

A-Engrossed
Senate Bill 238

Ordered by the Senate March 21
Including Senate Amendments dated March 21

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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.

Permits injunctive[,] **and** compensatory [*and punitive*] remedies for violation of employment rights of firefighters[, *tobacco users*] and members of Legislative Assembly. **Permits injunctive relief for violation of employment rights of tobacco users.**

A BILL FOR AN ACT

1
2 Relating to remedies for employment discrimination; creating new provisions; and amending ORS
3 171.120, 659A.315 and 659A.885.

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

5 **SECTION 1.** ORS 659A.885 is amended to read:

6 659A.885. (1) Any individual 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 such other equitable relief as may be appropriate, includ-
9 ing but not limited to reinstatement or the hiring of employees with or without back pay. A court
10 may order back pay in an action under this subsection only for the two-year period immediately
11 preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of
12 Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year
13 period immediately preceding the filing of the action. In any action under this subsection, the court
14 may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as
15 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 [*for the following unlawful*
20 *practices:*] **alleging a violation of** ORS 25.337, 25.424, **171.120**, 399.235, **476.574**, 659A.030, 659A.040,
21 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194,
22 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306,
23 659A.309, **659A.315**, 659A.318 [*and*] **or** 659A.421 (1) or (3).

24 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
25 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262,
26 659A.318 or 659A.421 (1) or (3):

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 (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) In any action under subsection (1) of this section alleging a violation of ORS **171.120**,
8 **476.574**, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under sub-
9 section (1) of this section, compensatory damages or \$250, whichever is greater.

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

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

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

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

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

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

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

31 **SECTION 2.** ORS 171.120 is amended to read:

32 171.120. (1) It is the purpose and intent of the Legislative Assembly in enacting this section and
33 ORS 171.122 and 171.125 that, subject to the conditions set forth in these sections, any member of
34 the Legislative Assembly whose employment is interrupted [*by reason*] **because** of attendance
35 [*upon*] **at** regular or special sessions of the Legislative Assembly or the performance of official du-
36 ties as a member of the Legislative Assembly shall be restored to [*such*] **the** employment [*in such*
37 *a manner as to give the member the*] status [*in such employment that*] the member would have enjoyed
38 if the member had continued in [*such*] employment [*continuously*] during any such attendance or
39 performance of duties.

40 (2) As a part of the public policy to encourage public service, an employer [*shall*] **may** not dis-
41 charge or threaten to discharge, intimidate or coerce any employee by reason of the employee's
42 service or scheduled service as a member or prospective member of the Legislative Assembly.

43 (3) The member or prospective member [*shall*] **may** not be subject to discipline or harassment
44 or placed at any employment disadvantage as a consequence of the leave of absence. It is an un-
45 lawful employment practice under ORS chapter 659A for a member or prospective member to be

1 subject to discipline or harassment or placed at any employment disadvantage as a consequence of
2 any leave of absence [*by reason of*] **related to** regular or special session **attendance or duties**. A
3 member or prospective member may file a complaint with the Commissioner of the Bureau of Labor
4 and Industries under ORS 659A.820, **or a civil action under ORS 659A.885**, alleging violation of
5 this subsection.

6 **SECTION 3.** ORS 659A.315 is amended to read:

7 659A.315. (1) It is an unlawful employment practice for any employer to require, as a condition
8 of employment, that any employee or prospective employee refrain from using lawful tobacco pro-
9 ducts during nonworking hours, except when the restriction relates to a bona fide occupational re-
10 quirement.

11 (2) Subsection (1) of this section does not apply if an applicable collective bargaining agreement
12 prohibits off-duty use of tobacco products.

13 [*(3) A civil action may be brought under ORS 659A.885 for a violation of this section.*]

14 **SECTION 4. The amendments to ORS 171.120, 659A.315 and 659A.885 by sections 1, 2 and**
15 **3 of this 2005 Act apply only to conduct giving rise to a cause of action under ORS 659A.885**
16 **that occurs on or after the effective date of this 2005 Act.**

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