

DRAFT

SUMMARY

Makes unlawful employment practice for employer to request employee to enter agreement that would prevent employee from disclosing or discussing conduct that constitutes unlawful discrimination, including sexual assault. Allows civil and administrative remedies for violation against unlawful employment practice.

Makes unlawful employment practice for any person to aid, abet, incite, compel, coerce or conceal any acts prohibited under provisions of Act and any acts that constitute certain types of unlawful discrimination. Clarifies that employer's withholding of certain information from person who is owner, president, partner or corporate officer of employer, during course of employer's investigation, is not unlawful employment practice, provided that employer makes person aware of ongoing investigation.

Allows person who is owner, president, partner or corporate officer to be held individually liable for engaging in prohibited acts.

Requires all employers to adopt written policy containing procedures and practices for reduction and prevention of certain types of unlawful discrimination, including sexual assault. Requires employers to post notice in workplace and provide employees with copy of policy at time of hire.

Requires Bureau of Labor and Industries to make available on bureau's website model procedures or policies that employers may use to establish employer policies. Makes voidable any agreement to pay severance pay to person found to have engaged in conduct that violates employer's policies or provisions of Act.

Extends timeline for filing complaint with Commissioner of Bureau of Labor and Industries alleging certain unlawful employment practices.

Extends statute of limitations from one year to seven years to file civil action for certain violations of law.

Becomes operative January 1, 2020.

Permits commissioner to adopt rules and take any action before operative date of Act that is necessary to enable bureau to exercise duties, powers and functions conferred on bureau.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to unlawful conduct in the workplace; creating new provisions; amending ORS 659A.820, 659A.875 and 659A.885; and prescribing an effective date.

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

SECTION 1. Sections 2 to 5 of this 2019 Act are added to and made a part of ORS chapter 659A.

SECTION 2. (1) It is an unlawful employment practice for an employer to enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault, as defined in ORS 181A.323, and that occurred between employees or between an employer and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer, or between an employer and an employee, off the employment premises.

(2)(a) An employer may not enter into a settlement, separation or severance agreement that includes a provision described under subsection (1) of this section or that prevents the disclosure of factual information relating to a claim of discrimination or conduct that constitutes sexual assault, as defined in ORS 181A.323.

(b) Paragraph (a) of this subsection does not apply if the agreement is entered into at the request of an employee claiming to be aggrieved by discrimination that is an unlawful employment practice under ORS 659A.030.

(3) An employer may not prohibit an employee from seeking reemployment with the employer as a term or condition of any settlement,

1 separation or severance agreement.

2 (4) An employee may file a complaint under ORS 659A.820 for vio-
3 lations of this section and may bring a civil action under ORS 659A.885
4 and recover relief as provided by ORS 659A.885 (1) to (3).

5 **SECTION 3.** (1) It is an unlawful employment practice for a person
6 to aid, abet, incite, compel, coerce or conceal the acts prohibited under
7 section 2 of this 2019 Act or any act that constitutes discrimination
8 prohibited by ORS 659A.030, including conduct that constitutes sexual
9 assault, as defined in ORS 181A.323, or an attempt to do so.

10 (2) An employer shall be deemed to have knowledge of unlawful
11 discrimination prohibited by ORS 659A.030, including conduct that
12 constitutes sexual assault, as defined in ORS 181A.323, or of the com-
13 mission of unlawful practices described under subsection (1) of this
14 section and under section 2 of this 2019 Act, if a supervisor or manager
15 employed by the employer has actual knowledge of the unlawful dis-
16 crimination or unlawful practices.

17 (3) Notwithstanding subsection (1) of this subsection, it is not an
18 unlawful employment practice for an employer to withhold informa-
19 tion relating to the acts prohibited under section 2 of this 2019 Act or
20 any act that constitutes discrimination prohibited by ORS 659A.030,
21 including conduct that constitutes sexual assault, as defined in ORS
22 181A.323, from a person who is the owner, president, partner or cor-
23 porate officer of the employer, during the course of the employer's
24 investigation of an allegation of such acts or conduct, provided that
25 the employer has made the owner, president, partner or corporate of-
26 ficer aware of the ongoing investigation.

27 (4) The owner, president, partner or corporate officer of the em-
28 ployer may be held individually liable for engaging in acts prohibited
29 under subsection (1) of this section or section 2 of this 2019 Act, or for
30 engaging in conduct that constitutes discrimination prohibited by ORS
31 659A.030, including conduct that constitutes sexual assault, as defined

in ORS 181A.323.

SECTION 4. (1)(a) Every employer in this state shall adopt a written policy containing procedures and practices for the reduction and prevention of discrimination prohibited by ORS 659A.030, including sexual assault, as defined in ORS 181A.323. An employer shall make the policy available to employees within the workplace by posting the policy in a conspicuous and accessible location in every establishment where employees work.

(b) In addition to the posting requirements under paragraph (a) of this subsection, an employer shall provide a copy of the policy to an employee at the time of hire.

(2) The Bureau of Labor and Industries shall make available on the bureau's website model procedures or policies that employers may use to establish the policy described in subsection (1) of this section.

SECTION 5. Any agreement entered into between an employer and an employee with executive authority that requires severance or separation payments is voidable by the employer if, after the employer conducts a good faith investigation, the employer determines that the employee violated section 2 or 3 of this 2019 Act or the policy adopted under section 4 of this 2019 Act.

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

659A.820. (1) As used in this section, for purposes of a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, "person claiming to be aggrieved by an unlawful practice" includes, but is not limited to, a person who believes that the person:

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

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

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

(3) A complaint alleging an unlawful employment practice as described under ORS 659A.030, 659A.040, 659A.063, 659A.069, 659A.082, 659A.096, 659A.103, 659A.109, 659A.112, 659A.142, 659A.183, 659A.199, 659A.228, 659A.230, 659A.233, 659A.259, 659A.277, 659A.290, 659A.309, 659A.318, 659A.320, 659A.355 or 659A.550 or section 2 or 3 of this 2019 Act must be filed no later than seven years after the occurrence of the alleged unlawful employment practice.

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

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

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

~~[(5)]~~ **(6)** Except as provided in subsection ~~[(6)]~~ **(7)** of this section, the commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the complaint. The commissioner shall include

1 in the notice the date, place and circumstances of the alleged unlawful
2 practice.

3 [(6)] (7) The commissioner shall notify the person against whom a com-
4 plaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or dis-
5 crimination under federal housing law is made within 10 days of the filing
6 of the complaint. The commissioner shall include in the notice:

7 (a) The date, place and circumstances of the alleged unlawful practice;
8 and

9 (b) A statement that the person against whom the complaint is made may
10 file an answer to the complaint.

11 **SECTION 7.** ORS 659A.875, as amended by section 8, chapter 197, Oregon
12 Laws 2017, is amended to read:

13 659A.875. (1) Except as provided in subsection (2) of this section, a civil
14 action under ORS 659A.885 alleging an unlawful employment practice must
15 be commenced within one year after the occurrence of the unlawful employ-
16 ment practice unless a complaint has been timely filed under ORS 659A.820.

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

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

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

31 **(5) A civil action under ORS 659A.885 alleging a violation of ORS**

659A.030, 659A.040, 659A.063, 659A.069, 659A.082, 659A.096, 659A.103, 659A.109, 659A.112, 659A.142, 659A.183, 659A.199, 659A.228, 659A.230, 659A.233, 659A.259, 659A.277, 659A.290, 659A.309, 659A.318, 659A.320, 659A.355 or 659A.550 or section 2 or 3 of this 2019 Act must be commenced not later than seven years after the occurrence of the alleged violation.

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

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

(b) A civil action described under subsection (5) of this section against a public body must be commenced within seven years after the occurrence of the unlawful discrimination.

[(7)] (8) For the purpose of time limitations, a compensation practice that is unlawful under ORS 652.220 occurs each time compensation is paid under a discriminatory compensation decision or other practice.

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

SECTION 8. ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive

relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

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

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

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 **or section 2 or 3 of this 2019 Act**; or

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

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,

659A.318, 659A.355 or 659A.421 **or section 2 or 3 of this 2019 Act:**

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

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

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

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

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

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

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

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

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

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

(8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national

origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

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

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

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

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

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

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

(9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this

subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

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

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

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

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

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

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

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit

1 court. In any action under this subsection, the court may order injunctive
 2 relief and any other equitable relief that may be appropriate, including but
 3 not limited to reinstatement or the hiring of employees with or without back
 4 pay. A court may order back pay in an action under this subsection only for
 5 the two-year period immediately preceding the filing of a complaint under
 6 ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries,
 7 or if a complaint was not filed before the action was commenced, the two-
 8 year period immediately preceding the filing of the action. In any action
 9 under this subsection, the court may allow the prevailing party costs and
 10 reasonable attorney fees at trial and on appeal. Except as provided in sub-
 11 section (3) of this section:

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

14 (b) Upon any appeal of a judgment in an action under this subsection, the
 15 appellate court shall review the judgment pursuant to the standard estab-
 16 lished by ORS 19.415 (3).

17 (2) An action may be brought under subsection (1) of this section alleging
 18 a violation of:

19 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281,
 20 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549,
 21 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063,
 22 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,
 23 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 24 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 25 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or**
 26 **section 2 or 3 of this 2019 Act; or**

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

29 (3) In any action under subsection (1) of this section alleging a violation
 30 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
 31 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,

659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
659A.318, 659A.355, 659A.357 or 659A.421 **or section 2 or 3 of this 2019**
Act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of

the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

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

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

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

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

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

SECTION 10. (1) Sections 2 to 5 of this 2019 Act and the amendments to ORS 659A.820, 659A.875 and 659A.885 by sections 6 to 9 of this 2019 Act become operative on January 1, 2020.

9 **SECTION 11. This 2019 Act takes effect on the 91st day after the**
10 **date on which the 2019 regular session of the Eightieth Legislative**
11 **Assembly adjourns sine die.**