

House Bill 2035

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Standardizes time limitations for filing civil actions for unlawful discrimination.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the filing of civil actions for unlawful discrimination; creating new provisions; amending
3 ORS 659A.875, 659A.880 and 659A.885; and declaring an emergency.

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

5 **SECTION 1.** ORS 659A.875 is amended to read:

6 659A.875. (1) Except as provided in [*subsection (2)*] **subsections (2) and (3)** of this section, a
7 civil action under ORS 659A.885 alleging an unlawful [*employment*] practice must be commenced
8 within one year after the occurrence of the unlawful [*employment*] practice unless a complaint has
9 been timely filed under ORS 659A.820.

10 (2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under
11 ORS 659A.885 within **one year after the occurrence of the unlawful practice or within 90 days**
12 after a 90-day notice is mailed to the complainant under ORS 659A.880, **whichever is later**. This
13 subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145 or
14 659A.421 or discrimination under federal housing law.

15 (3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must be commenced not later
16 than two years after the occurrence or the termination of the unlawful practice, or within two years
17 after the breach of any settlement agreement entered into under ORS 659A.840, whichever [*occurs*
18 *last*] **is later**. The two-year period shall not include any time during which an administrative pro-
19 ceeding was pending with respect to the unlawful practice.

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

22 [(5)] (4) The notice of claim required under ORS 30.275 must be given in any civil action under
23 ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of
24 a public body as defined in ORS 30.260.

25 [(6)] (5) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885 against a public
26 body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS
27 30.260, based on an unlawful employment practice must be commenced within one year after the
28 occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS
29 659A.820.

30 **SECTION 2.** ORS 659A.880 is amended to read:

31 659A.880. (1) [*If a complaint filed under ORS 659A.820 alleges unlawful practices other than those*

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 *unlawful practices described in ORS 659A.403 and 659A.406,*] The Commissioner of the Bureau of
 2 Labor and Industries shall issue a 90-day notice to the complainant if the commissioner dismisses
 3 *[the]* a complaint **filed under ORS 659A.820** within one year after the filing of the complaint[, and
 4 the dismissal is for any reason other than the fact that a civil action has been filed by the
 5 complainant.

6 (2) *[If the complaint filed under ORS 659A.820 alleges unlawful practices other than those unlaw-*
 7 *ful practices described in ORS 659A.145, 659A.403, 659A.406 and 659A.421,]* The commissioner shall
 8 issue a 90-day notice to the complainant on or before the one-year anniversary of the filing of the
 9 complaint unless a 90-day notice has previously been issued under subsection (1) of this section or
 10 the matter has been resolved by the execution of a settlement agreement.

11 (3) A 90-day notice under this section must be in writing and must notify the complainant that:

12 (a) A civil action against the respondent under ORS 659A.885 may be filed within **one year**
 13 **after the occurrence of the unlawful practice or** 90 days after the date of mailing of the 90-day
 14 notice, **whichever is later;** and

15 (b) *[that]* Any right to bring a civil action against the respondent under ORS 659A.885 will be
 16 lost if the action is not commenced within **one year after the occurrence of the unlawful prac-**
 17 **tice or** 90 days after the date of the mailing of the 90-day notice, **whichever is later.**

18 (4) This section does not apply to a complainant alleging an unlawful practice under ORS
 19 659A.145 or 659A.421 or discrimination under federal housing law.

20 **SECTION 3. The amendments to ORS 659A.875 and 659A.880 by sections 1 and 2 of this**
 21 **2011 Act apply to complaints filed under ORS 659A.820 and civil actions commenced as de-**
 22 **scribed in ORS 12.020 on or after the effective date of this 2011 Act.**

23 **SECTION 4.** ORS 659A.885, as amended by section 3, chapter 102, Oregon Laws 2010, is
 24 amended to read:

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

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

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

38 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 39 25.337, 25.424, 171.120, 408.230, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046,
 40 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194,
 41 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,
 42 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 or section 2, chapter 102,
 43 Oregon Laws 2010.

44 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 45 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,

1 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

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

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

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

11 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
12 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
13 of this section, compensatory damages or \$250, whichever is greater.

14 (6) Any individual against whom any distinction, discrimination or restriction on account of
15 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
16 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
17 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
18 abetting the place or person in violation of ORS **659A.403** or 659A.406 may bring an action against
19 the operator or manager of the place, the employee or person acting on behalf of the place or the
20 aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action
21 under this subsection:

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

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

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

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

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

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

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

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

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

45 (8) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or

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

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

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

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

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

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

17 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
19 **on its passage.**

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