

House Bill 4113

Sponsored by Representative WILLIAMS, Senator TAYLOR, Representatives BOSHART DAVIS, BONHAM, HELT; Representatives BARKER, CLEM, KENY-GUYER, LIVELY, MARSH, MEEK, NERON, NOSSE, PILUSO, PRUSAK, SANCHEZ, SCHOUTEN, SMITH DB, SOLLMAN, WILDE, WITT, Senator GOLDEN (Presession 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**.

Authorizes Bureau of Labor and Industries to conduct inquiries and investigations, including criminal records checks, to determine whether employer and any employees of employer have adequate character and fitness to employ minors in compliance with provisions relating to employment of minors. Requires Commissioner of Bureau of Labor and Industries to adopt rules no later than January 1, 2021.

Requires submission of attestation form before bureau may issue annual employment certification to employer. Authorizes commissioner to deny, revoke or refuse to issue employment certification and impose civil penalty if employer falsifies or misrepresents information in attestation form or permits employee who is required to report as sex offender to have direct contact with minor who is employed by employer.

Allows minor who is employed by employer and who claims to be aggrieved by employer's failure to comply with requirements to file civil action.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to employment of minors; creating new provisions; amending ORS 653.307, 653.370 and
3 659A.885; and declaring an emergency.

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

5 **SECTION 1. Sections 2, 3 and 4 of this 2020 Act are added to and made a part of ORS**
6 **653.305 to 653.370.**

7 **SECTION 2. (1) At any time after an employer has applied for or has been issued an an-**
8 **annual employment certificate under ORS 653.307, the Bureau of Labor and Industries may**
9 **make inquiries or investigations with respect to the character and general fitness of the**
10 **employer and of each employee of the employer who is not a minor, but who has direct**
11 **contact with a minor employed by the employer, to determine whether the employer and any**
12 **employees subject to the inquiries or investigations possesses adequate competence and re-**
13 **liability, character and general fitness to employ minors in compliance with ORS 653.305 to**
14 **653.370.**

15 **(2) As part of an inquiry or investigation conducted pursuant to this section, the com-**
16 **missioner may require the employer and each employee subject to an inquiry or investigation**
17 **to undergo a criminal records check using a state or nationwide criminal records check un-**
18 **der ORS 181A.195.**

19 **(3) The Commissioner of the Bureau of Labor and Industries shall adopt rules establish-**
20 **ing a process for conducting the inquiries and investigations described under subsection (1)**
21 **of this section, including rules that establish criteria by which the bureau may make a de-**
22 **termination regarding whether an employer, including any employees who are subject to the**
23 **inquiries and investigations, possesses satisfactory character and fitness to employ minors**

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 in compliance with ORS 653.305 to 653.370.

2 **SECTION 3.** (1) An employer commits an unlawful employment practice under ORS
3 chapter 659A if the employer:

4 (a) Permits an employee who reports as a sex offender under ORS 163A.010, 163A.015,
5 163A.020 or 163A.025, to have direct contact with any minor employed by the employer; or

6 (b) Makes a false statement or misrepresents information in the attestation form re-
7 quired by ORS 653.307 (3).

8 (2) A minor who is employed by an employer and who claims to be aggrieved by the
9 employer's violation of subsection (1) of this section may bring a civil action against the
10 employer under ORS 659A.885.

11 **SECTION 4.** (1) Subject to subsection (2) of this section, if the results of an inquiry or
12 investigation or a criminal records check conducted pursuant to section 2 of this 2020 Act
13 reveals information that contradicts a signed statement included in the attestation form re-
14 quired by ORS 653.307 (3), the Commissioner of the Bureau of Labor and Industries may:

15 (a) Deny, suspend or revoke an annual employment certification required under ORS
16 653.307; and

17 (b) Impose a civil penalty under ORS 653.370.

18 (2)(a) Before the commissioner may take any action under subsection (1) of this section,
19 the commissioner shall notify the employer of the reason for taking such action and offer
20 the employer an opportunity of not less than 30 days to explain the discrepancy and how the
21 employer intends to correct the discrepancy.

22 (b) The commissioner may suspend or revoke an employment certification under sub-
23 section (1) of this section provided that an employer shall be granted a hearing before the
24 bureau prior to such action being taken.

25 **SECTION 5.** ORS 653.307 is amended to read:

26 653.307. (1) In accordance with the applicable provisions of ORS chapter 183, the Bureau of
27 Labor and Industries shall adopt rules governing annual employment certificates required under this
28 section. After September 9, 1995, the rules governing the total hours a minor can work shall not be
29 more restrictive than the requirements of the federal Fair Labor Standards Act (29 U.S.C. 202, et
30 seq.), unless otherwise provided by Oregon law.

31 (2) An employer who hires minors shall apply to the bureau for an annual employment certif-
32 icate to employ minors. The application shall be on a form provided by the bureau and shall include,
33 but need not be limited to:

34 (a) The estimated or average number of minors to be employed during the year.

35 (b) A description of the activities to be performed.

36 (c) A description of the machinery or other equipment to be used by the minors.

37 (3) The bureau shall only issue an annual employment certificate under this section if the
38 application for the certificate is accompanied by an attestation form, provided by the bureau,
39 that includes a signed written statement by the employer that the employer:

40 (a) Has not been convicted of a crime requiring the employer to report as a sex offender
41 under ORS 163A.010, 163A.015, 163A.020 or 163A.025; and

42 (b) Will not permit any employee who has been convicted of a crime requiring the em-
43 ployee to report as a sex offender under ORS 163A.010, 163A.015, 163A.020 or 163A.025 to have
44 direct contact with any minor who is employed by the employer.

45 [(3)] (4) Once a year, the bureau shall provide to all employers applying for an annual employ-

1 ment certificate an information sheet summarizing all rules and laws governing the employment of
 2 minors.

3 [(4)] (5) Failure by an employer to comply with ORS 653.305 to 653.340 or with the regulations
 4 adopted by the bureau pursuant to this section shall subject the employer to revocation of the right
 5 to hire minors in the future at the discretion of the bureau, provided that an employer shall be
 6 granted a hearing before the bureau prior to such action being taken.

7 [(5)] (6) All school districts shall cooperate with the bureau and make available, upon request
 8 of the bureau, information concerning the age and schooling of minors.

9 **SECTION 6.** ORS 653.370 is amended to read:

10 653.370. (1)(a) In addition to any other penalty provided by law, the Commissioner of the Bureau
 11 of Labor and Industries may impose upon any person who violates ORS 653.305 to 653.370, or any
 12 rule adopted by the Bureau of Labor and Industries under ORS 653.305 to 653.370 or 653.400, a civil
 13 penalty not to exceed \$1,000 for each violation.

14 **(b) Notwithstanding paragraph (a) of this subsection, the commissioner may impose a**
 15 **civil penalty not to exceed \$5,000 against an employer who:**

16 **(A) Permits an employee who reports as a sex offender under ORS 163A.010, 163A.015,**
 17 **163A.020 or 163A.025 to have direct contact with any minor employed by the employer; or**

18 **(B) Makes a false statement or misrepresents information in the attestation form re-**
 19 **quired by ORS 653.307 (3).**

20 (2) Notwithstanding ORS 183.482, any petition for review of an order imposing a civil penalty
 21 under this section must be filed within 30 days following the date the order upon which the petition
 22 is based is served.

23 (3) Except as otherwise provided in this section, civil penalties under this section shall be im-
 24 posed as provided in ORS 183.745.

25 (4) All sums collected as penalties pursuant to this section shall be first applied toward re-
 26 imbursement of the costs incurred in determining the violations, conducting hearings under this
 27 section and assessing and collecting such penalties. The remainder, if any, of the sums collected as
 28 penalties pursuant to this section shall be paid over by the commissioner to the Department of State
 29 Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt
 30 for the money to the commissioner.

31 (5)(a) Notwithstanding subsection (1) of this section, the commissioner may not impose a civil
 32 penalty pursuant to this section upon any person who provides evidence satisfactory to the com-
 33 missioner that:

34 (A) The person has paid a civil penalty to the United States Department of Labor for violation
 35 of the child labor provisions of the federal Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

36 (B) The civil penalty involved the same factual circumstances at issue before the commissioner.

37 (b) Notwithstanding subsection (1) of this section, the commissioner shall refund any civil pen-
 38 alty previously imposed on and collected from any person pursuant to this section if the person
 39 provides evidence satisfactory to the commissioner that:

40 (A) The person has paid a civil penalty to the United States Department of Labor for violation
 41 of the child labor provisions of the federal Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

42 (B) The civil penalty involved the same factual circumstances underlying the commissioner's
 43 imposition of a civil penalty.

44 **SECTION 7.** ORS 659A.885 is amended to read:

45 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-

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

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

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

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

14 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
 15 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
 16 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 17 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
 18 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309,
 19 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421; or

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

21 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 22 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 23 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 24 659A.290, 659A.318, 659A.355 or 659A.421 **or section 3 of this 2020 Act**:

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

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

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

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

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

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

35 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 36 659A.850 for a violation of ORS 652.220.

37 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 38 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 39 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of

1 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
 2 tifies that the case is of general public importance. The court may allow an intervenor prevailing
 3 party costs and reasonable attorney fees at trial and on appeal.

4 **SECTION 8.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, and sec-
 5 tion 7, chapter 463, Oregon Laws 2019, is amended to read:

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

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

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

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

20 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 21 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 22 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 23 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 24 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 25 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.370 or 659A.421; or

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

27 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 28 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 29 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 30 659A.290, 659A.318, 659A.355, 659A.370 or 659A.421 **or section 3 of this 2020 Act:**

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

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

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

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

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

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

41 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 42 659A.850 for a violation of ORS 652.220.

43 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 44 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 45 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145

1 or 659A.421 or discrimination under federal housing law:

2 (a) “Aggrieved person” includes a person who believes that the person:

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

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

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

10 **SECTION 9.** ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, section
11 7, chapter 463, Oregon Laws 2019, and section 12, chapter 701, Oregon Laws 2019, is amended to
12 read:

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

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

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

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

27 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
28 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
29 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
30 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
31 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
32 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421; or

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

34 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
35 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
36 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
37 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 3 of this 2020 Act:**

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

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

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

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

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

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

3 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
4 659A.850 for a violation of ORS 652.220.

5 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
6 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
7 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

45 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or

1 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 2 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 3 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 4 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 5 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 6 appealing an adverse decision of the trial court.

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

9 (a) “Aggrieved person” includes a person who believes that the person:

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

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

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

17 **SECTION 10.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 18 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 19 Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, is amended to read:

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

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

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

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

34 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 35 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 36 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 37 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 38 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 39 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421; or

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

41 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 42 243.323, 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.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or section 3 of this 2020**

45 **Act:**

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

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

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

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

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

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

11 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 12 659A.850 for a violation of ORS 652.220.

13 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 14 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 15 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 9 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 10 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 11 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 12 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 13 determines that the commissioner 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 violation of ORS 659A.145
 16 or 659A.421 or discrimination under federal housing law:

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

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

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

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

25 **SECTION 11.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 26 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 27 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon
 28 Laws 2019, is amended to read:

29 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 30 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 31 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 32 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 33 court may order back pay in an action under this subsection only for the two-year period imme-
 34 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 35 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 36 year period immediately preceding the filing of the action. In any action under this subsection, the
 37 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 38 cept as provided in subsection (3) of this section:

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

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

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

43 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 44 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
 45 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,

1 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
 2 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
 3 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
 4 659A.421; or

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

6 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 7 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
 8 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
 9 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
 10 659A.421 **or section 3 of this 2020 Act:**

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

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

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

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

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

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

21 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 22 659A.850 for a violation of ORS 652.220.

23 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 24 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 25 tion, compensatory damages or \$200, whichever is greater.

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

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

32 (8) Any individual against whom any distinction, discrimination or restriction on account of
 33 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 34 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 35 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 36 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 37 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 38 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 39 section:

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

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

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

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

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

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

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

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

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

18 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
19 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
20 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
21 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
22 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
23 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
24 appealing an adverse decision of the trial court.

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

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

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

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

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

35 **SECTION 12. The Commissioner of the Bureau of Labor and Industries shall adopt rules**
36 **under section 2 of this 2020 Act no later than January 1, 2021.**

37 **SECTION 13. This 2020 Act being necessary for the immediate preservation of the public**
38 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
39 **on its passage.**

40