

Senate Bill 451

Sponsored by Senator KNOPP (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**.

Establishes that decisions related to immunizations are personal health care decisions and that immunizations may not be mandated as condition of employment for registered nurses or other medical staff unless required by federal law.

Makes violation unlawful employment practice.

A BILL FOR AN ACT

1
2 Relating to mandatory immunizations for certain employees; creating new provisions; and amending
3 ORS 659A.885.

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

5 **SECTION 1. (1) It is the policy of the State of Oregon that decisions related to immu-**
6 **nizations are personal health care decisions and that immunizations may not be mandated**
7 **by an employer who employs registered nurses or other medical staff as a condition of em-**
8 **ployment unless required by federal law.**

9 **(2) It is an unlawful employment practice for an employer to require an applicant for**
10 **employment as a registered nurse or other medical staff or an employee who is employed as**
11 **a registered nurse or other medical staff to be immunized as a condition of future or con-**
12 **tinuing employment, unless the immunization is mandated by federal law.**

13 **(3) An applicant for employment or an employee who alleges a violation of this section**
14 **may file a complaint under ORS 659A.820.**

15 **(4) For purposes of this section:**

16 **(a) "Medical staff" includes those individuals licensed in this state under ORS chapter**
17 **677.**

18 **(b) "Registered nurse" means a nurse licensed under ORS 678.050.**

19 **SECTION 2. ORS 659A.885, as amended by section 7, chapter 343, Oregon Laws 2019, section**
20 **7, chapter 463, Oregon Laws 2019, and section 12, chapter 701, Oregon Laws 2019, is amended to**
21 **read:**

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

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.

cept as provided in subsection (3) of this section:

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

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

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

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 **or section 1 of this 2021 Act**; or

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

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

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

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

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

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

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

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

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

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

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

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

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

1 section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 **SECTION 3.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
43 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
44 Oregon Laws 2019, and section 13, chapter 701, Oregon Laws 2019, 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, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 15 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 16 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 17 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 18 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 19 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 **or sec-**
 20 **tion 1 of this 2021 Act;** or

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

22 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 23 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 24 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 25 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421:

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

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

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

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

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

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

36 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 37 659A.850 for a violation of ORS 652.220.

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

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

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

1 penalty in the amount of \$720.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **SECTION 4.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 6 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 7 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, and section 13, chapter 701, Oregon
 8 Laws 2019, is amended to read:

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

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

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

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

23 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475B.281, 476.574,
 24 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
 25 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 26 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
 27 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
 28 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
 29 659A.421 **or section 1 of this 2021 Act;** or

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

31 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 32 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
 33 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
 34 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
 35 659A.421:

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

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

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

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

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

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

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

3 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
4 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
5 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

43 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
44 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
45 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to

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

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

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

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

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

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

15