

Requested by Representative POWER

**PROPOSED AMENDMENTS TO
HOUSE BILL 2341**

1 On page 1 of the printed bill, delete lines 5 through 26 and delete pages
2 2 through 7 and insert:

3 **“SECTION 1. Sections 2 to 4 of this 2019 Act are added to and made
4 a part of ORS chapter 659A.**

5 **“SECTION 2. For purposes of section 3 of this 2019 Act, reasonable
6 accommodation may include, but need not be limited to:**

7 **“(1) Acquisition or modification of equipment or devices;**

8 **“(2) More frequent or longer break periods or periodic rest;**

9 **“(3) Assistance with manual labor; or**

10 **“(4) Modification of work schedules or job assignments.**

11 **“SECTION 3. (1) It is an unlawful employment practice for an em-
12 ployer, because of known limitations related to pregnancy, childbirth
13 or a related medical condition, including but not limited to lactation,
14 of a job applicant or an employee, to:**

15 **“(a) Deny employment opportunities to an applicant or employee if
16 the denial is based on the need of the employer to make reasonable
17 accommodation to the known limitations.**

18 **“(b) Fail or refuse to make reasonable accommodation to the known
19 limitations, unless the employer can demonstrate that the accommo-
20 dation would impose an undue hardship on the operation of the busi-
21 ness of the employer.**

1 “(c) Take an adverse employment action or in any manner dis-
2 criminate or retaliate against an applicant or an employee, with re-
3 spect to hire or tenure, or any other term or condition of employment,
4 because the applicant or employee has inquired about, requested or
5 used a reasonable accommodation under this section.

6 “(d) Require an applicant or an employee to accept a reasonable
7 accommodation that is unnecessary for the applicant or the employee
8 to perform the essential duties of the job or to accept a reasonable
9 accommodation if the applicant or employee does not have a known
10 limitation.

11 “(e) Require an employee to take family leave under ORS 659A.150
12 to 659A.186, or any other leave, if the employer can make reasonable
13 accommodation to the known limitations.

14 “(2)(a) An employer shall post signs that provide notice informing
15 employees of the employment protections under this section, including
16 the right to be free from discrimination because of pregnancy,
17 childbirth and related medical conditions, and the right to reasonable
18 accommodation under this section.

19 “(b) The employer shall post the signs in a conspicuous and acces-
20 sible location in or about the premises where employees work.

21 “(c) In addition to posting the signs, the employer shall provide a
22 written copy of the notice to:

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

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

26 “(C) An employee who informs the employer of the employee’s
27 pregnancy, within 10 days after the employer receives the information.

28 “(3) The Commissioner of the Bureau of Labor and Industries shall
29 develop training and education materials that the Bureau of Labor and
30 Industries may use to train and educate employers and employees re-

1 **garding the obligations, rights and protections provided in ORS**
2 **659A.030 and under this section.**

3 **“(4)(a) For purposes of this section, a reasonable accommodation**
4 **imposes an undue hardship on the operation of the business of an**
5 **employer if the reasonable accommodation requires significant diffi-**
6 **culty or expense.**

7 **“(b) Whether a reasonable accommodation requires significant dif-**
8 **ficulty or expense shall be determined by considering the factors pro-**
9 **vided in ORS 659A.121 (2).**

10 **“(5) An employee who alleges a violation of this section may bring**
11 **a civil action under ORS 659A.885 or may file a complaint with the**
12 **Commissioner of the Bureau of Labor and Industries in the manner**
13 **provided by ORS 659A.820.**

14 **“(6)(a) Nothing in this section shall be construed to preempt, limit,**
15 **diminish or otherwise affect any provision of state or federal law re-**
16 **lating to discrimination because of sex.**

17 **“(b) Nothing in this section shall be construed to limit the remedies**
18 **or rights under federal or state law that provide greater or equal pro-**
19 **tection for employees who are affected by pregnancy, childbirth or a**
20 **related medical condition.**

21 **“SECTION 4. The requirements of section 3 of this 2019 Act apply**
22 **only to employers who employ six or more persons.**

23 **“SECTION 5. ORS 659A.885, as amended by section 9, chapter 197,**
24 **Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is**
25 **amended to read:**

26 **“659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-**
27 **tice specified in subsection (2) of this section may file a civil action in cir-**
28 **cuit court. In any action under this subsection, the court may order**
29 **injunctive relief and any other equitable relief that may be appropriate, in-**
30 **cluding but not limited to reinstatement or the hiring of employees with or**

1 without back pay. A court may order back pay in an action under this sub-
2 section only for the two-year period immediately preceding the filing of a
3 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
4 bor and Industries, or if a complaint was not filed before the action was
5 commenced, the two-year period immediately preceding the filing of the
6 action. In any action under this subsection, the court may allow the pre-
7 vailing 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 sub-
10 section; and

11 “(b) Upon any appeal of a judgment in an action under this subsection,
12 the appellate court shall review the judgment pursuant to the standard es-
13 tablished by ORS 19.415 (3).

14 “(2) An action may be brought under subsection (1) of this section alleg-
15 ing a violation of:

16 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
17 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
18 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
19 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
20 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
21 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
22 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 **or**
23 **section 3 of this 2019 Act; or**

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

26 “(3) In any action under subsection (1) of this section alleging a violation
27 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
28 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
29 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
30 659A.318, 659A.355 or 659A.421:

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

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

5 “(c) Upon appeal of any judgment finding a violation, the appellate court
6 shall review the judgment pursuant to the standard established by ORS
7 19.415 (1); and

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

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

12 “(a) It is proved by clear and convincing evidence that an employer has
13 engaged in fraud, acted with malice or acted with willful and wanton mis-
14 conduct; or

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

17 “(5) In any action under subsection (1) of this section alleging a violation
18 of ORS 653.060 **or section 3 of this 2019 Act**, the court may award, in ad-
19 dition to the relief authorized under subsection (1) of this section,
20 compensatory damages or \$200, whichever is greater.

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

25 “(7) In any action under subsection (1) of this section alleging a violation
26 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
27 thorized under subsection (1) of this section, a civil penalty in the amount
28 of \$720.

29 “(8) Any individual against whom any distinction, discrimination or re-
30 striction on account of race, color, religion, sex, sexual orientation, national

1 origin, marital status or age, if the individual is 18 years of age or older,
2 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
4 person aiding or abetting the place or person in violation of ORS 659A.406
5 may bring an action against the operator or manager of the place, the em-
6 ployee or person acting on behalf of the place or the aider or abettor of the
7 place or person. Notwithstanding subsection (1) of this section, in an action
8 under this subsection:

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

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

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

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

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

21 “(f) Upon any appeal of a judgment under this subsection, the appellate
22 court shall review the judgment pursuant to the standard established by ORS
23 19.415 (1).

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

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

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

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

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

15 “(11) In an action under subsection (1) or (9) of this section alleging a
16 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
17 ing law:

18 “(a) ‘Aggrieved person’ includes a person who believes that the person:

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

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

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

28 “**SECTION 6.** ORS 659A.885, as amended by sections 9 and 10, chapter
29 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is
30 amended to read:

1 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
2 tice specified in subsection (2) of this section may file a civil action in cir-
3 cuit court. In any action under this subsection, the court may order
4 injunctive relief and any other equitable relief that may be appropriate, in-
5 cluding but not limited to reinstatement or the hiring of employees with or
6 without back pay. A court may order back pay in an action under this sub-
7 section only for the two-year period immediately preceding the filing of a
8 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
9 bor and Industries, or if a complaint was not filed before the action was
10 commenced, the two-year period immediately preceding the filing of the
11 action. In any action under this subsection, the court may allow the pre-
12 vailing 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 sub-
15 section; and

16 “(b) Upon any appeal of a judgment in an action under this subsection,
17 the appellate court shall review the judgment pursuant to the standard es-
18 tablished by ORS 19.415 (3).

19 “(2) An action may be brought under subsection (1) of this section alleg-
20 ing a violation of:

21 “(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
22 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547,
23 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
24 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to
25 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
26 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
27 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.357 or
28 **659A.421 or section 3 of this 2019 Act**; or

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

1 “(3) In any action under subsection (1) of this section alleging a violation
2 of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030,
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4 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
5 659A.318, 659A.355, 659A.357 or 659A.421:

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

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

10 “(c) Upon appeal of any judgment finding a violation, the appellate court
11 shall review the judgment pursuant to the standard established by ORS
12 19.415 (1); and

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

14 “(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this
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18 engaged in fraud, acted with malice or acted with willful and wanton mis-
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20 “(b) An employer was previously adjudicated in a proceeding under this
21 section or under ORS 659A.850 for a violation of ORS 652.220.

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23 of ORS 653.060 **or section 3 of this 2019 Act**, the court may award, in ad-
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25 compensatory damages or \$200, whichever is greater.

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

30 “(7) In any action under subsection (1) of this section alleging a violation

1 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
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3 of \$720.

4 “(8) Any individual against whom any distinction, discrimination or re-
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6 origin, marital status or age, if the individual is 18 years of age or older,
7 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
9 person aiding or abetting the place or person in violation of ORS 659A.406
10 may bring an action against the operator or manager of the place, the em-
11 ployee or person acting on behalf of the place or the aider or abettor of the
12 place or person. Notwithstanding subsection (1) of this section, in an action
13 under this subsection:

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

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

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

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

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

26 “(f) Upon any appeal of a judgment under this subsection, the appellate
27 court shall review the judgment pursuant to the standard established by ORS
28 19.415 (1).

29 “(9) When the commissioner or the Attorney General has reasonable cause
30 to believe that a person or group of persons is engaged in a pattern or

1 practice of resistance to the rights protected by ORS 659A.145 or 659A.421
2 or federal housing law, or that a group of persons has been denied any of the
3 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
4 commissioner or the Attorney General may file a civil action on behalf of
5 the aggrieved persons in the same manner as a person or group of persons
6 may file a civil action under this section. In a civil action filed under this
7 subsection, the court may assess against the respondent, in addition to the
8 relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

11 “(10) In any action under subsection (1) of this section alleging a vio-
12 lation of ORS 659A.145 or 659A.421 or alleging discrimination under federal
13 housing law, when the commissioner is pursuing the action on behalf of an
14 aggrieved complainant, the court shall award reasonable attorney fees to the
15 commissioner if the commissioner prevails in the action. The court may
16 award reasonable attorney fees and expert witness fees incurred by a de-
17 fendant that prevails in the action if the court determines that the commis-
18 sioner had no objectively reasonable basis for asserting the claim or for
19 appealing an adverse decision of the trial court.

20 “(11) In an action under subsection (1) or (9) of this section alleging a
21 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
22 ing law:

23 “(a) ‘Aggrieved person’ includes a person who believes that the person:

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

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

28 “(b) An aggrieved person in regard to issues to be determined in an action
29 may intervene as of right in the action. The Attorney General may intervene
30 in the action if the Attorney General certifies that the case is of general

1 public importance. The court may allow an intervenor prevailing party costs
2 and reasonable attorney fees at trial and on appeal.”.

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