

# House Bill 3333

Sponsored by Representatives SALINAS, WILLIAMSON; Representatives ALONSO LEON, BYNUM, DOHERTY, GORSEK, HELM, HERNANDEZ, HOLVEY, KENY-GUYER, LIVELY, MARSH, MCLAIN, MEEK, MITCHELL, NATHANSON, NOSSE, PILUSO, POWER, PRUSAK, RAYFIELD, SANCHEZ, SCHOUTEN, SMITH WARNER, WILDE, WILLIAMS, Senators KNOPP, MANNING JR, MONNES ANDERSON, ROBLAN, TAYLOR

## 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 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**

**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 and an employee, off the employment premises.

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

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

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

11 (4) An employee may file a complaint under ORS 659A.820 for violations of this section  
 12 and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS  
 13 659A.885 (1) to (3).

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

18 (2) An employer shall be deemed to have knowledge of unlawful discrimination prohibited  
 19 by ORS 659A.030, including conduct that constitutes sexual assault, as defined in ORS  
 20 181A.323, or of the commission of unlawful practices described under subsection (1) of this  
 21 section and under section 2 of this 2019 Act, if a supervisor or manager employed by the  
 22 employer has actual knowledge of the unlawful discrimination or unlawful practices.

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

31 (4) The owner, president, partner or corporate officer of the employer may be held indi-  
 32 vidually liable for engaging in acts prohibited under subsection (1) of this section or section  
 33 2 of this 2019 Act, or for engaging in conduct that constitutes discrimination prohibited by  
 34 ORS 659A.030, including conduct that constitutes sexual assault, as defined in ORS 181A.323.

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

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

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

45 **SECTION 5.** Any agreement entered into between an employer and an employee with

1 **executive authority that requires severance or separation payments is voidable by the em-**  
 2 **ployer if, after the employer conducts a good faith investigation, the employer determines**  
 3 **that the employee violated section 2 or 3 of this 2019 Act or the policy adopted under section**  
 4 **4 of this 2019 Act.**

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

7 659A.820. (1) As used in this section, for purposes of a complaint alleging an unlawful practice  
 8 under ORS 659A.145 or 659A.421 or discrimination under federal housing law, “person claiming to  
 9 be aggrieved by an unlawful practice” includes, but is not limited to, a person who believes that the  
 10 person:

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

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

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

22 **(3) A complaint alleging an unlawful employment practice as described under ORS**  
 23 **659A.030, 659A.040, 659A.063, 659A.069, 659A.082, 659A.096, 659A.103, 659A.109, 659A.112,**  
 24 **659A.142, 659A.183, 659A.199, 659A.228, 659A.230, 659A.233, 659A.259, 659A.277, 659A.290,**  
 25 **659A.309, 659A.318, 659A.320, 659A.355 or 659A.550 or section 2 or 3 of this 2019 Act must be**  
 26 **filed no later than seven years after the occurrence of the alleged unlawful employment**  
 27 **practice.**

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

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

34 ~~[(4)]~~ **(5)** If an employer has one or more employees who refuse or threaten to refuse to abide by  
 35 the provisions of this chapter or to cooperate in carrying out the purposes of this chapter, the em-  
 36 ployer may file with the commissioner a verified complaint requesting assistance by conciliation or  
 37 other remedial action.

38 ~~[(5)]~~ **(6)** Except as provided in subsection ~~[(6)]~~ **(7)** of this section, the commissioner shall notify  
 39 the person against whom a complaint is made within 30 days of the filing of the complaint. The  
 40 commissioner shall include in the notice the date, place and circumstances of the alleged unlawful  
 41 practice.

42 ~~[(6)]~~ **(7)** The commissioner shall notify the person against whom a complaint alleging an unlawful  
 43 practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law is made  
 44 within 10 days of the filing of the complaint. The commissioner shall include in the notice:

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

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

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

5 659A.875. (1) Except as provided in subsection (2) of this section, a civil action under ORS  
 6 659A.885 alleging an unlawful employment practice must be commenced within one year after the  
 7 occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS  
 8 659A.820.

9 (2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under  
 10 ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880.  
 11 This subsection does not 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 be commenced not later  
 14 than two years after the occurrence or the termination of the unlawful practice, or within two years  
 15 after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs  
 16 last. The two-year period shall not include any time during which an administrative proceeding was  
 17 pending with respect to the unlawful practice.

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

21 **(5) A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.040,**  
 22 **659A.063, 659A.069, 659A.082, 659A.096, 659A.103, 659A.109, 659A.112, 659A.142, 659A.183,**  
 23 **659A.199, 659A.228, 659A.230, 659A.233, 659A.259, 659A.277, 659A.290, 659A.309, 659A.318,**  
 24 **659A.320, 659A.355 or 659A.550 or section 2 or 3 of this 2019 Act must be commenced not later**  
 25 **than seven years after the occurrence of the alleged violation.**

26 [(5)] (6) The notice of claim required under ORS 30.275 must be given in any civil action under  
 27 ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of  
 28 a public body as defined in ORS 30.260.

29 [(6)] (7)(a) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885 against a public  
 30 body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS  
 31 30.260, based on an unlawful employment practice must be commenced within one year after the  
 32 occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS  
 33 659A.820.

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

36 [(7)] (8) For the purpose of time limitations, a compensation practice that is unlawful under ORS  
 37 652.220 occurs each time compensation is paid under a discriminatory compensation decision or  
 38 other practice.

39 [(8)] (9) Notwithstanding ORS 30.275 (2)(b), notice of claim against a public body under ORS  
 40 652.220 or 659A.355 must be given within 300 days of discovery of the alleged loss or injury.

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

43 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
 44 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
 45 the court may order injunctive relief and any other equitable relief that may be appropriate, in-

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

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

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

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

12 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,  
 13 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
 14 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
 15 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
 16 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
 17 659A.318, 659A.320, 659A.355 or 659A.421 **or section 2 or 3 of this 2019 Act**; or

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

19 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 20 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
 21 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
 22 659A.290, 659A.318, 659A.355 or 659A.421 **or section 2 or 3 of this 2019 Act**:

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

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

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

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

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

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

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

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

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

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

44 (8) Any individual against whom any distinction, discrimination or restriction on account of  
 45 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of  
44 right in the action. The Attorney General may intervene in the action if the Attorney General cer-  
45 tifies that the case is of general public importance. The court may allow an intervenor prevailing

1 party costs and reasonable attorney fees at trial and on appeal.

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

4 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
5 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
6 the court may order injunctive relief and any other equitable relief that may be appropriate, in-  
7 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A  
8 court may order back pay in an action under this subsection only for the two-year period imme-  
9 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau  
10 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-  
11 year period immediately preceding the filing of the action. In any action under this subsection, the  
12 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
13 cept as provided in subsection (3) of this section:

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

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

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

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

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

25 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
26 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
27 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
28 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 2 or 3 of this 2019 Act**:

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

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

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

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

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

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

39 (b) An employer was previously adjudicated in a proceeding under this section or under ORS  
40 659A.850 for a violation of ORS 652.220.

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

44 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574  
45 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this

1 section, compensatory damages or \$250, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **(2) The Commissioner of the Bureau of Labor and Industries may adopt rules and take**  
11 **any other action before the operative date specified in subsection (1) of this section that is**  
12 **necessary to enable the Bureau of Labor and Industries to exercise, on and after the opera-**  
13 **tive date specified in subsection (1) of this section, all of the duties, functions and powers**  
14 **conferred on the bureau by sections 2 to 5 of this 2019 Act and the amendments to ORS**  
15 **659A.820, 659A.875 and 659A.885 by sections 6 to 9 of this 2019 Act.**

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

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