 (b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the
12 process uses high heat or pressure; or

13 (c) Any other process identified by the Oregon Health Authority, in consultation with the
14 Oregon Liquor Control Commission, by rule.

15 (6) “Debilitating medical condition” means:

16 (a) Cancer, glaucoma, a degenerative or pervasive neurological condition, positive status for
17 human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to
18 the treatment of those medical conditions;

19 (b) A medical condition or treatment for a medical condition that produces, for a specific pa-
20 tient, one or more of the following:

21 (A) Cachexia;

22 (B) Severe pain;

23 (C) Severe nausea;

24 (D) Seizures, including seizures caused by epilepsy; or

25 (E) Persistent muscle spasms, including spasms caused by multiple sclerosis;

26 (c) Post-traumatic stress disorder; or

27 (d) Any other medical condition or side effect related to the treatment of a medical condition
28 adopted by the Oregon Health Authority by rule or approved by the authority pursuant to a petition
29 filed under ORS 475B.517.

30 (7)(a) “Delivery” has the meaning given that term in ORS 475.005.

31 (b) “Delivery” does not include transfer of marijuana by a registry identification cardholder to
32 another registry identification cardholder if no consideration is paid for the transfer.

33 (8)(a) “Designated primary caregiver” means an individual:

34 (A) Who is 18 years of age or older;

35 (B) Who has significant responsibility for managing the well-being of a person who has been
36 diagnosed with a debilitating medical condition; and

37 (C) Who is designated as the person responsible for managing the well-being of a person who
38 has been diagnosed with a debilitating medical condition on that person’s application for a registry
39 identification card or in other written notification submitted to the authority.

40 (b) “Designated primary caregiver” does not include a person’s attending physician.

41 (9) “High heat” means a temperature exceeding 180 degrees.

42 (10) “Immature marijuana plant” means a marijuana plant that is not flowering.

43 (11)(a) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant
44 Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

45 (b) “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

1 (12) “Marijuana grow site” means a location registered under ORS 475B.420 where marijuana
2 is produced for use by a registry identification cardholder.

3 (13) “Marijuana processing site” means a marijuana processing site registered under ORS
4 475B.435 or a site for which an applicant has submitted an application for registration under ORS
5 475B.435.

6 (14) “Mature marijuana plant” means a marijuana plant that is not an immature marijuana
7 plant.

8 (15)(a) “Medical cannabinoid product” means a cannabinoid edible and any other product in-
9 tended for human consumption or use, including a product intended to be applied to a person’s skin
10 or hair, that contains cannabinoids or dried leaves or flowers of marijuana.

11 (b) “Medical cannabinoid product” does not include:

12 (A) Usable marijuana by itself;

13 (B) A cannabinoid concentrate by itself;

14 (C) A cannabinoid extract by itself; or

15 (D) Industrial hemp, as defined in ORS 571.300.

16 (16) “Medical marijuana dispensary” means a medical marijuana dispensary registered under
17 ORS 475B.450 or a site for which an applicant has submitted an application for registration under
18 ORS 475B.450.

19 (17) “Medical use of marijuana” means the production, processing, possession, delivery or ad-
20 ministration of marijuana, or use of paraphernalia used to administer marijuana, to mitigate the
21 symptoms or effects of a debilitating medical condition.

22 (18) “Person designated to produce marijuana by a registry identification cardholder” means a
23 person designated to produce marijuana by a registry identification cardholder under ORS 475B.420
24 who produces marijuana for a registry identification cardholder at an address other than the address
25 where the registry identification cardholder resides or at an address where more than 12 mature
26 marijuana plants are produced.

27 (19) “Process” means the compounding or conversion of marijuana into medical cannabinoid
28 products, cannabinoid concentrates or cannabinoid extracts.

29 (20) “Production” means:

30 (a) Planting, cultivating, growing, trimming or harvesting marijuana; or

31 (b) Drying marijuana leaves or flowers.

32 (21) “Registry identification card” means a document issued by the Oregon Health Authority
33 under ORS 475B.415 that identifies a person [*authorized to engage in the medical use of marijuana*]
34 **to whom ORS 475B.400 to 475B.525 apply** and, if the person has a designated primary caregiver
35 under ORS 475B.418, the person’s designated primary caregiver.

36 (22) “Registry identification cardholder” means a person to whom a registry identification card
37 has been issued under ORS 475B.415.

38 (23)(a) “Usable marijuana” means the dried leaves and flowers of marijuana.

39 (b) “Usable marijuana” does not include:

40 (A) The seeds, stalks and roots of marijuana; or

41 (B) Waste material that is a by-product of producing marijuana.

42 (24) “Written documentation” means a statement signed by the attending physician of a person
43 diagnosed with a debilitating medical condition or copies of the person’s relevant medical records.

44 **SECTION 7. This 2017 Act takes effect on the 91st day after the date on which the 2017**
45 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

