

Requested by SENATE COMMITTEE ON WORKFORCE

**PROPOSED AMENDMENTS TO
SENATE BILL 479**

1 On page 1 of the printed bill, line 2, after “harassment” insert “; creating
2 new provisions; amending ORS 659A.820, 659A.875 and 659A.885; and pre-
3 scribing an effective date”.

4 Delete lines 4 through 29 and delete page 2 and insert:

5 **“SECTION 1. As used in sections 1 to 4 of this 2019 Act:**

6 **“(1) ‘Public employer’ has the meaning given that term in ORS**
7 **260.432.**

8 **“(2) ‘Sexual assault’ means unwanted conduct of a sexual nature**
9 **that is inflicted upon a person or compelled through the use of phys-**
10 **ical force, manipulation, threat or intimidation.**

11 **“(3) ‘Workplace harassment’ means conduct that constitutes dis-**
12 **crimination prohibited by ORS 659A.030, including conduct that con-**
13 **stitutes sexual assault or that constitutes conduct prohibited by ORS**
14 **659A.082 or 659A.112.**

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

21 **“(2) The policy must include:**

1 “(a) A statement prohibiting workplace harassment;

2 “(b) Information explaining that a victim of workplace harassment

3 has a right to seek redress through the employer’s internal process

4 provided under section 3 of this 2019 Act, through the Bureau of Labor

5 and Industries’ complaint resolution process under ORS 659A.820 to

6 659A.865 or under any other available law, whether civil or criminal,

7 including:

8 “(A) The timeline under which relief may be sought;

9 “(B) Any available administrative or judicial remedies; and

10 “(C) The advance notice of claim against a public body that a

11 claimant must provide as required under ORS 30.275;

12 “(c) A statement that a person who reports workplace harassment

13 has the right to be protected from retaliation;

14 “(d) A statement of the scope of the policy, including that the policy

15 applies to elected public officials, volunteers and interns;

16 “(e) An explanation that a victim of workplace harassment may

17 voluntarily disclose information regarding an incident of workplace

18 harassment that involves the victim; and

19 “(f) Information to connect a victim of workplace harassment with

20 legal resources and counseling and support services, including any

21 available employee assistance services.

22 “(3) A public employer shall provide a copy of the policies described

23 in this section to each employee and shall include a copy of the poli-

24 cies in any orientation materials that are provided to new employees

25 at the time of hire.

26 “(4) If an employee discloses any concerns about workplace

27 harassment to a supervisor of the employer, the supervisor shall, at

28 the time of the disclosure, provide to the employee a copy of the poli-

29 cies described in this section.

30 “SECTION 3. A public employer shall develop written policies and

1 procedures for the prompt investigation of a report of workplace
2 harassment. The policies and procedures must:

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

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

10 “(3) Subject to subsection (4) of this section, require the employer
11 to follow up with the victim of the alleged harassment once every
12 three months for the calendar year following the date on which the
13 employer received a report of harassment, to determine whether the
14 alleged harassment has stopped or if the victim has experienced re-
15 taliation.

16 “(4) Inform the victim that the employer will follow up in the
17 manner described in subsection (3) of this section until and unless the
18 victim objects to such action in writing.

19 **“SECTION 4. (1) Except as provided in subsections (2) or (4) of this**
20 **section, it is an unlawful employment practice for a public employer**
21 **to enter into an agreement with an employee or prospective employee,**
22 **as a condition of employment, continued employment, promotion,**
23 **compensation or the receipt of benefits, that contains a nondisclosure**
24 **provision, a nondisparagement provision or any other provision that**
25 **has the purpose or effect of preventing the employee from disclosing**
26 **or discussing workplace harassment:**

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

30 “(b) That occurred between an employer and an employee off the

1 **employment premises.**

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

7 **“(a) A provision described in subsection (1) of this section;**

8 **“(b) A provision that prevents the disclosure of factual information**
9 **relating to the claim of discrimination or conduct that constitutes**
10 **sexual assault; or**

11 **“(c) A no-rehire provision that prohibits the employee from seeking**
12 **reemployment with the employer as a term or condition of the agree-**
13 **ment.**

14 **“(3)(a) An agreement entered into under subsection (2) of this sec-**
15 **tion must provide that the employee has at least seven days after ex-**
16 **ecuting the agreement to revoke the agreement.**

17 **“(b) The agreement may not become effective until after the revo-**
18 **cation period has expired.**

19 **“(4) If an employer makes a good faith determination that an em-**
20 **ployee has engaged in workplace harassment described under sub-**
21 **section (1) of this section, the employer may enter into a settlement,**
22 **separation or severance agreement that includes one or more of the**
23 **following provisions:**

24 **“(a) A provision described in subsection (1) of this section;**

25 **“(b) A provision that prevents the disclosure of factual information**
26 **that relates to the workplace harassment; or**

27 **“(c) A no-rehire provision that prohibits the employee from seeking**
28 **reemployment with the employer as a term or condition of the agree-**
29 **ment.**

30 **“(5) An employee may file a complaint under ORS 659A.820 for vio-**

1 **lations of this section and may bring a civil action under ORS 659A.885**
2 **and recover relief as provided by ORS 659A.885 (1) to (3).**

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

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

8 “659A.820. (1) As used in this section, for purposes of a complaint alleging
9 an unlawful practice under ORS 659A.145 or 659A.421 or discrimination un-
10 der federal housing law, ‘person claiming to be aggrieved by an unlawful
11 practice’ includes, but is not limited to, a person who believes that the per-
12 son:

13 “(a) Has been injured by an unlawful practice under ORS 659A.145 or
14 659A.421 or a discriminatory housing practice; or

15 “(b) Will be injured by an unlawful practice under ORS 659A.145 or
16 659A.421 or a discriminatory housing practice that is about to occur.

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

27 **“(3) A complaint alleging an unlawful employment practice as de-**
28 **scribed in ORS 659A.030, 659A.082 or 659A.112 or section 4 of this 2019**
29 **Act must be filed no later than five years after the occurrence of the**
30 **alleged unlawful employment practice.**

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

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

7 “[(4)] (5) If an employer has one or more employees who refuse or
8 threaten to refuse to abide by the provisions of this chapter or to cooperate
9 in carrying out the purposes of this chapter, the employer may file with the
10 commissioner a verified complaint requesting assistance by conciliation or
11 other remedial action.

12 “[(5)] (6) Except as provided in subsection [(6)] (7) of this section, the
13 commissioner shall notify the person against whom a complaint is made
14 within 30 days of the filing of the complaint. The commissioner shall include
15 in the notice the date, place and circumstances of the alleged unlawful
16 practice.

17 “[(6)] (7) The commissioner shall notify the person against whom a com-
18 plaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or dis-
19 crimination under federal housing law is made within 10 days of the filing
20 of the 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.875, as amended by section 8, chapter 197,
26 Oregon Laws 2017, is amended to read:

27 “659A.875. (1) Except as provided in subsection (2) of this section[,]:

28 “(a) A civil action under ORS 659A.885 alleging an unlawful employment
29 practice **other than a violation of ORS 659A.030, 659A.082 or 659A.112**
30 **or section 4 of this 2019 Act** must be commenced within one year after the

1 occurrence of the unlawful employment practice unless a complaint has been
2 timely filed under ORS 659A.820.

3 **“(b) A civil action under ORS 659A.885 alleging a violation of ORS**
4 **659A.030, 659A.082 or 659A.112 or section 4 of this 2019 Act must be**
5 **commenced not later than five years after the occurrence of the al-**
6 **leged violation unless a complaint has been timely filed under ORS**
7 **659A.820.**

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

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

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

22 “(5) The notice of claim required under ORS 30.275 must be given in any
23 civil action under ORS 659A.885 against a public body, as defined in ORS
24 30.260, or any officer, employee or agent of a public body as defined in ORS
25 30.260.

26 “(6) Notwithstanding ORS 30.275 (9)[,]:

27 **“(a) A civil action under ORS 659A.885 against a public body, as defined**
28 **in ORS 30.260, or any officer, employee or agent of a public body as defined**
29 **in ORS 30.260, based on an unlawful employment practice **other than a vi-****
30 **olation of ORS 659A.030, 659A.082 or 659A.112 or section 4 of this 2019**

1 **Act** must be commenced within one year after the occurrence of the unlawful
2 employment practice unless a complaint has been timely filed under ORS
3 659A.820.

4 **“(b) A civil action under ORS 659A.885 alleging a violation of ORS**
5 **659A.030, 659A.082 or 659A.112 or section 4 of this 2019 Act must be**
6 **commenced not later than five years after the occurrence of the al-**
7 **leged violation unless a complaint has been timely filed under ORS**
8 **659A.820.**

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

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

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

18 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
19 tice specified in subsection (2) of this section may file a civil action in cir-
20 cuit court. In any action under this subsection, the court may order
21 injunctive relief and any other equitable relief that may be appropriate, in-
22 cluding but not limited to reinstatement or the hiring of employees with or
23 without back pay. A court may order back pay in an action under this sub-
24 section only for the two-year period immediately preceding the filing of a
25 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
26 bor and Industries, or if a complaint was not filed before the action was
27 commenced, the two-year period immediately preceding the filing of the
28 action. In any action under this subsection, the court may allow the pre-
29 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
30 cept as provided in subsection (3) of this section:

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

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

6 “(2) An action may be brought under subsection (1) of this section alleg-
7 ing a violation of:

8 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
9 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
10 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
11 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
12 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
13 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
14 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 **or**
15 **section 4 of this 2019 Act; 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 or 659A.421 **or section 4 of this 2019 Act:**

23 “(a) The court may award, in addition to the relief authorized under
24 subsection (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.

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

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

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

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

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

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

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

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

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

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

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

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

13 “(f) Upon any appeal of a judgment under this subsection, the appellate
14 court shall review the judgment pursuant to the standard established by ORS
15 19.415 (1).

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

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

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

28 “(10) In any action under subsection (1) of this section alleging a vio-
29 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
30 housing law, when the commissioner is pursuing the action on behalf of an

1 aggrieved complainant, the court shall award reasonable attorney fees to the
2 commissioner if the commissioner prevails in the action. The court may
3 award reasonable attorney fees and expert witness fees incurred by a de-
4 fendant that prevails in the action if the court determines that the commis-
5 sioner had no objectively reasonable basis for asserting the claim or for
6 appealing an adverse decision of the trial court.

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

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

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

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

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

20 “**SECTION 8.** ORS 659A.885, as amended by sections 9 and 10, chapter
21 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is
22 amended to read:

23 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
24 tice specified in subsection (2) of this section may file a civil action in cir-
25 cuit court. In any action under this subsection, the court may order
26 injunctive relief and any other equitable relief that may be appropriate, in-
27 cluding but not limited to reinstatement or the hiring of employees with or
28 without back pay. A court may order back pay in an action under this sub-
29 section only for the two-year period immediately preceding the filing of a
30 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-

1 bor and Industries, or if a complaint was not filed before the action was
2 commenced, the two-year period immediately preceding the filing of the
3 action. In any action under this subsection, the court may allow the pre-
4 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
5 cept as provided in subsection (3) of this section:

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

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

11 “(2) An action may be brought under subsection (1) of this section alleg-
12 ing a violation of:

13 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
14 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
15 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
16 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
17 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
18 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
19 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.357 or
20 **659A.421 or section 4 of this 2019 Act**; or

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

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, 653.547, 653.549, 659.852, 659A.030,
25 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
26 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
27 659A.318, 659A.355, 659A.357 or **659A.421 or section 4 of this 2019 Act**:

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) of this
7 section alleging a violation of ORS 652.220, the court may award punitive
8 damages if:

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

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

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

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

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

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

1 person aiding or abetting the place or person in violation of ORS 659A.406
2 may bring an action against the operator or manager of the place, the em-
3 ployee or person acting on behalf of the place or the aider or abettor of the
4 place or person. Notwithstanding subsection (1) of this section, in an action
5 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 “(9) When the commissioner or the Attorney General has reasonable cause
22 to believe that a person or group of persons is engaged in a pattern or
23 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 “(10) In any action under subsection (1) of this section alleging a vio-
4 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
5 housing law, when the commissioner is pursuing the action on behalf of an
6 aggrieved complainant, the court shall award reasonable attorney fees to the
7 commissioner if the commissioner prevails in the action. The court may
8 award reasonable attorney fees and expert witness fees incurred by a de-
9 fendant that prevails in the action if the court determines that the commis-
10 sioner had no objectively reasonable basis for asserting the claim or for
11 appealing an adverse decision of the trial court.

12 “(11) In an action under subsection (1) or (9) of this section alleging a
13 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
14 ing 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 9. The Commissioner of the Bureau of Labor and In-**
26 **dustries shall adopt any rules necessary to administer and enforce the**
27 **provisions of sections 1 to 4 of this 2019 Act no later than 90 days after**
28 **the effective date of this 2019 Act.**

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

1 **“(1) Conduct prohibited by ORS 659A.030, 659A.082 or 659A.112 oc-**
2 **ccurring on or after the effective date of this 2019 Act.**

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

5 **“SECTION 11. (1)(a) Sections 1 to 3 of this 2019 Act become opera-**
6 **tive on January 1, 2020.**

7 **“(b) Section 4 of this 2019 Act and the amendments to 659A.885 by**
8 **sections 7 and 8 of this 2019 Act become operative on October 1, 2020.**

9 **“(2) The Commissioner of the Bureau of Labor and Industries may**
10 **adopt rules and take any other action before the operative date speci-**
11 **fied in subsection (1) of this section that is necessary to enable the**
12 **Bureau of Labor and Industries to exercise, on and after the operative**
13 **date specified in subsection (1) of this section, all of the duties, func-**
14 **tions and powers conferred on the bureau by sections 2 to 4 of this 2019**
15 **Act and the amendments to ORS 659A.820, 659A.875 and 659A.885 by**
16 **sections 5 to 8 of this 2019 Act.**

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

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