

A-Engrossed
Senate Bill 706

Ordered by the Senate April 15
Including Senate Amendments dated April 15

Sponsored by Senator CARTER; Representatives HANSEN, SHIELDS (at the request of Housing and Community Services Department, Urban League of Portland, Fair Housing Council of Oregon)

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.

[Prohibits facially neutral housing policy that adversely impacts disabled persons or other persons due to their race, color, sex, marital status, source of income, familial status, religion or national origin to greater extent than it adversely impacts persons generally.]

Prohibits disclosure in sale, lease or rental of real property that occupant of property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

Prohibits discrimination against disabled person or discrimination due to race, color, sex, marital status, source of income, familial status, religion or national origin by multiple listing service, real estate brokers' organization or other service, organization or facility relating to business of selling or renting dwellings.

Requires Commissioner of Bureau of Labor and Industries to investigate complaint of discrimination within 30 days of filing of complaint.

Allows court trial for violation. Allows attorney fees. Imposes civil penalties.

Directs commissioner and Department of Consumer and Business Services to adopt interagency agreement to coordinate referral of complaints concerning architectural barriers.

A BILL FOR AN ACT

1
2 Relating to housing discrimination; creating new provisions; amending ORS 90.390, 659A.145,
3 659A.421, 659A.800, 659A.820, 659A.835, 659A.845, 659A.850, 659A.855, 659A.870 and 659A.885;
4 and repealing ORS 659A.424.

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

6 **SECTION 1.** ORS 659A.145 is amended to read:

7 659A.145. (1) A person, because of a disability of a purchaser, lessee or renter, a disability of a
8 person residing in or intending to reside in a dwelling after it is sold, rented or made available or
9 a disability of any person associated with a purchaser, lessee or renter, *[shall]* **may** not discriminate
10 by:

11 (a) Refusing to sell, lease, rent or otherwise make available any real property to a purchaser,
12 lessee or renter;

13 (b) Expelling a purchaser, lessee or renter;

14 (c) Making any distinction or restriction against a purchaser, lessee or renter in the price,
15 terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or
16 the furnishing of any facilities or services in connection therewith; or

17 (d) Attempting to discourage the sale, rental or lease of any real property.

18 (2) For purposes of this *[subsection]* **section**, discrimination includes:

19 (a) A refusal to permit, at the expense of the disabled person, reasonable modifications of ex-
20 isting premises occupied or to be occupied by *[such]* **the** person if *[such]* **the** modifications may be

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 necessary to afford *[such]* **the** person full enjoyment of the premises, except that, in the case of a
2 rental, the landlord may, when it is reasonable to do so, condition permission for a modification on
3 the renter agreeing to restore the interior of the premises to the condition that existed before the
4 modification, reasonable wear and tear excepted; or

5 (b) A refusal to make reasonable accommodations in rules, policies, practices or services when
6 *[such]* **the** accommodations may be necessary to afford *[such]* **the disabled** person equal opportunity
7 to use and enjoy a dwelling.

8 (3) A person *[shall]* **may** not publish, circulate, issue or display or cause to be published, cir-
9 culated, issued or displayed any communication, notice, advertisement[,] or sign of any kind relating
10 to the sale, rental or leasing of real property *[which]* **that** indicates any preference, limitation,
11 specification or discrimination against a disabled person.

12 (4) A person whose business includes engaging in residential real estate related transactions,
13 as defined in ORS 659A.421 (2)(b), *[shall]* **may** not discriminate against any person in making a
14 **transaction** available *[such a transaction]*, or in the terms or conditions of *[such a]* **the** transaction,
15 because of a disability.

16 (5) A real estate broker or principal real estate broker *[shall]* **may** not accept or retain a listing
17 of real property for sale, lease or rental with an understanding that the purchaser, lessee or renter
18 may be discriminated against solely because a person is a disabled person.

19 **(6) A person may not deny access to, or membership or participation in, any multiple**
20 **listing service, real estate brokers' organization or other service, organization or facility**
21 **relating to the business of selling or renting dwellings, or discriminate against any person**
22 **in the terms or conditions of the access, membership or participation, because that person**
23 **is a disabled person.**

24 *[(6)]* (7) A person *[shall]* **may** not assist, induce, incite or coerce another person to *[permit]*
25 **commit** an act or engage in a practice that violates this section.

26 *[(7)]* (8) A person *[shall]* **may** not coerce, intimidate, threaten or interfere with any person in
27 the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having
28 aided or encouraged any other person in the exercise or enjoyment of, any right granted or pro-
29 tected by this section.

30 *[(8)]* (9) A person *[shall]* **may** not, for profit, induce or attempt to induce any other person to
31 sell or rent any dwelling by representations regarding the entry or prospective entry into the
32 neighborhood of a disabled person or persons.

33 **(10) In the sale, lease or rental of real property, a person may not disclose to any person**
34 **that an occupant or owner of the real property has or died from human immunodeficiency**
35 **virus or acquired immune deficiency syndrome.**

36 *[(9)]* (11) Any violation of this section is an unlawful practice.

37 **SECTION 2.** ORS 659A.421 is amended to read:

38 659A.421. (1) *[No]* **A** person *[shall]* **may not**, because of race, color, sex, marital status, source
39 of income, familial status, religion or national origin of any person:

40 (a) Refuse to sell, lease or rent any real property to a purchaser.

41 (b) Expel a purchaser from any real property.

42 (c) Make any distinction, discrimination or restriction against a purchaser in the price, terms,
43 conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the
44 furnishing of any facilities or services in connection therewith.

45 (d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

1 (e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed,
2 any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing
3 of real property [*which*] **that** indicates any preference, limitation, specification or discrimination
4 based on race, color, sex, marital status, source of income, **familial status**, religion or national or-
5 igin.

6 (f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that
7 violates this subsection [*and*] **or** subsection (3) of this section.

8 (g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of,
9 or on account of having aided or encouraged any other person in the exercise of, any right granted
10 or protected by this section.

11 **(h) Deny access to, or membership or participation in, any multiple listing service, real**
12 **estate brokers' organization or other service, organization or facility relating to the business**
13 **of selling or renting dwellings, or discriminate against any person in the terms or conditions**
14 **of the access, membership or participation.**

15 (2)(a) [*No*] **A** person whose business includes engaging in residential real estate related trans-
16 actions [*shall*] **may not** discriminate against any person in making **a transaction** available [*such a*
17 *transaction*], or in the terms or conditions of [*such a*] **the** transaction, because of race, color, sex,
18 marital status, source of income, familial status, religion or national origin.

19 (b) As used in this subsection, "residential real estate related transaction" means any of the
20 following:

21 (A) The making or purchasing of loans or providing other financial assistance:

22 (i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

23 (ii) For securing residential real estate; or

24 (B) The selling, brokering or appraising of residential real property.

25 (3) [*No*] **A** real estate licensee [*shall*] **may not** accept or retain a listing of real property for
26 sale, lease or rental with an understanding that a purchaser may be discriminated against with re-
27 spect to the sale, rental or lease thereof because of race, color, sex, marital status, source of income,
28 familial status, religion or national origin.

29 (4) [*No person shall*] **A person may not**, for profit, induce or attempt to induce any other person
30 to sell or rent any dwelling by representations regarding the entry or prospective entry into the
31 neighborhood of a person or persons of a particular race, color, sex, marital status, source of in-
32 come, familial status, religion or national origin.

33 (5) For purposes of [*subsections (1) to (4) of*] this section, "source of income" does not include
34 federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income
35 derived in an illegal manner.

36 (6) [*Subsections (1) and (3) of this section do*] **This section does** not apply with respect to sex
37 distinction, discrimination or restriction if the real property involved is such that the application
38 of [*subsections (1) and (3) of*] this section would necessarily result in common use of bath or bedroom
39 facilities by unrelated persons of opposite sex.

40 (7)(a) This section does not apply to familial status distinction, discrimination or restriction with
41 respect to housing for older persons.

42 (b) As used in this subsection, "housing for older persons" means housing:

43 (A) Provided under any state or federal program that is specifically designed and operated to
44 assist elderly persons, as defined by the state or federal program;

45 (B) Intended for, and solely occupied by, persons 62 years of age or older; or

1 (C) Intended and operated for occupancy by at least one person 55 years of age or older per
2 unit. Housing qualifies as housing for older persons under this subparagraph if:

3 (i) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or
4 older per unit; and

5 (ii) Policies and procedures [*which*] **that** demonstrate an intent by the owner or manager to
6 provide housing for persons 55 years of age or older are published and adhered to.

7 (c) Housing [*shall*] **does** not fail to meet the requirements for housing for older persons if:

8 (A) Persons residing in [*such*] **the** housing as of September 13, 1988, do not meet the require-
9 ments of paragraph (b)(B) or (C) of this subsection. However, new occupants of [*such*] **the** housing
10 shall meet the age requirements of paragraph (b)(B) or (C) of this subsection; or

11 (B) The housing includes unoccupied units[. *However, such*] **and the** units are reserved for oc-
12 cupancy by persons who meet the age requirements of paragraph (b)(B) or (C) of this subsection.

13 (d) Nothing in this section limits the applicability of any reasonable local, state or federal re-
14 strictions regarding the maximum number of occupants permitted to occupy a dwelling.

15 [(8) *In the sale, lease or rental of real estate, no person shall disclose to any person that an occu-
16 pant or owner of real property has or died from human immunodeficiency virus or acquired immune
17 deficiency syndrome.*]

18 [(9)] **(8)** The provisions of subsection (1)(a) to (d) and (f) of this section that prohibit actions
19 based upon familial status or sex do not apply to the renting of space within a single-family resi-
20 dence if the owner actually maintains and occupies the residence as the owner's primary residence
21 and all occupants share some common space within the residence.

22 [(10)] **(9)** Any violation of this section is an unlawful practice.

23 **SECTION 3.** ORS 659A.820 is amended to read:

24 659A.820. (1) Any person claiming to be aggrieved by an alleged unlawful practice may file with
25 the Commissioner of the Bureau of Labor and Industries a [*verified*] written complaint that states
26 the name and address of the person alleged to have committed the unlawful practice. The complaint
27 may be signed by the complainant or the attorney for the complainant. The complaint must set forth
28 the acts or omissions alleged to be an unlawful practice. The complainant may be required to set
29 forth in the complaint such other information as the commissioner may require. Except as provided
30 in ORS 654.062, a complaint under this section must be filed no later than one year after the alleged
31 unlawful practice.

32 (2) A complaint may not be filed under this section if a civil action has been commenced in state
33 or federal court alleging the same matters.

34 (3) [*Any*] **If an** employer [*whose*] **has one or more** employees[, *or any of them,*] **who** refuse or
35 threaten to refuse to abide by the provisions of this chapter or to cooperate in carrying out the
36 purposes of this chapter, **the employer** may file with the commissioner a [*verified*] complaint re-
37 questing assistance by conciliation or other remedial action.

38 (4) **Except as provided in subsection (5) of this section,** the commissioner shall notify the
39 person against whom a complaint is made within 30 days of the filing of the complaint. The
40 [*notice*] **commissioner** shall include **in the notice** the date, place and circumstances of the alleged
41 unlawful practice.

42 (5) **The commissioner shall notify the person against whom a complaint alleging an un-
43 lawful practice under ORS 659A.145 or 659A.421 is made within 10 days of the filing of the
44 complaint. The commissioner shall include in the notice:**

45 (a) **The date, place and circumstances of the alleged unlawful practice; and**

1 **(b) A statement that the person against whom the complaint is made may file an answer**
2 **to the complaint.**

3 **SECTION 4.** ORS 659A.835 is amended to read:

4 659A.835. (1) **Except as provided in subsection (2) of this section,** after the filing of any
5 complaint under ORS 659A.820 or 659A.825, the Commissioner of the Bureau of Labor and Industries
6 may investigate the complaint. *[If by reason of the investigation the commissioner determines that*
7 *additional persons should be named as respondents in the complaint, the commissioner may add the*
8 *names of those persons to the complaint as respondents. The commissioner may name additional per-*
9 *sons as respondents under this subsection only during the course of the investigation.]*

10 **(2) The commissioner shall commence an investigation of any complaint filed under ORS**
11 **659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 within 30**
12 **days of the filing of the complaint.**

13 **(3) If, by reason of an investigation under this section, the commissioner determines that**
14 **additional persons should be named as respondents in the complaint, the commissioner may**
15 **add the names of those persons to the complaint. The commissioner may name additional**
16 **persons as respondents under this subsection only during the course of the investigation.**

17 [(2)] (4) If an investigation under this section discloses any substantial evidence supporting the
18 allegations of a complaint, the commissioner shall issue a finding of substantial evidence. The find-
19 ing must be sent to the respondent and the complainant and must be signed by the commissioner
20 or the commissioner's designee. The finding must include at least the following information:

21 (a) The names of the complainant and the respondent;

22 (b) The allegations contained in the complaint;

23 (c) Facts found by the commissioner that are related to the allegations of the complaint; and

24 (d) A statement that the investigation of the complaint has disclosed substantial evidence sup-
25 porting the allegations of the complaint.

26 **SECTION 5.** ORS 659A.845 is amended to read:

27 659A.845. (1) If the Commissioner of the Bureau of Labor and Industries issues a finding of
28 substantial evidence under ORS 659A.835 and the matter cannot be settled through conference,
29 conciliation and persuasion, or if the commissioner determines that the interest of justice requires
30 that a hearing be held without first seeking settlement, the commissioner shall prepare formal
31 charges. Formal charges must contain all information required for a notice under ORS 183.415 and
32 must specify the allegations of the complaint to which the respondent will be required to make re-
33 sponse. Formal charges shall also set the time and place for hearing the formal charges.

34 **(2)(a)** The commissioner shall serve the formal charges on all respondents found to have en-
35 gaged in the unlawful practice.

36 **(b) If the formal charges allege a violation of ORS 659A.145 or 659A.421, the commissioner**
37 **shall serve on the named respondents and complainants the formal charges and a notice of**
38 **the right of the respondents and complainants under ORS 659A.870 to opt for a court trial**
39 **instead of a hearing under ORS 659A.850.**

40 **SECTION 6.** ORS 659A.850 is amended to read:

41 659A.850. (1) All proceedings before the Commissioner of the Bureau of Labor and Industries
42 under this section shall be conducted as contested case proceedings under the provisions of ORS
43 chapter 183. The commissioner may appoint a special tribunal or hearing officer to hear the matter.
44 The commissioner may affirm, reverse, modify or supplement the determinations, conclusions or or-
45 der of any special tribunal or hearing officer appointed under this subsection. The scheduling of a

1 hearing under this section does not affect the ability of the commissioner and any respondent to
2 thereafter settle the matters alleged in the complaint through conference, conciliation and persua-
3 sion.

4 (2) After considering all the evidence, the commissioner shall cause to be issued findings of facts
5 and conclusions of law.

6 (3) The commissioner shall issue an order dismissing the formal charges against any respondent
7 not found to have engaged in any unlawful practice alleged in the complaint.

8 (4) After a hearing under this section, the commissioner shall issue an appropriate cease and
9 desist order against any respondent found to have engaged in any unlawful practice alleged in the
10 complaint. The order must be signed by the commissioner and must take into account the need to
11 supervise compliance with the terms of order. The order may require that the respondent:

12 (a) Perform an act or series of acts designated in the order that are reasonably calculated to:

13 (A) Carry out the purposes of this chapter;[, to]

14 (B) Eliminate the effects of the unlawful practice that the respondent is found to have engaged
15 in, [and to] **including but not limited to an award of actual damages suffered by the**
16 **complainant and injunctive or other equitable relief; and**

17 (C) Protect the rights of the complainant and other persons similarly situated;

18 (b) Submit reports to the commissioner on the manner of compliance with other terms and con-
19 ditions specified in the commissioner's order, and take other action as may be required to ensure
20 compliance with the commissioner's order; and

21 (c) Refrain from any action specified in the order that would jeopardize the rights of the
22 complainant or other persons similarly situated, or that would otherwise frustrate the purposes of
23 this chapter.

24 (5) A cease and desist order issued under subsection (4) of this section may be recorded in the
25 County Clerk Lien Record in the manner provided by ORS 205.125 and enforced in the manner
26 provided by ORS 205.126. In addition to enforcement under ORS 205.126, the order may be enforced
27 by writ of mandamus or a civil action to compel specific performance of the order.

28 **SECTION 7.** ORS 659A.855 is amended to read:

29 659A.855. (1)(a) If the Commissioner of the Bureau of Labor and Industries files a complaint
30 under ORS 659A.825 alleging an unlawful practice other than an unlawful employment practice, and
31 the commissioner finds that the respondent engaged in the unlawful practice, the commissioner may,
32 in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each
33 respondent found to have committed the unlawful practice.

34 [(2)] (b) Civil penalties under this [section] **subsection** may not exceed \$1,000 for each violation.
35 [Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.]

36 (2)(a) **Notwithstanding subsection (1)(b) of this section, if a complaint is filed under ORS**
37 **659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or dis-**
38 **crimination under federal housing law and the commissioner finds that a respondent has**
39 **engaged in an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under**
40 **federal housing law, the commissioner may assess against the respondent, in addition to any**
41 **other relief available, a civil penalty:**

42 (A) **In an amount not exceeding \$11,000;**

43 (B) **Except as provided in paragraph (b) of this subsection, in an amount not exceeding**
44 **\$27,500 if the respondent has been adjudged to have engaged in one other discriminatory**
45 **housing practice during the five-year period ending on the date of the filing of the specific**

1 charges leading to the hearing; or

2 (C) Except as provided in paragraph (b) of this subsection, in an amount not exceeding
3 \$55,000 if the respondent has been adjudged to have engaged in two or more discriminatory
4 housing practices during the seven-year period ending on the date of the filing of the specific
5 charges leading to the hearing.

6 (b) If acts constituting the discriminatory housing practice that is the object of the
7 hearing were committed by the same individual who has been previously adjudged to have
8 committed acts constituting a discriminatory housing practice, the civil penalties listed in
9 paragraph (a)(B) and (C) of this subsection may be imposed regardless of the period of time
10 between the previous and subsequent discriminatory housing practices.

11 (3) Civil penalties under this section shall be imposed in the manner provided by ORS
12 183.745.

13 [(3)] (4) All sums collected as civil penalties under this section must first be applied toward re-
14 imbursement of the costs incurred in determining the violations, conducting hearings and assessing
15 and collecting the penalty. The remainder, if any, shall be paid over by the commissioner to the
16 Department of State Lands for the benefit of the Common School Fund. The department shall issue
17 a receipt for the money to the commissioner.

18 **SECTION 8.** ORS 659A.870 is amended to read:

19 659A.870. (1) Except as provided in this section, the filing of a civil action by a person in circuit
20 court pursuant to ORS 659A.885, or in federal district court under applicable federal law, waives the
21 right of the person to file a complaint with the Commissioner of the Bureau of Labor and Industries
22 under ORS 659A.820 with respect to the matters alleged in the civil action.

23 (2) The filing of a complaint under ORS 659A.820 is not a condition precedent to the filing of
24 any civil action.

25 (3) If a person files a civil action claiming a violation of ORS 659A.145 or 659A.421 or of an
26 equivalent federal law, the filing does not constitute an election of remedies or a waiver of the right
27 of the person to file a complaint with the commissioner under ORS 659A.820, but the commissioner
28 shall dismiss the complaint upon the commencement of a trial in the civil action.

29 (4)(a) The filing of a complaint under ORS 659A.820 by a person claiming a violation of ORS
30 659A.145 or 659A.421 or of an equivalent federal law does not constitute an election of remedies or
31 a waiver of the right of the person to file a civil action with respect to the same matters, but a civil
32 action may not be filed after a hearing officer has commenced a hearing on the record under this
33 chapter with respect to the allegations of the complaint.

34 (b) A respondent or complainant named in a complaint filed under ORS 659A.820 or
35 659A.825 claiming a violation of ORS 659A.145 or 659A.421 may elect to have the matter heard
36 in circuit court. The election must be made in writing and received by the commissioner
37 within 20 days after service of formal charges under ORS 659A.845. If the respondent or the
38 complainant makes the election, the commissioner shall pursue the matter in court on behalf
39 of the complainant at no cost to the complainant.

40 (c) If the Attorney General or the commissioner files a complaint under ORS 659A.825,
41 the Attorney General or the commissioner may elect to have the matter heard in circuit
42 court.

43 (d) If the respondent, the complainant, the Attorney General or the commissioner do not
44 elect to have the matter heard in circuit court, the commissioner may conduct a hearing on
45 the formal charges under ORS 659A.850.

1 (5) A person who has filed a complaint under ORS 659A.820 need not receive a 90-day notice
2 under ORS 659A.880 before commencing a civil action that is based on the same matters alleged in
3 the complaint filed with the commissioner.

4 (6) **Except as provided in subsections (3) and (4) of this section,** this section [*shall not be*
5 *construed to*] **does not** limit or alter in any way the authority or power of the commissioner, or
6 [*to*] limit or alter in any way any of the rights of an individual complainant, until and unless the
7 complainant commences a civil action.

8 **SECTION 9.** ORS 659A.885 is amended to read:

9 659A.885. (1) Any individual 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 [*such*] **any** other equitable relief [*as*] **that** may be appro-
12 priate, including but not limited to reinstatement or the hiring of employees with or without back
13 pay. A court may order back pay in an action under this subsection only for the two-year period
14 immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the
15 Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced,
16 the two-year period immediately preceding the filing of the action. In any action under this sub-
17 section, the court may allow the prevailing party costs and reasonable attorney fees at trial and on
18 appeal. Except 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 for the following unlawful
23 practices: ORS 25.337, 25.424, 399.235, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069,
24 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233,
25 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.318 and 659A.421 [*(1) or (3)*].

26 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
27 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262,
28 659A.318 or 659A.421 [*(1) or (3)*]:

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

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

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

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

35 (4) In any action under subsection (1) of this section alleging a violation of ORS 659A.203 or
36 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this sec-
37 tion, compensatory damages or \$250, whichever is greater.

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

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

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

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

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

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

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

14 **(6) When the commissioner or the Attorney General has reasonable cause to believe that**
15 **a person or group of persons is engaged in a pattern or practice of resistance to the rights**
16 **protected by ORS 659A.145 or 659A.421 or an equivalent federal law, or that a group of indi-**
17 **viduals has been denied any of the rights protected by ORS 659A.145 or 659A.421 or an**
18 **equivalent federal law, the commissioner or the Attorney General may file a civil action on**
19 **behalf of the aggrieved individuals in the same manner as an individual or group of individ-**
20 **uals may file a civil action under this section. In a civil action filed under this subsection,**
21 **the court may assess against the respondent, in addition to the relief authorized under sub-**
22 **sections (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 **(7) In any action under subsection (1) of this section alleging a violation of ORS 659A.145**
26 **or 659A.421 or alleging discrimination under federal housing law, when the commissioner is**
27 **pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable**
28 **attorney fees to the commissioner if the commissioner prevails in the action. The court may**
29 **award reasonable attorney fees and expert witness fees incurred by a defendant that prevails**
30 **in the action if the court determines that the commissioner had no objectively reasonable**
31 **basis for asserting the claim or for appealing an adverse decision of the trial court.**

32 **SECTION 10.** ORS 90.390 is amended to read:

33 90.390. (1) A landlord may not discriminate against a tenant in violation of local, state or federal
34 law, including ORS 346.630, 346.660, 346.690, 659A.145 and 659A.421.

35 (2) If the tenant can prove that the landlord [*has in fact acted in violation of*] **violated** subsection
36 (1) of this section, the tenant has a defense in any discriminatory action brought by the landlord
37 against the tenant for possession, unless the tenant is in default in rent.

38 (3) A tenant may prove a landlord's discrimination in violation of ORS 659A.145 or 659A.421 by
39 demonstrating that a facially neutral housing policy has a disparate adverse impact on [*members of*
40 *a protected class as described in ORS 659A.424*] **persons based on the characteristics described**
41 **in ORS 659A.145 or 659A.421.**

42 (4) A landlord may not discriminate against an applicant because the applicant was [*in fact*] a
43 defendant in an action for possession pursuant to ORS 105.105 to 105.168 that prior to the applica-
44 tion was dismissed in favor of the defendant or that resulted in final judgment for the defendant. If
45 the landlord knowingly acts in violation of this subsection, the applicant may recover actual dam-

1 ages or \$200, whichever is greater.

2 **SECTION 11. ORS 659A.424 is repealed.**

3 **SECTION 12. The amendments to statutes by sections 1 to 10 and 13 of this 2005 Act**
4 **apply to conduct occurring on or after the effective date of this 2005 Act.**

5 **SECTION 13.** ORS 659A.800 is amended to read:

6 659A.800. (1) The Bureau of Labor and Industries may take all steps necessary to eliminate and
7 prevent unlawful practices. To eliminate the effects of unlawful discrimination, the bureau may
8 promote voluntarily affirmative action by employers, labor organizations, governmental agencies,
9 private organizations and individuals and may accept financial assistance and grants or funds for
10 such purpose.

11 (2) The bureau is given general jurisdiction and power for the purpose of eliminating and pre-
12 venting unlawful practices.

13 (3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner
14 and such other personnel as may be necessary to carry into effect the powers and duties conferred
15 upon the Bureau of Labor and Industries and the commissioner under this chapter and may pre-
16 scribe the duties and responsibilities of [*such*] **the** employees. The commissioner may delegate any
17 of the powers under this chapter to the deputy commissioner employed under this subsection.

18 (4) The commissioner or the designee of the commissioner may issue subpoenas to require the
19 production of evidence necessary for the performance of any of the duties under this chapter.

20 (5) [*No*] **A** person delegated any powers or duties under this section and ORS 659A.805 [*shall*]
21 **may not** act as prosecutor and examiner in processing any violation under this chapter.

22 **(6) The commissioner and the Department of Consumer and Business Services shall adopt**
23 **an interagency agreement to coordinate the following:**

24 **(a) When the bureau, in the course of performing its duties under this chapter, learns**
25 **of complaints concerning architectural barriers related to design or construction that re-**
26 **strict access to covered multifamily dwellings, as defined in ORS 447.210, by persons with**
27 **disabilities, the bureau shall refer the complaints to the department. The department shall**
28 **refer the complaints to the appropriate administrative authority or municipality.**

29 **(b) When the department, in the course of performing its duties, learns of complaints**
30 **concerning architectural barriers related to design or construction that restrict access to**
31 **covered multifamily dwellings, as defined in ORS 447.210, by persons with disabilities, the**
32 **department shall refer the complaints to the bureau.**

33 **SECTION 14.** For the purposes of ORS 659A.145 and 659A.421, “discrimination” includes:

34 (1) Failure to design and construct a covered multifamily dwelling as required by the Fair
35 Housing Act (42 U.S.C. 3601 et seq.); and

36 (2) Failure to renovate, alter or modify a building as required by ORS 447.241.

37 **SECTION 15.** Section 14 of this 2005 Act becomes operative 60 days after the Legislative
38 Assembly receives notice from the Bureau of Labor and Industries that the bureau has en-
39 tered into a contract with the United States Department of Housing and Urban Development
40 to provide services under a fair housing assistance program.