

Requested by Senator TAYLOR

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2005**

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon de-
2 lete the rest of the line and insert “creating new provisions; amending ORS
3 652.210, 652.220, 652.230, 659A.820, 659A.870, 659A.875 and 659A.885; and pre-
4 scribing an effective date.”.

5 Delete lines 4 through 20 and delete pages 2 through 6 and insert:

6 **“SECTION 1.** ORS 652.210 is amended to read:

7 “652.210. As used in ORS 652.210 to 652.230, unless the context requires
8 otherwise:

9 **“(1) ‘Compensation’ includes wages, salary, bonuses, benefits, fringe**
10 **benefits and equity-based compensation.**

11 “[~~1~~] **(2)** ‘Employee’ means any individual who, otherwise than as a
12 copartner of the employer, as an independent contractor or as a participant
13 in a work training program administered under the state or federal assist-
14 ance laws, renders personal services wholly or partly in this state to an
15 employer who pays or agrees to pay such individual at a fixed rate. However,
16 when services are rendered only partly in this state, an individual is not an
17 employee unless the contract of employment of the employee has been en-
18 tered into, or payments thereunder are ordinarily made or to be made, within
19 this state.

20 “[~~2~~] **(3)(a)** ‘Employer’ means any person employing one or more em-
21 ployees, including the State of Oregon or any political subdivision thereof

1 or any county, city, district, authority, public corporation or entity and any
2 of their instrumentalities organized and existing under law or charter.

3 “(b) ‘Employer’ does not include the federal government.

4 “(4) ‘Equal-pay analysis’ means an evaluation process to assess and
5 correct wage disparities among employees who perform work of com-
6 parable character.

7 “(5) ‘Protected class’ means a group of persons distinguished by
8 race, color, religion, sex, sexual orientation, national origin, marital
9 status, veteran status, disability or age.

10 “[3] (6) ‘Rate’ with reference to wages means:

11 “(a) The basis of compensation for services by an employee for an em-
12 ployer; and

13 “(b) [*includes*] Compensation based on the time spent in the performance
14 of the services, on the number of operations accomplished or on the quantity
15 produced or handled.

16 “(7) ‘Sexual orientation’ has the meaning given that term in ORS
17 174.100.

18 “[4] (8) ‘Unpaid wages’ means the difference between the wages actually
19 paid to an employee and the wages required under ORS 652.220 to be paid
20 to the employee.

21 “(9) ‘Veteran status’ means an individual is a veteran as defined in
22 ORS 408.225.

23 “[5] (10) ‘Wages’ means all compensation for performance of service by
24 an employee for an employer, whether paid by the employer or another per-
25 son, [*including*] or paid in cash or any medium other than cash [*cash*
26 *value of all compensation paid in any medium other than cash*].

27 “(11) ‘Working conditions’ includes work environment, hours, time
28 of day, physical surroundings and potential hazards encountered by
29 an employee.

30 “(12) ‘Work of comparable character’ means work that requires

1 **substantially similar knowledge, skill, effort, responsibility and work-**
2 **ing conditions in the performance of work, regardless of job de-**
3 **scription or job title.**

4 **“SECTION 2.** ORS 652.220 is amended to read:

5 **“652.220. (1) [No employer shall:] It is an unlawful employment prac-**
6 **tice under ORS chapter 659A for an employer to:**

7 **“(a) In any manner discriminate between [the sexes] employees on the**
8 **basis of a protected class in the payment of wages or other compensation**
9 **for work of comparable character[, the performance of which requires compa-**
10 **erable skills].**

11 **“(b) Pay wages or other compensation to any employee at a rate [less]**
12 **greater than that at which the employer pays wages or other compen-**
13 **sation to employees of [the opposite sex] a protected class for work of**
14 **comparable character[, the performance of which requires comparable skills].**

15 **“(c) Screen job applicants based on current or past compensation.**

16 **“(d) Determine compensation for a position based on current or**
17 **past compensation of a prospective employee. This paragraph is not**
18 **intended to prevent an employer from considering the compensation**
19 **of a current employee of the employer during a transfer, move or hire**
20 **of the employee to a new position with the same employer.**

21 **“[(2) Subsection (1) of this section does not apply where:]**

22 **“[(a) Payment is made pursuant to a seniority or merit system which does**
23 **not discriminate on the basis of sex.]**

24 **“[(b) A differential in wages between employees is based in good faith on**
25 **factors other than sex.]**

26 **“(2) Notwithstanding subsection (1) of this section, an employer**
27 **may pay employees for work of comparable character at different**
28 **compensation levels if all of the difference in compensation levels is**
29 **based on a bona fide factor that is related to the position in question**
30 **and is based on:**

- 1 “(a) A seniority system;
- 2 “(b) A merit system;
- 3 “(c) A system that measures earnings by quantity or quality of
- 4 **production, including piece-rate work;**
- 5 “(d) Workplace locations;
- 6 “(e) Travel, if travel is necessary and regular for the employee;
- 7 “(f) Education;
- 8 “(g) Training;
- 9 “(h) Experience; or
- 10 “(i) Any combination of the factors described in this subsection, if
- 11 **the combination of factors accounts for the entire compensation dif-**
- 12 **ferential.**
- 13 “(3) [*No employer shall*] **An employer may not** in any manner discrimi-
- 14 **nate in the payment of wages or other compensation** against any employee
- 15 **because the employee has filed a complaint under ORS 659A.820 or** in a
- 16 **proceeding under ORS 652.210 to 652.230[,] or 659A.885** or has testified, or
- 17 **is about to testify, or because the employer believes that the employee may**
- 18 **testify, in any investigation or proceedings pursuant to ORS 652.210 to**
- 19 **652.230, 659A.830 or 659A.885** or in a criminal action pursuant to ORS
- 20 **652.210 to 652.230.**
- 21 “(4) **An employer may not reduce the compensation level of an**
- 22 **employee to comply with the provisions of this section.**
- 23 “(5) **Amounts owed to an employee because of the failure of the**
- 24 **employer to comply with the requirements of this section are unpaid**
- 25 **wages.**
- 26 “(6) **An employee who asserts a violation under this section may file**
- 27 **a complaint with the Commissioner of the Bureau of Labor and In-**
- 28 **dustries under ORS 659A.820, a civil action under ORS 652.230 or a civil**
- 29 **action under 659A.885.**
- 30 “(7) **An employer shall post a notice of the requirements of this**

1 **section in every establishment where employees work. The Bureau of**
2 **Labor and Industries shall make available to employers a template**
3 **that meets the required notice provisions of this section.**

4 **“SECTION 3.** ORS 652.230 is amended to read:

5 “652.230. (1) Any employee whose compensation is at a rate that is in vi-
6 olation of ORS 652.220 shall have a right of action against the employer for
7 the recovery of:

8 “(a) The amount of the unpaid wages to which the employee is entitled
9 for the one year period preceding the commencement of the action; and

10 “(b) An additional amount as liquidated damages equal to the amount
11 referred to in paragraph (a) of this subsection.

12 “(2) The court shall award reasonable attorney fees to the prevailing
13 plaintiff in an action under this section. The court may award reasonable
14 attorney fees and expert witness fees incurred by a defendant who prevails
15 in the action if the court determines that the plaintiff had no objectively
16 reasonable basis for asserting a claim or no objectively reasonable basis for
17 appealing an adverse decision of a trial court.

18 “(3) The action for the unpaid wages and liquidated damages may be
19 maintained by one or more employees on behalf of themselves or other em-
20 ployees similarly situated.

21 “(4) No agreement for compensation at a rate less than the rate to which
22 such employee is entitled under ORS 652.210 to 652.230 is a defense to any
23 action under ORS 652.210 to 652.230.

24 **“(5) For the purpose of time limitations, a compensation practice**
25 **that is unlawful under ORS 652.220 occurs each time compensation is**
26 **paid pursuant to a discriminatory compensation decision or other**
27 **practice.**

28 **“(6) An action under this section alleging a violation of ORS 652.220**
29 **must be commenced within one year after the occurrence of the un-**
30 **lawful practice.**

1 “(7) Notwithstanding ORS 30.275 (2)(b), notice of claim against a
2 public body under ORS 652.220 must be given within 300 days of dis-
3 covery of the alleged loss or injury.

4 “**SECTION 4.** It is an unlawful practice under ORS chapter 659A for
5 an employer or prospective employer to seek the salary history of an
6 applicant or employee from the applicant or employee or a current or
7 former employer of the applicant or employee. This section is not in-
8 tended to prevent an employer from requesting from a prospective
9 employee written authorization to confirm prior compensation after
10 the employer makes an offer of employment to the prospective em-
11 ployee that includes an amount of compensation.

12 “**SECTION 5.** ORS 659A.820 is amended to read:

13 “659A.820. (1) As used in this section, for purposes of a complaint alleging
14 an unlawful practice under ORS 659A.145 or 659A.421 or discrimination un-
15 der federal housing law, [*aggrieved person*] ‘**person claiming to be**
16 **aggrieved by an unlawful practice**’ includes, but is not limited to, a
17 person who believes that the person:

18 “(a) Has been injured by an unlawful practice **under ORS 659A.145 or**
19 **659A.421** or a discriminatory housing practice; or

20 “(b) Will be injured by an unlawful practice **under ORS 659A.145 or**
21 **659A.421** or a discriminatory housing practice that is about to occur.

22 “(2) Any person claiming to be aggrieved by an [*alleged*] unlawful practice
23 may file with the Commissioner of the Bureau of Labor and Industries a
24 verified written complaint that states the name and address of the person
25 alleged to have committed the unlawful practice. The complaint must be
26 signed by the complainant. The complaint must set forth the acts or omis-
27 sions alleged to be an unlawful practice. The complainant may be required
28 to set forth in the complaint such other information as the commissioner
29 may require. Except as provided in ORS 654.062, a complaint under this
30 section must be filed no later than one year after the alleged unlawful

1 practice.

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

5 “(b) The prohibition described in paragraph (a) of this subsection does not
6 apply to a complaint alleging an unlawful practice under ORS 659A.145 or
7 659A.421 or alleging discrimination under federal housing law.

8 “(4) If an employer has one or more employees who refuse or threaten to
9 refuse to abide by the provisions of this chapter or to cooperate in carrying
10 out the purposes of this chapter, the employer may file with the commis-
11 sioner a verified complaint requesting assistance by conciliation or other
12 remedial action.

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

17 “(6) The commissioner shall notify the person against whom a complaint
18 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimi-
19 nation under federal housing law is made within 10 days of the filing of the
20 complaint. The commissioner shall include in the notice:

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

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

25 **“SECTION 6.** ORS 659A.870 is amended to read:

26 “659A.870. (1) Except as provided in this section, the filing of a civil
27 action by a person in circuit court pursuant to ORS 659A.885, or in federal
28 district court under applicable federal law, waives the right of the person to
29 file a complaint with the Commissioner of the Bureau of Labor and Indus-
30 tries under ORS 659A.820 with respect to the matters alleged in the civil

1 action.

2 “(2) The filing of a complaint under ORS 659A.820 is not a condition
3 precedent to the filing of any civil action.

4 “(3) If a person files a civil action alleging an unlawful practice under
5 ORS 659A.145 or 659A.421 or discrimination under federal housing law, the
6 filing does not constitute an election of remedies or a waiver of the right
7 of the person to file a complaint with the commissioner under ORS 659A.820,
8 but the commissioner shall dismiss the complaint upon the commencement
9 of a trial in the civil action.

10 **“(4) If a person files a complaint under ORS 659A.820 alleging a vi-**
11 **olation of ORS 652.220 and the commissioner issues a final order in**
12 **favor of the complainant, the commissioner shall require the employer**
13 **to pay an award of back pay for the lesser of:**

14 **“(a) The two-year period immediately preceding the filing of the**
15 **complaint plus the period of time commencing with the date on which**
16 **the complaint is filed and ending on the date on which the commis-**
17 **sioner issued the order; or**

18 **“(b) The period of time the complainant was subject to an unlawful**
19 **wage differential by the employer plus the period of time commencing**
20 **with the date on which the complaint is filed and ending on the date**
21 **on which the commissioner issued the order.**

22 “[~~(4)(a)~~] **(5)(a)** The filing of a complaint under ORS 659A.820 by a person
23 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimi-
24 nation under federal housing law does not constitute an election of remedies
25 or a waiver of the right of the person to file a civil action with respect to
26 the same matters, but a civil action may not be filed after a hearing officer
27 has commenced a hearing on the record under this chapter with respect to
28 the allegations of the complaint.

29 **“(b) A respondent or complainant named in a complaint filed under ORS**
30 **659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or**

1 659A.421 or discrimination under federal housing law may elect to have the
2 matter heard in circuit court under ORS 659A.885. The election must be made
3 in writing and received by the commissioner within 20 days after service of
4 formal charges under ORS 659A.845. If the respondent or the complainant
5 makes the election, the commissioner may pursue the matter in court on
6 behalf of the complainant at no cost to the complainant.

7 “(c) If the Attorney General or the commissioner files a complaint under
8 ORS 659A.825, the Attorney General or the commissioner may elect to have
9 the matter heard in circuit court under ORS 659A.885.

10 “(d) If the respondent, the complainant, the Attorney General or the
11 commissioner do not elect to have the matter heard in circuit court, the
12 commissioner may conduct a hearing on the formal charges under ORS
13 659A.850.

14 “[5] (6) A person who has filed a complaint under ORS 659A.820 need
15 not receive a 90-day notice under ORS 659A.880 before commencing a civil
16 action that is based on the same matters alleged in the complaint filed with
17 the commissioner.

18 “[6] (7) Except as provided in subsections (3) and (4) of this section, this
19 section does not limit or alter in any way the authority or power of the
20 commissioner, or limit or alter in any way any of the rights of an individual
21 complainant, until and unless the complainant commences a civil action.

22 “**SECTION 7.** ORS 659A.870, as amended by section 5, chapter 609,
23 Oregon Laws 2015, is amended to read:

24 “659A.870. (1) Except as provided in this section, the filing of a civil
25 action by a person in circuit court pursuant to ORS 659A.885, or in federal
26 district court under applicable federal law, waives the right of the person to
27 file a complaint with the Commissioner of the Bureau of Labor and Indus-
28 tries under ORS 659A.820 with respect to the matters alleged in the civil
29 action.

30 “(2) The filing of a complaint under ORS 659A.820 is not a condition

1 precedent to the filing of any civil action.

2 “(3) If a person files a civil action alleging an unlawful practice under
3 ORS 659A.145 or 659A.421 or discrimination under federal housing law, the
4 filing does not constitute an election of remedies or a waiver of the right
5 of the person to file a complaint with the commissioner under ORS 659A.820,
6 but the commissioner shall dismiss the complaint upon the commencement
7 of a trial in the civil action.

8 **“(4) If a person files a complaint under ORS 659A.820 alleging a vi-**
9 **olation of ORS 652.220 and the commissioner issues a final order in**
10 **favor of the complainant, the commissioner shall require the employer**
11 **to pay an award of back pay for the lesser of:**

12 **“(a) The two-year period immediately preceding the filing of the**
13 **complaint plus the period of time commencing with the date on which**
14 **the complaint is filed and ending on the date on which the commis-**
15 **sioner issued the order; or**

16 **“(b) The period of time the complainant was subject to an unlawful**
17 **wage differential by the employer plus the period of time commencing**
18 **with the date on which the complaint is filed and ending on the date**
19 **on which the commissioner issued the order.**

20 “[~~(4)(a)~~] **(5)(a)** The filing of a complaint under ORS 659A.820 by a person
21 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimi-
22 nation under federal housing law does not constitute an election of remedies
23 or a waiver of the right of the person to file a civil action with respect to
24 the same matters, but a civil action may not be filed after a hearing officer
25 has commenced a hearing on the record under this chapter with respect to
26 the allegations of the complaint.

27 **“(b)** A respondent or complainant named in a complaint filed under ORS
28 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or
29 659A.421 or discrimination under federal housing law may elect to have the
30 matter heard in circuit court under ORS 659A.885. The election must be made

1 in writing and received by the commissioner within 20 days after service of
2 formal charges under ORS 659A.845. If the respondent or the complainant
3 makes the election, the commissioner shall pursue the matter in court on
4 behalf of the complainant at no cost to the complainant.

5 “(c) If the Attorney General or the commissioner files a complaint under
6 ORS 659A.825, the Attorney General or the commissioner may elect to have
7 the matter heard in circuit court under ORS 659A.885.

8 “(d) If the respondent, the complainant, the Attorney General or the
9 commissioner do not elect to have the matter heard in circuit court, the
10 commissioner may conduct a hearing on the formal charges under ORS
11 659A.850.

12 “[5] (6) A person who has filed a complaint under ORS 659A.820 need
13 not receive a 90-day notice under ORS 659A.880 before commencing a civil
14 action that is based on the same matters alleged in the complaint filed with
15 the commissioner.

16 “[6] (7) Except as provided in subsections (3) and (4) of this section, this
17 section does not limit or alter in any way the authority or power of the
18 commissioner, or limit or alter in any way any of the rights of an individual
19 complainant, until and unless the complainant commences a civil action.

20 **“SECTION 8.** ORS 659A.875 is amended to read:

21 “659A.875. (1) Except as provided in subsection (2) of this section, a civil
22 action under ORS 659A.885 alleging an unlawful employment practice must
23 be commenced within one year after the occurrence of the unlawful employ-
24 ment practice unless a complaint has been timely filed under ORS 659A.820.

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

30 “(3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must

1 be commenced not later than two years after the occurrence or the termi-
2 nation of the unlawful practice, or within two years after the breach of any
3 settlement agreement entered into under ORS 659A.840, whichever occurs
4 last. The two-year period shall not include any time during which an ad-
5 ministrative proceeding was pending with respect to the unlawful practice.

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

9 “(5) The notice of claim required under ORS 30.275 must be given in any
10 civil action under ORS 659A.885 against a public body, as defined in ORS
11 30.260, or any officer, employee or agent of a public body as defined in ORS
12 30.260.

13 “(6) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885
14 against a public body, as defined in ORS 30.260, or any officer, employee or
15 agent of a public body as defined in ORS 30.260, based on an unlawful em-
16 ployment practice must be commenced within one year after the occurrence
17 of the unlawful employment practice unless a complaint has been timely filed
18 under ORS 659A.820.

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

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

25 “**SECTION 9.** ORS 659A.885, as amended by section 5, chapter 73, Oregon
26 Laws 2016, is amended to read:

27 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
28 tice specified in subsection (2) of this section may file a civil action in cir-
29 cuit court. In any action under this subsection, the court may order
30 injunctive relief and any other equitable relief that may be appropriate, in-

1 cluding but not limited to reinstatement or the hiring of employees with or
2 without back pay. A court may order back pay in an action under this sub-
3 section only for the two-year period immediately preceding the filing of a
4 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
5 bor and Industries, or if a complaint was not filed before the action was
6 commenced, the two-year period immediately preceding the filing of the
7 action. In any action under this subsection, the court may allow the pre-
8 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
9 cept as provided in subsection (3) of this section:

10 “(a) The judge shall determine the facts in an action under this sub-
11 section; and

12 “(b) Upon any appeal of a judgment in an action under this subsection,
13 the appellate court shall review the judgment pursuant to the standard es-
14 tablished by ORS 19.415 (3).

15 “(2) An action may be brought under subsection (1) of this section alleg-
16 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
17 (2), 475B.233, 476.574, **652.220**, 652.355, 653.060, 653.601 to 653.661, 659.852,
18 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082,
19 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199,
20 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to
21 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
22 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

23 “(3) In any action under subsection (1) of this section alleging a violation
24 of ORS 25.337, 25.424, **652.220**, **652.355**, 659.852, 659A.030, 659A.040, 659A.043,
25 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203,
26 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, **659A.355**,
27 659A.421, 653.547 or 653.549:

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

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

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

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

6 **“(4) Notwithstanding ORS 31.730, in an action under subsection (1)**
7 **of this section alleging a violation of ORS 652.220, the court may award**
8 **punitive damages if:**

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

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

14 “[4] (5) In any action under subsection (1) of this section alleging a vi-
15 olation of ORS [652.355 or] 653.060, the court may award, in addition to the
16 relief authorized under subsection (1) of this section, compensatory damages
17 or \$200, whichever is greater.

18 “[5] (6) In any action under subsection (1) of this section alleging a vi-
19 olation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition
20 to the relief authorized under subsection (1) of this section, compensatory
21 damages or \$250, whichever is greater.

22 “[6] (7) In any action under subsection (1) of this section alleging a vi-
23 olation of ORS 10.090 or 10.092, the court may award, in addition to the relief
24 authorized under subsection (1) of this section, a civil penalty in the amount
25 of \$720.

26 “[7] (8) Any individual against whom any distinction, discrimination or
27 restriction on account of race, color, religion, sex, sexual orientation, na-
28 tional origin, marital status or age, if the individual is 18 years of age or
29 older, has been made by any place of public accommodation, as defined in
30 ORS 659A.400, by any employee or person acting on behalf of the place or

1 by any person aiding or abetting the place or person in violation of ORS
2 659A.406 may bring an action against the operator or manager of the place,
3 the employee or person acting on behalf of the place or the aider or abettor
4 of the place or person. Notwithstanding subsection (1) of this section, in an
5 action under this subsection:

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

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

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

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

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

18 “(f) Upon any appeal of a judgment under this subsection, the appellate
19 court shall review the judgment pursuant to the standard established by ORS
20 19.415 (1).

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

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

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

3 “~~[(9)]~~ **(10)** In any action under subsection (1) of this section alleging a
4 violation of ORS 659A.145 or 659A.421 or alleging discrimination under fed-
5 eral housing law, when the commissioner is pursuing the action on behalf
6 of an aggrieved complainant, the court shall award reasonable attorney fees
7 to the commissioner if the commissioner prevails in the action. The court
8 may award reasonable attorney fees and expert witness fees incurred by a
9 defendant that prevails in the action if the court determines that the com-
10 missioner had no objectively reasonable basis for asserting the claim or for
11 appealing an adverse decision of the trial court.

12 “~~[(10)]~~ **(11)** In an action under subsection (1) or ~~[(8)]~~ **(9)** of this section
13 alleging a violation of ORS 659A.145 or 659A.421 or discrimination under
14 federal housing law:

15 “(a) ‘Aggrieved person’ includes a person who believes that the person:

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

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

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

25 “**SECTION 10.** ORS 659A.885, as amended by section 5, chapter 73,
26 Oregon Laws 2016, and section 9 of this 2017 Act, is amended to read:

27 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
28 tice specified in subsection (2) of this section may file a civil action in cir-
29 cuit court. In any action under this subsection, the court may order
30 injunctive relief and any other equitable relief that may be appropriate, in-

1 cluding but not limited to reinstatement or the hiring of employees with or
2 without back pay. A court may order back pay in an action under this sub-
3 section only for the two-year period immediately preceding the filing of a
4 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
5 bor and Industries, or if a complaint was not filed before the action was
6 commenced, the two-year period immediately preceding the filing of the
7 action. In any action under this subsection, the court may allow the pre-
8 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
9 cept as provided in subsection (3) of this section:

10 “(a) The judge shall determine the facts in an action under this sub-
11 section; and

12 “(b) Upon any appeal of a judgment in an action under this subsection,
13 the appellate court shall review the judgment pursuant to the standard es-
14 tablished by ORS 19.415 (3).

15 “(2) An action may be brought under subsection (1) of this section alleg-
16 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
17 (2), 475B.233, 476.574, 652.220, 652.355, 653.060, 653.601 to 653.661, 659.852,
18 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082,
19 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199,
20 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to
21 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
22 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549 **or section 4 of this**
23 **2017 Act.**

24 “(3) In any action under subsection (1) of this section alleging a violation
25 of ORS 25.337, 25.424, 652.220, 652.355, 659.852, 659A.030, 659A.040, 659A.043,
26 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203,
27 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355,
28 659A.421, 653.547 or 653.549 **or section 4 of this 2017 Act:**

29 “(a) The court may award, in addition to the relief authorized under
30 subsection (1) of this section, compensatory damages or \$200, whichever is

1 greater, and punitive damages;

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

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

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

7 “(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this
8 section alleging a violation of ORS 652.220, the court may award punitive
9 damages if:

10 “(a) It is proved by clear and convincing evidence that an employer has
11 engaged in fraud, acted with malice or acted with willful and wanton mis-
12 conduct; or

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

15 “(5) In any action under subsection (1) of this section alleging a violation
16 of ORS 653.060, the court may award, in addition to the relief authorized
17 under subsection (1) of this section, compensatory damages or \$200, which-
18 ever is greater.

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

23 “(7) In any action under subsection (1) of this section alleging a violation
24 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
25 thorized under subsection (1) of this section, a civil penalty in the amount
26 of \$720.

27 “(8) Any individual against whom any distinction, discrimination or re-
28 striction on account of race, color, religion, sex, sexual orientation, national
29 origin, marital status or age, if the individual is 18 years of age or older,
30 has been made by any place of public accommodation, as defined in ORS

1 659A.400, by any employee or person acting on behalf of the place or by any
2 person aiding or abetting the place or person in violation of ORS 659A.406
3 may bring an action against the operator or manager of the place, the em-
4 ployee or person acting on behalf of the place or the aider or abettor of the
5 place or person. Notwithstanding subsection (1) of this section, in an action
6 under this subsection:

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

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

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

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

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

19 “(f) Upon any appeal of a judgment under this subsection, the appellate
20 court shall review the judgment pursuant to the standard established by ORS
21 19.415 (1).

22 “(9) When the commissioner or the Attorney General has reasonable cause
23 to believe that a person or group of persons is engaged in a pattern or
24 practice of resistance to the rights protected by ORS 659A.145 or 659A.421
25 or federal housing law, or that a group of persons has been denied any of the
26 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
27 commissioner or the Attorney General may file a civil action on behalf of
28 the aggrieved persons in the same manner as a person or group of persons
29 may file a civil action under this section. In a civil action filed under this
30 subsection, the court may assess against the respondent, in addition to the

1 relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

13 “(11) In an action under subsection (1) or (9) of this section alleging a
14 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
15 ing law:

16 “(a) ‘Aggrieved person’ includes a person who believes that the person:

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

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

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

26 **“SECTION 11. Section 12 of this 2017 Act is added to and made a**
27 **part of ORS 652.210 to 652.230.**

28 **“SECTION 12. (1) In a civil action under ORS 652.230 or 659A.885 (1)**
29 **alleging a violation of ORS 652.220, the employer may file a motion to**
30 **disallow an award of compensatory and punitive damages. The court**

1 shall grant the motion if the employer demonstrates, by a preponder-
2 ance of the evidence, that the employer:

3 “(a) Completed, within three years before the date that the em-
4 ployee filed the action, an equal-pay analysis of the employer’s pay
5 practices in good faith that was:

6 “(A) Reasonable in detail and in scope in light of the size of the
7 employer; and

8 “(B) Related to the protected class asserted by the plaintiff in the
9 action; and

10 “(b) Eliminated the wage differentials for the plaintiff and has made
11 reasonable and substantial progress toward eliminating wage differen-
12 tials for the protected class asserted by the plaintiff.

13 “(2) If the court grants the motion filed under this section, the
14 court may award back pay only for the two-year period immediately
15 preceding the filing of the action and may allow the prevailing plaintiff
16 costs and reasonable attorney fees, but may not award compensatory
17 or punitive damages.

18 “(3) Evidence of an equal-pay analysis undertaken in accordance
19 with subsection (1) of this section is inadmissible in any other pro-
20 ceeding.

21 “(4) Information that an employer has not completed an equal-pay
22 analysis may not be used as evidence of a violation of ORS 652.220 in
23 an action under ORS 652.230 or 659A.885 alleging a violation of ORS
24 652.220.

25 **“SECTION 13.** The amendments to ORS 659A.885 by section 10 of
26 this 2017 Act become operative on January 1, 2024.

27 **“SECTION 14.** Section 12 of this 2017 Act and the amendments to
28 ORS 652.210, 652.220, 652.230, 659A.820, 659A.870, 659A.875 and 659A.885
29 by sections 1 to 3 and 5 to 9 of this 2017 Act become operative on
30 January 1, 2019.

