

# B-Engrossed Senate Bill 332

Ordered by the House May 24  
Including Senate Amendments dated April 12 and House Amendments  
dated May 24

Sponsored by Senator BAERTSCHIGER JR (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.

*[Provides that, when interview is element of process of selecting candidate for civil service position from eligibility list, public employer must interview each veteran applicant who meets qualifications for position and shows transferable skills if duties of position are performed by only one person within public employer's organization.]*

**Modifies law regarding requirement that public employer grant preference to veteran or disabled veteran in selection process for civil service position. Expands definitions of "veteran" and "disabled veteran" to include certain National Guard members. Requires evidence of eligibility and disability to be provided at time of application. Sets forth processes for granting one or more preferences.**

**Allows public employer to exercise discretion not to appoint qualified veteran or disabled veteran to civil service position based solely on veteran's or disabled veteran's merits or qualification in final stage of selection process. Requires public employer to provide written reasons for not appointing veteran or disabled veteran to position under certain circumstances.**

**Requires aggrieved veteran or disabled veteran to exhaust nonjudicial remedies with Bureau of Labor and Industries before filing civil action for unlawful employment practice.**

*[Declares emergency, effective on passage.]*

## A BILL FOR AN ACT

1  
2 Relating to veterans' preference in public employment; creating new provisions; amending ORS  
3 408.225 and 659A.885; and repealing ORS 408.230, 408.235 and 408.237.

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

5 **SECTION 1.** ORS 408.225 is amended to read:

6 408.225. (1) As used in *[ORS 408.225 to 408.237]* **this section and section 4 of this 2019 Act:**

7 (a) **"Application examination" means the selection process utilized by a public employer**  
8 **after the initial application screening of an applicant. An application examination may be**  
9 **scored or unscored and includes, but is not limited to, formal testing, assessments resulting**  
10 **in a score and unscored examinations or assessments such as interviews and reference**  
11 **checks.**

12 [(a)(A)] (b)(A) "Civil service position" means any position for which a hiring or promotion de-  
13 cision is made or required to be made based on the results of a merit based, competitive process that  
14 includes, but is not limited to, consideration of an applicant's or employee's relative ability, knowl-  
15 edge, experience and other skills.

16 (B) A "civil service position" need not be labeled a "civil service position."

17 [(b)] (c) "Combat zone" means an area designated by the President of the United States by  
18 executive order in which, on the dates designated by executive order, the Armed Forces of the  
19 United States are or have engaged in combat.

**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        [(c)] (d) “Disabled veteran” means a veteran who has a disability rating from the United States  
2 Department of Veterans Affairs, a veteran whose discharge or release from active duty was for a  
3 disability incurred or aggravated in the line of duty or a veteran who was awarded the Purple Heart  
4 for wounds received in combat.

5        [(d)] (e) “Honorable conditions” has the meaning given that term in rules adopted by the De-  
6 partment of Veterans’ Affairs.

7        (f) **“Initial application screening” means a public employer’s process to determine**  
8 **whether a veteran or disabled veteran applicant for a civil service position meets the mini-**  
9 **imum and special qualifications for the position. “Initial application screening” includes an**  
10 **evaluation of skills or assessment of responses to supplemental test questions if required in**  
11 **the recruitment announcement for the position.**

12        (g) **“Minimum qualifications” means baseline education, experience or other require-**  
13 **ments that an applicant must have in order to be considered for a civil service position by**  
14 **a public employer as set forth in rules adopted by the public employer or in the recruitment**  
15 **announcement for the position.**

16        [(e)] (h) “Public employer” means a public body, as that term is defined in ORS 174.109, and any  
17 person authorized to act on behalf of the public body, with respect to control, management or  
18 supervision of any employee.

19        (i) **“Special qualifications” means attributes desired by a public employer in an applicant**  
20 **for a civil service position that make an applicant more competitive for a position when**  
21 **compared to other applicants for the same position who do not possess the special quali-**  
22 **fications at all or to the same degree. Special qualifications may be unique to each position**  
23 **and may, but are not required to, be set forth in rules adopted by the public employer or in**  
24 **the recruitment announcement for the position.**

25        [(f)] (j) “Veteran” means a person who:

26        (A) Served on active duty with the Armed Forces of the United States:

27        (i) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and  
28 was discharged or released under honorable conditions;

29        (ii) For a period of more than 178 consecutive days beginning after January 31, 1955, and was  
30 discharged or released from active duty under honorable conditions;

31        (iii) For 178 days or less and was discharged or released from active duty under honorable  
32 conditions because of a service-connected disability;

33        (iv) For 178 days or less and was discharged or released from active duty under honorable  
34 conditions and has a disability rating from the United States Department of Veterans Affairs; or

35        (v) For at least one day in a combat zone and was discharged or released from active duty under  
36 honorable conditions;

37        (B) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed  
38 Forces of the United States and was discharged or released from active duty under honorable con-  
39 ditions; or

40        (C) Is receiving a nonservice-connected pension from the United States Department of Veterans  
41 Affairs.

42        (2) As used in subsection [(1)(f)] (1)(j) of this section, “active duty” does not include attendance  
43 at a school under military orders, except schooling incident to an active enlistment or a regular tour  
44 of duty, or normal military training as a reserve officer or member of an organized reserve or a  
45 National Guard unit.

1       **SECTION 2.** ORS 408.230, 408.235 and 408.237 are repealed.

2       **SECTION 3.** Section 4 of this 2019 Act is added to and made a part of ORS chapter 408.

3       **SECTION 4.** (1) For purposes of this section:

4       (a) “Certification of service” means a letter that:

5       (A) Is on letterhead of a military branch in which a veteran served;

6       (B) Specifies the veteran’s military service dates;

7       (C) Specifies the veteran’s expected date of discharge or release from active duty service;

8       and

9       (D) Specifies that the veteran’s expected character of service or discharge is honorable.

10      (b) “Disabled veteran” means:

11      (A) A disabled veteran as defined in ORS 408.225;

12      (B) A person who is receiving service-connected compensation from the United States  
13 Department of Veterans Affairs under 38 U.S.C. 1110 or 1131; or

14      (C) A person who was a reserve officer or member of an organized reserve or a National  
15 Guard unit whose discharge or release from active duty as defined in ORS 408.225 (2) or ac-  
16 tive duty for attendance at a school under military orders or normal military training was  
17 for a disability incurred or aggravated in the line of duty.

18      (c) “Veteran” means:

19      (A) A veteran as defined in ORS 408.225; or

20      (B) A person whose periods of service with an organized reserve or National Guard unit  
21 totals 20 years or more and who, if discharged or released, was discharged or released under  
22 honorable conditions.

23      (2)(a) A veteran or disabled veteran is eligible to use the preference provided for in this  
24 section for a civil service position for which the veteran or disabled veteran makes applica-  
25 tion.

26      (b) A veteran shall provide evidence of eligibility for the preference at the time the vet-  
27 eran makes application for the position. Evidence may include federal DD Form 214 or 215,  
28 NGB Form 22 or 22A or other documentation demonstrating preference eligibility. When a  
29 veteran is currently serving on active duty and is in the process of discharging or releasing  
30 from active duty under honorable conditions, the veteran may provide as evidence a certi-  
31 fication of service showing expected discharge or release within 120 days from the submission  
32 of the certification, or a preseparation draft of federal DD Form 214 or 215. Failure to provide  
33 evidence at the time of application will disqualify the veteran from requesting use of the  
34 preference in the public employer’s consideration of the veteran’s application for the posi-  
35 tion.

36      (c) A disabled veteran shall provide evidence of disability from the United States De-  
37 partment of Veterans Affairs at the time the disabled veteran makes application for the po-  
38 sition. Failure to provide evidence of disability at the time of application will disqualify the  
39 disabled veteran from requesting use of the preference in the public employer’s consideration  
40 of the disabled veteran’s application for the position.

41      (3) A public employer shall grant a preference to a veteran or disabled veteran who ap-  
42 plies for a vacant civil service position or seeks promotion to a civil service position with a  
43 higher maximum salary rate in the manner set forth in this section. The public employer  
44 shall grant a preference at each stage of the application process.

45      (4)(a) Initial application screenings done by public employers must result in a score on

1 a 100-point scale.

2 (b) Upon completion of an initial application screening and determination that a veteran  
3 or disabled veteran applicant meets the minimum and special qualifications for the position  
4 and, if applicable, is evaluated to have the necessary skills for the position and adequately  
5 responds to any supplemental questions, the public employer shall grant preference as fol-  
6 lows:

7 (A) The employer shall add five preference points to a nondisabled veteran's score; or

8 (B) The employer shall add 10 preference points to a disabled veteran's score.

9 (c) After application of preference points under paragraph (b) of this subsection, the  
10 public employer shall generate a list of qualified veteran and disabled veteran applicants to  
11 consider for appointment.

12 (5)(a) Following the initial application screening under subsection (4) of this section, the  
13 public employer shall conduct the employer's application examination process with all quali-  
14 fied veteran and disabled veteran applicants on the list and shall apply preferences as de-  
15 scribed in subsection (6) of this section.

16 (b) Application examination processes may be scored or unscored. If scored, applicants  
17 must be ranked on a 100-point scale. If unscored, applicants must be sorted into hierarchical  
18 levels based on the degree to which applicants possess or demonstrate desired attributes or  
19 meet other criteria for the position.

20 (c) If the application examination process includes one or more interviews, the public  
21 employer shall interview all veteran and disabled veteran applicants on the list.

22 (6) After the application examination process is completed, the preference shall be applied  
23 as follows:

24 (a) For scored application examinations, the public employer shall add five points to a  
25 nondisabled veteran's score or 10 points to a disabled veteran's score.

26 (b) For unscored application examinations, the public employer shall advance a  
27 nondisabled veteran one level or advance a disabled veteran two levels.

28 (7) The application of preferences in the manner described in this section is not a re-  
29 quirement that the public employer appoint a veteran or disabled veteran to a civil service  
30 position.

31 (8)(a) A public employer shall appoint an otherwise qualified veteran or disabled veteran  
32 to a vacant civil service position if the results of a veteran's or disabled veteran's application  
33 examination, when combined with the veteran's or disabled veteran's preferences, are equal  
34 to or higher than the results of an application examination for an applicant who is not a  
35 veteran or disabled veteran.

36 (b) Notwithstanding paragraph (a) of this subsection, a public employer may, at the time  
37 of making a final hiring or promotion decision in the selection process, exercise discretion  
38 not to appoint an otherwise qualified veteran or disabled veteran described in paragraph (a)  
39 of this subsection based solely on the veteran's or disabled veteran's merits or qualifications  
40 with respect to the vacant civil service position. A public employer that exercises discretion  
41 under this paragraph shall provide to the veteran or disabled veteran written reasons for the  
42 employer's decision not to appoint the veteran or disabled veteran to the position within a  
43 reasonable time after making the decision.

44 (9) Except as otherwise provided in subsection (8)(b) of this section, if a public employer  
45 does not appoint a veteran or disabled veteran to a vacant civil service position, upon written

1 **request of the veteran or disabled veteran, the employer, in writing, shall provide the**  
2 **employer's reasons for the decision not to appoint the veteran or disabled veteran to the**  
3 **position.**

4 **(10) Violation of this section is an unlawful employment practice.**

5 **(11) A veteran or disabled veteran claiming to be aggrieved by a violation of this section**  
6 **may file a verified written complaint with the Commissioner of the Bureau of Labor and In-**  
7 **dustry in accordance with ORS 659A.820.**

8 **SECTION 5.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and sec-  
9 tion 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

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

24 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, [408.230, 408.237 (2),] 475B.281, 476.574, 652.020,  
25 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
26 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
27 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
28 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
29 659A.318, 659A.320, 659A.355 or 659A.421; [or]

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

31 **(c) Section 4 of this 2019 Act, except that a person must first exhaust all available non-**  
32 **judicial remedies under ORS 659A.820 to 659A.865.**

33 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
34 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
35 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
36 659A.290, 659A.318, 659A.355 or 659A.421:

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

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

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

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

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

45 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted

1 with malice or acted with willful and wanton misconduct; or

2 (b) An employer was previously adjudicated in a proceeding under this section or under ORS  
3 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or  
45 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing

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

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

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

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

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

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

16 **SECTION 6.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,  
17 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

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

32 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, [408.230, 408.237 (2),] 475B.281, 476.574, 652.020,  
33 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
34 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
35 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
36 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
37 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421; [or]

38 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450; **or**

39 **(c) Section 4 of this 2019 Act, except that a person must first exhaust all available non-**  
40 **judicial remedies under ORS 659A.820 to 659A.865.**

41 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
42 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
43 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
44 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421:

45 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,

1 compensatory damages or \$200, whichever is greater, and punitive damages;

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

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

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

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

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

10 (b) An employer was previously adjudicated in a proceeding under this section or under ORS  
11 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

7 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or  
8 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing  
9 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to  
10 the commissioner if the commissioner prevails in the action. The court may award reasonable at-  
11 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court  
12 determines that the commissioner had no objectively reasonable basis for asserting the claim or for  
13 appealing an adverse decision of the trial court.

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

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

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

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

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

24 **SECTION 7. Section 4 of this 2019 Act, the amendments to ORS 408.225 and 659A.885 by**  
25 **sections 1, 5 and 6 of this 2019 Act and the repeal of ORS 408.230, 408.235 and 408.237 by**  
26 **section 2 of this 2019 Act apply to selection processes for civil service positions and eligibility**  
27 **lists for civil service positions undertaken by public employers on or after the effective date**  
28 **of this 2019 Act.**

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