

House Bill 4069

Sponsored by Representatives RESCHKE, SCHARF; Representatives CATE, GEORGE, GOODWIN, LEVY, MORGAN, SMITH DB, SMITH G, Senators HANSELL, HEARD, LINTHICUM (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits discrimination in places of public accommodation on basis of person's medical history.
Prohibits discrimination in education on basis of person's medical history.

Prohibits school districts from requiring disclosure of student's medical history as condition of student attending school.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to discrimination based on medical history; creating new provisions; amending ORS 433.240, 433.255, 433.267, 433.269, 433.273, 659.850, 659A.403, 659A.406, 659A.409 and 659A.885; and declaring an emergency.

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

Unlawful Discrimination in Public Accommodations

SECTION 1. ORS 659A.403 is amended to read:

659A.403. (1) Except as provided in subsection (2) of this section, all persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, **medical history** or age if the individual is of age, as described in this section, or older.

(2) Subsection (1) of this section does not prohibit:

(a) The enforcement of laws governing the consumption of alcoholic beverages by minors and the frequenting by minors of places of public accommodation where alcoholic beverages are served;

(b) The enforcement of laws governing the use of marijuana items, as defined in ORS 475C.009, by persons under 21 years of age and the frequenting by persons under 21 years of age of places of public accommodation where marijuana items are sold; or

(c) The offering of special rates or services to persons 50 years of age or older.

(3) It is an unlawful practice for any person to deny full and equal accommodations, advantages, facilities and privileges of any place of public accommodation in violation of this section.

SECTION 2. ORS 659A.406 is amended to read:

659A.406. Except as otherwise authorized by ORS 659A.403, it is an unlawful practice for any person to aid or abet any place of public accommodation, as defined in ORS 659A.400, or any employee or person acting on behalf of the place of public accommodation to make any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender

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 identity, national origin, marital status, **medical history** or age if the individual is 18 years of age
 2 or older.

3 **SECTION 3.** ORS 659A.409 is amended to read:

4 659A.409. Except as provided by laws governing the consumption of alcoholic beverages by mi-
 5 nors, the use of marijuana items, as defined in ORS 475C.009, by persons under 21 years of age, the
 6 frequenting by minors of places of public accommodation where alcoholic beverages are served and
 7 the frequenting by persons under 21 years of age of places of public accommodation where
 8 marijuana items are sold, and except for special rates or services offered to persons 50 years of age
 9 or older, it is an unlawful practice for any person acting on behalf of any place of public accom-
 10 modation as defined in ORS 659A.400 to publish, circulate, issue or display, or cause to be published,
 11 circulated, issued or displayed, any communication, notice, advertisement or sign of any kind to the
 12 effect that any of the accommodations, advantages, facilities, services or privileges of the place of
 13 public accommodation will be refused, withheld from or denied to, or that any discrimination will
 14 be made against, any person on account of race, color, religion, sex, sexual orientation, gender
 15 identity, national origin, marital status, **medical history** or age if the individual is of age, as de-
 16 scribed in this section, or older.

17 **SECTION 4.** ORS 659A.885 is amended to read:

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

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

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

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

32 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574,
 33 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 34 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 35 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 36 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 37 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421; or

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

39 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 40 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 41 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 42 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421:

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

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

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

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

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

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

8 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 9 659A.850 for a violation of ORS 652.220.

10 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 11 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 12 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

40 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
 41 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 42 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 43 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 44 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 45 manner as a person or group of persons may file a civil action under this section. In a civil action

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

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

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

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

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

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

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

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

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

22 **SECTION 5.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 23 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 24 Oregon Laws 2019, section 13, chapter 701, Oregon Laws 2019, and section 45, chapter 367, Oregon
 25 Laws 2021, is amended to read:

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

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

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

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

40 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574,
 41 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
 42 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
 43 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 44 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 45 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421; or

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

2 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
3 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
4 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
5 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421:

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

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

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

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

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

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

16 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
17 659A.850 for a violation of ORS 652.220.

18 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
19 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
20 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

13 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 14 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 15 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 16 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 17 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 18 determines that the commissioner 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 violation of ORS 659A.145
 21 or 659A.421 or discrimination under federal housing law:

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

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

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

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

30 **SECTION 6.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 31 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 32 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, section 13, chapter 701, Oregon Laws
 33 2019, and section 46, chapter 367, Oregon Laws 2021, is amended to read:

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

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

45 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall

1 review the judgment pursuant to the standard established by ORS 19.415 (3).

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

3 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574,
 4 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
 5 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 6 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
 7 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
 8 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or
 9 659A.421; or

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

11 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 12 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
 13 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
 14 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or
 15 659A.421:

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

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

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

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

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

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

26 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 27 659A.850 for a violation of ORS 652.220.

28 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or
 29 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this sec-
 30 tion, compensatory damages or \$200, whichever is greater.

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

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

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

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

1 compensatory and punitive damages;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40
41 **Unlawful Discrimination in Education**

42
43 **SECTION 7.** ORS 659.850 is amended to read:

44 659.850. (1) As used in this section:

45 (a)(A) "Discrimination" means any act that unreasonably differentiates treatment, intended or

1 unintended, or any act that is fair in form but discriminatory in operation, either of which is based
 2 on race, color, religion, sex, sexual orientation, gender identity, national origin, marital status,
 3 **medical history**, age or disability.

4 (B) "Discrimination" does not include:

5 (i) Enforcement of an otherwise valid dress code or policy, as long as the code or policy:

6 [(i)] **(aa)** Provides, on a case-by-case basis, for reasonable accommodation of an individual based
 7 on the health and safety needs of the individual; and

8 [(ii)] **(bb)** Does not have a disproportionate adverse impact on members of a protected class to
 9 a greater extent than the policy impacts persons generally.

10 **(ii) Reliance on a student's medical history for the purpose of providing educational ser-**
 11 **VICES to the student, if the medical history relied upon is limited to only information required**
 12 **for educational purposes.**

13 (b) "Race" includes physical characteristics that are historically associated with race, including
 14 but not limited to natural hair, hair texture, hair type and protective hairstyles as defined in ORS
 15 659A.001.

16 (2) A person may not be subjected to discrimination in any public elementary, secondary or
 17 community college education program or service, school or interschool activity or in any higher
 18 education program or service, school or interschool activity where the program, service, school or
 19 activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

20 (3) The State Board of Education and the Higher Education Coordinating Commission shall es-
 21 tablish rules necessary to ensure compliance with subsection (2) of this section in the manner re-
 22 quired by ORS chapter 183.

23
 24 **Prohibiting Condition to Student's Attendance at School**

25
 26 **SECTION 8. (1) A school district may not condition a student's attendance at a school**
 27 **on the disclosure of the student's medical history to the school district.**

28 **(2) A school district shall ensure that whenever a student's medical history is requested,**
 29 **including as provided by ORS 336.211 and 433.267, the school district provides a written notice**
 30 **that explains that failure to provide the medical history cannot make the student ineligible**
 31 **to attend school.**

32 **(3) When a student's medical history is requested for the purpose of providing educa-**
 33 **tional services to a student, a school district shall provide written notice that the disclosure:**

34 **(a) Is voluntary and that failure to disclose does not make a student ineligible to attend**
 35 **school;**

36 **(b) May be limited to only information required for educational purposes; and**

37 **(c) Does not need to include the student's complete medical history.**

38 **(4) Nothing in this section prevents a school district from requiring a student to:**

39 **(a) Provide information related to, or needed for, the administration of medication under**
 40 **ORS 339.866 or 339.869;**

41 **(b) Have a physical examination as a condition for participating in extracurricular sports,**
 42 **as provided by ORS 336.479; or**

43 **(c) Provide a medical release after exhibiting signs, symptoms or behaviors consistent**
 44 **with a concussion or being diagnosed with a concussion, as provided by ORS 336.485.**

45 **SECTION 9.** ORS 433.240 is amended to read:

1 433.240. [(1)] In adopting ORS 433.235 to 433.284, the Legislative Assembly recognizes the obli-
 2 gation of parents to have their children properly immunized [*and to provide to schools and facilities*
 3 *accurate records of immunization*].

4 [(2) *Notwithstanding ORS 339.030, nothing in ORS 433.235 to 433.284 operates to remove parental*
 5 *liability under compulsory attendance laws.*]

6 **SECTION 10.** ORS 433.255 is amended to read:

7 433.255. Except in strict conformity with the rules of the Oregon Health Authority, no child or
 8 employee shall be permitted to be in any school or children’s facility when:

- 9 (1) That child or employee has any restrictable disease; **or**
- 10 (2) That child or employee comes from any house in which exists any restrictable disease.[: or]
- 11 [(3) *That child has been excluded as provided in ORS 433.267 (5) or (7).*]

12 **SECTION 11.** ORS 433.267 is amended to read:

13 433.267. (1) [*As a condition of attendance in any school or children’s facility in this state,*] **A**
 14 **school district may request that** every child through grade 12 [*shall*] submit to the
 15 administrator[, *unless the school or facility the child attends already has on file a record that indicates*
 16 *that the child has received immunizations against the restrictable diseases prescribed by rules of the*
 17 *Oregon Health Authority as provided in ORS 433.273,*] one of the following:

18 (a) A document signed by the parent, a practitioner of the healing arts who has within the scope
 19 of the practitioner’s license the authority to administer immunizations or a representative of the
 20 local health department certifying the immunizations the child has received;

21 (b) A document signed by a physician or a representative of the local health department stating
 22 that the child should be exempted from receiving specified immunization because of indicated med-
 23 ical diagnosis; or

24 (c) A document, on a form prescribed by the authority by rule and signed by the parent of the
 25 child, stating that the parent is declining one or more immunizations on behalf of the child. A doc-
 26 ument submitted under this paragraph:

27 (A) May include the reason for declining the immunization, including whether the parent is de-
 28 clining the immunization because of a religious or philosophical belief; and

29 (B) Must include either:

30 (i) A signature from a health care practitioner verifying that the health care practitioner has
 31 reviewed with the parent information about the risks and benefits of immunization that is consistent
 32 with information published by the Centers for Disease Control and Prevention and the contents of
 33 the vaccine educational module approved by the authority pursuant to rules adopted under ORS
 34 433.273; or

35 (ii) A certificate verifying that the parent has completed a vaccine educational module approved
 36 by the authority pursuant to rules adopted under ORS 433.273.

37 [(2)(a)] **(2)** A newly entering child or a transferring child [*shall be required*] **may be requested**
 38 to submit the document described in subsection (1) of this section prior to attending the school or
 39 facility.

40 [(b) *Notwithstanding paragraph (a) of this subsection, a child transferring from a school in the*
 41 *United States must submit the document required by subsection (1) of this section not later than the*
 42 *exclusion date set by rule of the authority.*]

43 (3) Persons who have been emancipated pursuant to ORS 419B.558 or who have reached the age
 44 of consent for medical care pursuant to ORS 109.640 may sign those documents on their own behalf
 45 otherwise requiring the signatures of parents under subsection (1) of this section.

1 [(4) *The administrator shall conduct a primary evaluation of the records submitted pursuant to*
 2 *subsection (1) of this section to determine whether the child is entitled to begin attendance by reason*
 3 *of having submitted a document that complies with the requirements of subsection (1) of this section.*]

4 [(5) *If the records do not meet the initial minimum requirements established by rule, the child may*
 5 *not be allowed to attend until the requirements are met. If the records meet the initial minimum re-*
 6 *quirements, the child shall be allowed to attend.*]

7 [(6) *At the time specified by the authority by rule, records for children meeting the initial minimum*
 8 *requirements and records previously on file shall be reviewed for completion of requirements by the*
 9 *administrator to determine whether the child is entitled to continue in attendance. If the records do not*
 10 *comply, the administrator shall notify the local health department and shall transmit any records con-*
 11 *cerning the child's immunization status to the local health department.*]

12 [(7) *The local health department shall provide for a secondary evaluation of the records to deter-*
 13 *mine whether the child should be excluded for noncompliance with the requirements stated in sub-*
 14 *section (1) of this section. If the child is determined to be in noncompliance, the local health department*
 15 *shall issue an exclusion order and shall send copies of the order to the parent or the person who is*
 16 *emancipated or has reached the age of majority and the administrator. On the effective date of the or-*
 17 *der, the administrator shall exclude the child from the school or facility and not allow the child to at-*
 18 *tend the school or facility until the requirements of this section have been met.*]

19 [(8) *The administrator shall readmit the child to the school or facility when in the judgment of the*
 20 *local health department the child is in compliance with the requirements of this section.*]

21 [(9)] (4) The administrator shall be responsible for updating the document described in sub-
 22 section (1)(a) of this section as necessary to reflect the current status of the immunization of the
 23 child and the time at which the child comes into compliance with immunizations against the
 24 restrictable diseases prescribed by rules of the authority pursuant to ORS 433.273.

25 [(10)] (5) Nothing in this section shall be construed as relieving agencies, in addition to school
 26 districts, which are involved in the maintenance and evaluation of immunization records on April
 27 27, 1981, from continuing responsibility for these activities.

28 [(11)] (6) All documents [*required by*] **requested under** this section shall be on forms approved
 29 or provided by the authority.

30 [(12)] (7) In lieu of signed documents from practitioners, the authority may accept immunization
 31 record updates using practitioner documented immunization records generated by electronic means
 32 or on unsigned practitioner letterhead if the authority determines such records are accurate.

33 [(13)] (8) As used in this section:

34 (a) "Newly entering child" means a child who is initially attending:

35 (A) A facility in this state;

36 (B) A school at the entry grade level;

37 (C) Either a school at any grade level or a facility from homeschooling; or

38 (D) A school at any grade level or a facility after entering the United States from another
 39 country.

40 (b) "Transferring child" means a child moving from:

41 (A) One facility to another facility;

42 (B) One school in this state to another school in this state when the move is not the result of
 43 a normal progression of grade level; or

44 (C) A school in another state to a school in this state.

45 **SECTION 12.** ORS 433.269 is amended to read:

1 433.269. (1) A local public health authority shall ensure that immunizations required under ORS
 2 433.282 and 433.283 and the rules adopted pursuant to ORS 433.273 for [*attendance at*] a school,
 3 children’s facility or post-secondary educational institution are available through local health care
 4 providers or the local public health authority or its contractors:

5 (a) To the entire population of the area served by the local public health authority in convenient
 6 areas and at convenient times.

7 (b) Regardless of whether a child or student is able to pay for the immunization.

8 (2)(a) Each local public health authority, school and children’s facility shall report annually to
 9 the Oregon Health Authority on:

10 (A) The number of children in the area served by the local public health authority, school or
 11 children’s facility; and

12 (B) The number of children in the area served by the local public health authority, school or
 13 children’s facility who are susceptible to restrictable disease as prescribed by the Oregon Health
 14 Authority’s rules pursuant to ORS 433.273.

15 (b) Each school and children’s facility shall report annually to the Oregon Health Authority on
 16 the number of children in the area served by the school or children’s facility who are in attendance
 17 at the school or children’s facility [*conditionally because of*] **with** an incomplete immunization
 18 schedule.

19 (c) Each local public health authority shall make available to each school and children’s facility
 20 in the area served by the local public health authority data on the immunization rate, by disease,
 21 of children in the area. Upon request, the Oregon Health Authority shall assist local public health
 22 authorities in compiling data for purposes of this paragraph.

23 (d) A child exempted under ORS 433.267 is susceptible to restrictable disease for purposes of this
 24 subsection.

25 (3)(a) For the purpose of providing parents with the information necessary to protect their
 26 children’s health, each school and children’s facility shall make available the information reported
 27 and received by the school and children’s facility pursuant to subsection (2) of this section:

28 (A) At the main office of the school or children’s facility;

29 (B) On the school’s or school district’s website or on the children’s facility’s website, if avail-
 30 able; and

31 (C) To the parents of the children who attend the school or children’s facility, in the form of a
 32 paper document or electronic communication that includes the information in a clear and easy to
 33 understand manner.

34 (b) The information required to be made available under paragraph (a) of this subsection must
 35 be made available at the beginning of each school year [*and not later than one month after the date*
 36 *that children may be excluded as provided by ORS 433.267*].

37 (4) The administrator of a school or children’s facility shall maintain immunization records of
 38 children, including children who are in attendance at the school or children’s facility [*conditionally*
 39 *because of*] **with** an incomplete immunization schedule and children who are exempted as described
 40 in ORS 433.267 (1)(b) and (c).

41 **SECTION 13.** ORS 433.273 is amended to read:

42 433.273. The Oregon Health Authority shall adopt rules pertaining to the implementation of ORS
 43 433.235 to 433.284, which shall include, but need not be limited to:

44 (1) The definition of “restrictable” disease;

45 (2) The required immunization against diseases;

1 (3) The time schedule for immunization;

2 (4) The approved means of immunization;

3 [(5) *The procedures and time schedule whereby children may be excluded from attendance in*
4 *schools or children's facilities under ORS 433.267 (1)(b) and (c), provided that the authority includes*
5 *as part of those procedures service of notice to parents;*]

6 [(6)] (5) The manner in which immunization records for children are established, evaluated and
7 maintained;

8 [(7)] (6) Exemptions for schools and children's facilities, including exemptions from the reporting
9 requirements of ORS 433.269 (2) and exemptions from the requirement under ORS 433.269 (3) to make
10 information available;

11 [(8)] (7) The implementation of ORS 433.282 and 433.283;

12 [(9)] (8) The process for approving a vaccine educational module;

13 [(10)] (9) Criteria for a vaccine educational module, including the requirement that a vaccine
14 educational module present information that is consistent with information published by the Centers
15 for Disease Control and Prevention concerning:

16 (a) Epidemiology;

17 (b) The prevention of disease through the use of vaccinations; and

18 (c) The safety and efficacy of vaccines; and

19 [(11)] (10) Documentation required to verify completion of a vaccine educational module, in-
20 cluding the qualifications of persons who may certify the completion.

21
22 **Captions**

23
24 **SECTION 14. The unit captions used in this 2022 Act are provided only for the conven-**
25 **ience of the reader and do not become part of the statutory law of this state or express any**
26 **legislative intent in the enactment of this 2022 Act.**

27
28 **Emergency Clause**

29
30 **SECTION 15. This 2022 Act being necessary for the immediate preservation of the public**
31 **peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect**
32 **on its passage.**

33 _____