

# Enrolled Senate Bill 238

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CHAPTER .....

AN ACT

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

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

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

659A.885. (1) Any individual claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and such other equitable relief as may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except 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 [*for the following unlawful practices:*] **alleging a violation of** ORS 25.337, 25.424, **171.120**, 399.235, **476.574**, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, **659A.315**, 659A.318 [*and*] **or** 659A.421 (1) or (3).

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

- (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) In any action under subsection (1) of this section alleging a violation of ORS **171.120, 476.574**, 659A.203 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.

(5) Any individual against whom any distinction, discrimination or restriction on account of race, **color**, religion, sex, **national origin**, marital status[, *color, national origin*] 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 person acting on behalf of such place or by any person aiding or abetting such place or person in violation of ORS 659A.406 may bring an action against the operator or manager of such place, the employee or person acting on behalf of such place or the aider or abettor of such place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

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

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

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

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

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

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

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

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

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

(3) The member or prospective member [*shall*] **may** not be subject to discipline or harassment or placed at any employment disadvantage as a consequence of the leave of absence. It is an unlawful employment practice under ORS chapter 659A for a member or prospective member to be subject to discipline or harassment or placed at any employment disadvantage as a consequence of any leave of absence [*by reason of*] **related to** regular or special session **attendance or duties**. A member or prospective member may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820, **or a civil action under ORS 659A.885**, alleging violation of this subsection.

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

659A.315. (1) It is an unlawful employment practice for any employer to require, as a condition of employment, that any employee or prospective employee refrain from using lawful tobacco products during nonworking hours, except when the restriction relates to a bona fide occupational requirement.

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

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

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

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**Passed by Senate March 23, 2005**

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Secretary of Senate

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President of Senate

**Passed by House May 25, 2005**

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Speaker of House

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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Secretary of State