

House Bill 2341

Sponsored by Representative POWER; Representatives DOHERTY, SALINAS, WILDE (Pre-session filed.)

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**.

Makes unlawful employment practice for employer to deny reasonable accommodation to known limitations related to pregnancy, childbirth or related medical condition or to take certain actions related to reasonable accommodations to known limitations related to pregnancy, childbirth or related medical condition.

Requires employer to post notice to employees of provisions of law prohibiting employment discrimination because of pregnancy and protections provided under Act. Requires employer to provide copy of notice to employees at certain times.

Requires Commissioner of Bureau of Labor and Industries to adopt rules to establish training and outreach to inform employers and employees of rights and protections related to pregnancy-related employment discrimination and reasonable accommodations available for pregnancy, childbirth and related medical conditions.

A BILL FOR AN ACT

1
2 Relating to reasonable accommodation for pregnancy-related conditions; creating new provisions;
3 and amending ORS 659A.885.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 659A.**

6 **SECTION 2. (1) It is an unlawful employment practice for an employer to:**

7 (a) **Deny employment opportunities to a job applicant or employee if the denial is based**
8 **on the need of the employer to make reasonable accommodation to the known physical**
9 **impairments resulting from, or the disabilities related to, the pregnancy of the applicant or**
10 **the employee.**

11 (b) **Fail or refuse to make reasonable accommodation to the known physical impairments**
12 **resulting from, or the disabilities related to, the pregnancy of an applicant or an employee,**
13 **unless the employer can demonstrate that the accommodation would impose an undue**
14 **hardship on the operation of the business of the employer.**

15 (c) **Take an adverse employment action or in any manner discriminate or retaliate**
16 **against an applicant or an employee, with respect to hire or tenure, or any other term or**
17 **condition of employment, because the applicant or employee has inquired about or requested**
18 **reasonable accommodation under this section.**

19 (d) **Require an applicant or an employee to accept a reasonable accommodation that is**
20 **unnecessary for the applicant or the employee to perform the essential duties of the job.**

21 (e) **Require an employee to take family or medical leave under ORS 659A.150 to 659A.186,**
22 **or any other leave, if the employer can make reasonable accommodation to the known**
23 **physical impairments resulting from, or the disabilities related to, pregnancy, childbirth or**
24 **other pregnancy-related medical conditions, including lactation.**

25 (2)(a) **An employer shall post signs that provide notice informing employees of the em-**
26 **ployment protections under ORS 659A.030, including the right to be free from discrimination**

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 because of pregnancy, childbirth and other pregnancy-related medical conditions, and the
 2 right to reasonable accommodation under this section.

3 (b) The employer shall post the signs in a conspicuous and accessible location in or about
 4 the premises where employees work.

5 (c) In addition to posting the signs, the employer shall provide a written copy of the no-
 6 tice to:

7 (A) A new employee, at the time of hire;

8 (B) Existing employees, within 180 days after the effective date of this 2019 Act; and

9 (C) An employee who informs the employer of the employee's pregnancy, within 10 days
 10 after the employer receives the information.

11 (3) The Commissioner of the Bureau of Labor and Industries shall adopt by rule training
 12 and education materials that the Bureau of Labor and Industries may use to train and edu-
 13 cate employers and employees regarding the obligations, rights and protections provided in
 14 ORS 659A.030 and under this section.

15 (4) For purposes of this section, reasonable accommodation may include, but need not
 16 be limited to:

17 (a) Acquisition or modification of equipment or devices;

18 (b) More frequent or longer break periods or periodic rest;

19 (c) Assistance with manual labor;

20 (d) Modification of work schedules or job assignments; or

21 (e) Providing an appropriate location in the workplace for an employee to express breast
 22 milk in private.

23 (5)(a) For purposes of this section, a reasonable accommodation imposes an undue hard-
 24 ship on the operation of the business of an employer if the reasonable accommodation re-
 25 quires significant difficulty or expense.

26 (b) Whether a reasonable accommodation requires significant difficulty or expense shall
 27 be determined by considering the factors provided in ORS 659A.121 (2).

28 (6) An employee who alleges a violation of this section may bring a civil action under ORS
 29 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Indus-
 30 tries in the manner provided by ORS 659A.820.

31 (7)(a) Nothing in this section shall be construed to preempt, limit, diminish or otherwise
 32 affect any provision of state or federal law relating to discrimination because of sex.

33 (b) Nothing in this section shall be construed to limit the remedies or rights under fed-
 34 eral or state law that provide greater or equal protection for employees who are affected by
 35 pregnancy, childbirth or a pregnancy-related medical condition.

36 **SECTION 3.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and sec-
 37 tion 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

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

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

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

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

14 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 15 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 16 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 17 659A.290, 659A.318, 659A.355 or 659A.421:

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

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

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

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

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

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

28 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 29 659A.850 for a violation of ORS 652.220.

30 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 **or**
 31 **section 2 of this 2019 Act**, the court may award, in addition to the relief authorized under sub-
 32 section (1) of this section, compensatory damages or \$200, whichever is greater.

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

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

39 (8) Any individual against whom any distinction, discrimination or restriction on account of
 40 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 41 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 42 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 43 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 44 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 45 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-

1 section:

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

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

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

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

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

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

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

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

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

25 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
26 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
27 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
28 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
29 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
30 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
31 appealing an adverse decision of the trial court.

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

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

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

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

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

42 **SECTION 4.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
43 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

44 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
45 section (2) of this section may file a civil action in circuit court. In any action under this subsection,

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

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

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

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

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

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

20 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 21 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 22 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 23 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421:

24 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 25 compensatory damages or \$200, whichever is 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 shall review the judg-
 28 ment pursuant to the standard established by ORS 19.415 (1); and

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

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

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

34 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 35 659A.850 for a violation of ORS 652.220.

36 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 **or**
 37 **section 2 of this 2019 Act**, the court may award, in addition to the relief authorized under sub-
 38 section (1) of this section, compensatory damages or \$200, whichever is greater.

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

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

45 (8) Any individual against whom any distinction, discrimination or restriction on account of

1 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
2 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
3 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
4 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
5 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
6 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
7 section:

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

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

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

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

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

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

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

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

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

31 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
32 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
33 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
34 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
35 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
36 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
37 appealing an adverse decision of the trial court.

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

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

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

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

44 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
45 right in the action. The Attorney General may intervene in the action if the Attorney General cer-

1 tifies that the case is of general public importance. The court may allow an intervenor prevailing
2 party costs and reasonable attorney fees at trial and on appeal.

3
