

Chapter 659

1977 REPLACEMENT PART

Enforcement of Civil Rights; Fraudulent Employment Practices

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ENFORCEMENT OF CIVIL RIGHTS

659.010 Definitions for ORS 659.010 to 659.110 and 659.400 to 659.435. As used in ORS 659.010 to 659.110 and 659.400 to 659.435, unless the context requires otherwise:

(1) "Bureau" means the Bureau of Labor.

(2) "Cease and desist order" means an order signed by the commissioner, taking into account the subject matter of the complaint and the need to supervise compliance with the terms of any specific order issued to eliminate the effects of any unlawful practice found, addressed to a respondent requiring him to:

(a) Perform an act or series of acts designated therein and reasonably calculated to carry out the purposes of ORS 659.010 to 659.110 and 659.400 to 659.435, eliminate the effects of an unlawful practice found, and protect the rights of the complainant and other persons similarly situated;

(b) Take such action and submit such designated reports to the commissioner on the manner of compliance with other terms and conditions specified in his order as may be required to assure compliance therewith; or

(c) Refrain from any action designated in the order which would jeopardize the rights of the complainant or other person similarly situated or frustrate the purpose of ORS 659.010 to 659.110 and 659.400 to 659.435.

(3) "Commissioner" means the Commissioner of the Bureau of Labor.

(4) "Conciliation agreement" means a written agreement settling and disposing of a complaint under ORS 659.010 to 659.110 and 659.400 to 659.435 signed by a respondent and an authorized official of the Bureau of Labor.

(5) "Employee" does not include any individual employed by his parents, spouse or child or in the domestic service of any person.

(6) "Employer" means any person, including state agencies, political subdivisions and municipalities, who in this state, directly or through an agent, engages or utilizes the personal service of one or more employees reserving the right to control the means by which such service is or will be performed.

(7) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(8) "Entity" includes employers, labor organizations, employment agencies, places of public accommodation as defined in ORS

30.675 or vocational, professional or trade schools.

(9) "Labor organization" includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employes.

(10) "National origin" includes ancestry.

(11) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(12) "Respondent" includes any person or entity against whom a complaint or charge of unlawful practices is filed with the commissioner or whose name has been added to such complaint or charge pursuant to subsection (1) of ORS 659.050.

(13) "Unlawful employment practice" includes only those unlawful employment practices specified in ORS 659.030.

(14) "Unlawful practice" means any unlawful employment practice or any distinction, discrimination or restriction on account of race, religion, color, sex, marital status or national origin made by any place of public accommodation as defined in ORS 30.675, by any person acting on behalf of any such place or by any person aiding or abetting any such place or person in violation of ORS 30.685, or any violation of ORS 345.240, 659.033, 659.037, or rules adopted pursuant to subsection (1) of ORS 659.103, but does not include a refusal to furnish goods or services when the refusal is based on just cause.

[Amended by 1957 c.724 §3; 1959 c.547 §5, 1959 c.689 §13; 1961 c.247 §2; 1963 c.622 §3; 1969 c.618 §1, 1973 c.714 §5, 1977 c.770 §12]

659.015 Declaration of policy against discrimination in employment because of age. It is declared to be the public policy of Oregon that available manpower should be utilized to the fullest extent possible. To this end the abilities of an individual, and not any arbitrary standards which discriminate against an individual solely because of his age, should be the measure of the individual's fitness and qualification for employment.

[1959 c.547 §2; 1959 c.689 §2]

659.020 Declaration of policy against discrimination; opportunity to obtain employment without discrimination recognized as a civil right; exception of religious group. (1) It is declared to be the public policy of Oregon that practices of

discrimination against any of its inhabitants because of race, religion, color, sex, marital status or national origin are a matter of state concern and that such discrimination threatens not only the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

(2) The opportunity to obtain employment without discrimination because of race, religion, color, sex, marital status or national origin hereby is recognized as and declared to be a civil right. However, this section shall not be construed to prevent a bona fide church or sectarian religious institution, including but not limited to a school, hospital or church camp, from preferring an employe or applicant for employment of one religious sect or persuasion over another when:

(a) That religious sect or persuasion to which the employe or applicant belongs is the same as that of such church or institution.

(b) In the opinion of such bona fide church or sectarian religious institution, such a preference will best serve the purposes of such church or institution.

(c) The employment involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity which has no necessary relationship to the church or institution, or to its primary purposes.

[Amended by 1969 c.618 §2; 1977 c.770 §13]

659.022 Purpose of ORS 659.010 to 659.110 and 659.400 to 659.435. The purpose of ORS 659.010 to 659.110 and 659.400 to 659.435 is to encourage the fullest utilization of available manpower by removing arbitrary standards of race, religion, color, sex, marital status, national origin or age as a barrier to employment of the inhabitants of this state; to insure human dignity of all people within this state, and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of discrimination of any kind based on race, religion, color, sex, marital status or national origin. To accomplish this purpose the Legislative Assembly intends by ORS 659.010 to 659.110 and 659.400 to 659.435 to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of discrimination because of race, religion, color, sex, marital status or national origin are based.

(2) An adequate remedy for persons aggrieved by certain acts of discrimination

because of race, religion, color, sex, marital status or national origin or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of discrimination through a procedure involving investigation, conference, conciliation and persuasion; to encourage the use in good faith of such machinery by all parties to a complaint of discrimination; and to discourage unilateral action which makes moot the outcome of final administrative or judicial determination on the merits of such a complaint.

[1963 c.622 §2; 1969 c.618 §2a; 1977 c.770 §14]

659.024 [1959 c.547 §3; 1963 c.622 §5; 1965 c.575 §1; 1973 c.189 §2; repealed by 1977 c.770 §15]

659.026 [1959 c.689 §3; 1973 c.189 §3; repealed by 1977 c.770 §15]

659.028 Seniority systems and benefit plans not unlawful employment practices.

It shall not be unlawful for an employer, employment agency, or labor organization to observe the terms of a bona fide seniority system or any bona fide employe benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employe benefit plan shall excuse the failure to hire any individual.

[1969 c.618 §8]

Note: 659.028 was enacted into law by the Legislative Assembly but was not added to or made a part of 659.010 to 659.110 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation

659.029 "Because of sex" defined. For purposes of ORS 659.030, the phrase "because of sex" includes, but is not limited to, because of pregnancy, childbirth and related medical conditions or occurrences. Women affected by pregnancy, childbirth or related medical conditions or occurrences shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work by reason of physical condition, and nothing in this section shall be interpreted to permit otherwise.

[1977 c.330 §2]

659.030 What are unlawful employment practices. (1) For the purposes of ORS 659.010 to 659.110 and 659.400 to 659.435, it is an unlawful employment practice:

(a) For an employer, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older and under 65 years of age, or because of the race, religion, color, sex, national origin, marital status or age of any other person with whom the individual associates, or because of a juvenile record, that has been expunged pursuant to ORS 419.805 to 419.835, of any individual, to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. However, discrimination is not an unlawful employment practice if such discrimination results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(b) For a labor organization, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older and under 65 years of age, or because of a juvenile record, that has been expunged pursuant to ORS 419.805 to 419.835, to exclude or to expel from its membership such individual or to discriminate in any way against any such individual or any other person.

(c) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older and under 65 years of age, or on the basis of an expunged juvenile record, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification. But identifying employees according to race, religion, color, sex, national origin, marital status, or age does not violate this section unless the commissioner, after hearing conducted pursuant to ORS 659.103, determines that such a designation expresses an intent to limit, specify or discriminate on the basis of race, religion, color, sex, national origin, marital status or age.

(d) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbid-

den by this section or because he has filed a complaint, testified or assisted in any proceeding under ORS 659.010 to 659.110 and 659.400 to 659.435 or has attempted to do so.

(e) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under ORS 659.010 to 659.110 and 659.400 to 659.435 or to attempt to do so.

(2) The provisions of this section apply to an apprentice under ORS chapter 660, but the selection of an apprentice on the basis of the ability to complete the required apprenticeship training and the industry average period of employment thereafter before attaining the age of 65 years is not an unlawful employment practice.

(3) The compulsory retirement of employees required by law at an age under 65 years is not an unlawful employment practice. [Amended by 1969 c.618 §3; 1977 c.770 §1; 1977 c.801 §1a]

659.031 "Purchaser" defined for ORS 659.033. As used in ORS 659.033, unless the context requires otherwise, "purchaser" includes an occupant, prospective occupant, lessee, prospective lessee, buyer or prospective buyer. [1959 c.584 §2; 1973 c.714 §6]

659.032 [1957 c.725 §2; repealed by 1959 c.584 §4]

659.033 Discrimination in selling, renting or leasing real property prohibited. (1) No person shall, because of race, color, sex, marital status, religion or national origin of any person:

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

(b) Expel a purchaser from any real property.

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

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

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property which indicates any preference, limitation, specification or discrimination based on race, color, sex, marital status, religion or national origin.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this section.

(2) No real estate broker or salesman shall accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, sex, marital status, religion or national origin.

(3) This section does not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

[1957 c.725 §3; 1959 c.584 §3; 1973 c.714 §7; 1975 c.384 §1]

659.034 [1957 c 725 §4; repealed by 1959 c.584 §4]

659.037 Notice that discrimination will be made in place of public accommodation prohibited; age exceptions. Except as provided by laws governing the consumption of alcoholic beverages by minors and the frequenting of minors in places of public accommodation where alcoholic beverages are served, and except for special rates or services offered to persons 55 years old and older, no person acting on behalf of any place of public accommodation as defined in ORS 30.675 shall publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind to the effect that any of the accommodations, advantages, facilities, services or privileges of such place of public accommodation will be refused, withheld from or denied to, or that any discrimination will be made against, any person on account of race, religion, sex, marital status, color, national origin or age if the individual is 18 years of age and older.

[1957 c.724 §10; 1973 c.714 §8; 1977 c.770 §2]

659.040 Complaints of unlawful employment practices. (1) Any person claiming to be aggrieved by an alleged unlawful employment practice, may, by himself or his attorney, make, sign and file with the commissioner a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of and which complaint shall set forth the particulars thereof. The complainant may be required to set forth in the complaint such

other information as the commissioner may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year after the alleged unlawful employment practice.

(2) Whenever he has reason to believe that any person, employer, labor organization or employment agency has committed an unlawful employment practice, the Attorney General or the commissioner may make, sign and file a complaint in the same manner as a complaint is filed under subsection (1) of this section.

(3) Any employer whose employes, or any of them, refuse or threaten to refuse to abide by ORS 659.010 to 659.110 and 659.400 to 659.435 or to cooperate in carrying out the purposes of said statutes may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

(4) The commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the charge. The notice shall include the date, place and circumstances of the alleged unlawful employment practice.

[Amended by 1957 c 724 §13; 1971 c.723 §1; 1977 c.453 §2; 1977 c 770 §3]

659.045 Complaints of discrimination in housing or in place of public accommodation or in private vocational, professional or trade school. (1) Any person claiming to be aggrieved by an alleged distinction, discrimination or restriction on account of race, religion, sex, marital status, color, national origin or age if the individual is 18 years of age or older made by any place of public accommodation as defined in ORS 30.675 or by any person acting on behalf of such place or in violation of ORS 30.685 or any person claiming to be aggrieved by a violation of ORS 345.240 or any person claiming to be aggrieved by a violation of ORS 659.033 may, by himself or his attorney, make, sign and file with the Commissioner of the Bureau of Labor a verified complaint in writing which shall state the name and address of the person, the place of accommodation or the vocational, professional or trade school alleged to have committed the act complained of and which complaint shall set forth the particulars thereof. The complainant may be required to set forth in the complaint such other information as the Commissioner of the Bureau of Labor may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year

after the alleged distinction, discrimination or restriction.

(2) The Attorney General or the Commissioner of the Bureau of Labor may make, sign and file a complaint in a like manner as a complaint filed under subsection (1) of this section whenever he has reason to believe that any place of public accommodation or any person acting on behalf of such place or any person aiding or abetting such place or person has denied any person his rights under ORS 30.670 or 30.685 or has violated ORS 659.037 or that a violation of ORS 345.240 has occurred or that any person has violated the provisions of ORS 659.033.

[1957 c.724 §5; 1969 c.618 §4; 1973 c.714 §9; 1977 c.453 §2; 1977 c.770 §4]

659.050 Settlement by conciliation; written agreement. (1) After the filing of any complaint under ORS 659.040 or 659.045, the commissioner may cause prompt investigation to be made in connection therewith. If during the course of such investigation or upon the conclusion thereof it appears to the commissioner that additional persons should be named as respondents in the complaint the names of such persons may be added as respondents thereto. If the investigation discloses any substantial evidence supporting the allegations of the complaint the commissioner may cause immediate steps to be taken through conference, conciliation and persuasion to effect a settlement of the complaint and eliminate the effects of the unlawful practice and to otherwise carry out the purpose of ORS 659.010 to 659.110 and 659.400 to 659.435.

(2) The terms of any settlement of a complaint under this section shall be contained in a written conciliation agreement filed with the commissioner. Such agreement may include any or all terms and conditions which may be included in a cease and desist order.

(3) The commissioner may relax any terms or conditions of a conciliation agreement or cease and desist order, the performance of which would cause an undue hardship on the respondent or another person and are not essential to protection of the complainant's rights. In the absence of such relaxation by the commissioner, no respondent shall violate any terms or conditions of a cease and desist order or conciliation agreement to which he was a party; nor shall his agent or successor in

interest violate any terms or conditions thereof.

[Amended by 1957 c.724 §6; 1963 c.622 §6, 1971 c.723 §2; 1975 c.503 §1]

659.055 Complainant not to be deprived of services, real property or employment pending determination of complaint. Prior to a final administrative determination on the merits of a complaint filed against him under ORS 659.010 to 659.110 and 659.400 to 659.435 and subsequent to receipt of notice from the commissioner or his deputy that such complaint has been filed subject to ORS 659.105, no respondent shall, with an intention to defeat a purpose of this chapter, take any action which makes unavailable to the complainant therein, any services, real property, employment or employment opportunities sought by said complainant upon administrative determination on the merits thereof.

[1963 c.622 §4]

659.060 Hearing on complaints; findings; orders. (1) In case of failure to resolve a complaint after reasonable effort under ORS 659.050, or if it appears to the commissioner that the interest of justice requires a hearing without first proceeding by conference conciliation and persuasion, the commissioner shall cause to be prepared and served upon each respondent required to appear at such hearing such specific charges, in writing, as he will be required to answer, together with a written notice of the time and place of such hearing.

(2) All proceedings before the commissioner under this section shall be in conformity with the provisions of ORS chapter 183.

(3) After considering all the evidence, the commissioner shall cause to be issued findings of facts, and conclusions of law. He shall also issue an order dismissing the charge and complaint against any respondent not found to have engaged in any unlawful practice charged and an appropriate cease and desist order against any respondent found to have engaged in any unlawful practice charged.

(4) Nothing stated in ORS 659.010 to 659.110 and 659.400 to 659.435 shall be construed to prevent a settlement of any case scheduled for hearing under the provisions of ORS 659.010 to 659.110 and 659.400 to 659.435 by conciliation, conference and persuasion, nor to prevent the commissioner from appointing a special tribunal or hearings examiner to hear and determine matters of fact, make conclusions of law and formulate an order appropriate to the facts as found

under ORS 659.010 to 659.110 and 659.400 to 659.435, reserving to himself or his designee the decision to affirm, reverse, modify or supplement the determinations, conclusions or order of the special tribunal or hearings examiner. The provisions of this subsection shall apply to all pending files in the Bureau of Labor as well as to files commenced on or after June 17, 1975.

[Amended by 1957 c.724 §7; 1961 c.145 §1; 1963 c.622 §7; 1971 c.418 §20; 1971 c.723 §3; 1975 c.419 §1]

659.070 Enforcement of conciliation agreements and orders. Any conciliation agreement or order issued by the commissioner under ORS 659.060 may be enforced by mandamus or injunction or by a suit in equity to compel specific performance of such order.

[Amended by 1963 c.622 §10]

659.080 [Amended by 1957 c.724 §8; 1961 c.145 §2; 1963 c.622 §11; repealed by 1971 c.734 §21]

659.085 Judicial review of orders under ORS 659.070. Judicial review of orders under ORS 659.070 shall be in accordance with ORS 183.310 to 183.500.

[1971 c.734 §103]

659.090 [Repealed by 1971 c.734 §21]

659.095 Complainant authorized to file civil suit when conciliation agreement not obtained; termination or dismissal of proceedings. If, within one year following the filing of a complaint pursuant to subsection (1) of ORS 659.040 or subsection (1) of 659.045 except a complaint alleging violations of ORS 30.670 or 30.685, the commissioner has been unable to obtain a conciliation agreement with a respondent, or has not caused to be prepared and attempted to serve the specific charges referred to in subsection (1) of ORS 659.060, the commissioner shall so notify the complainant in writing and within 90 days after the date of mailing of such notice, the complainant may file a civil suit as provided for in ORS 659.121. If prior to the expiration of one year from the filing of a complaint pursuant to this section the commissioner dismisses the complaint for any reason other than a dismissal pursuant to subsection (3) of ORS 659.060, or the complainant requests the commissioner to terminate proceedings with respect to the complaint, the commissioner shall notify the complainant of said dismissal or termination in writing, and within 90 days after the date of mailing of such notice of dismissal or termination, a civil suit may be filed as provided for in ORS 659.121.

[1977 c.453 §4]

Note: Section 7, chapter 453, Oregon Laws 1977, provides:

Sec. 7. The provisions of this Act shall apply only to those alleged acts of discrimination occurring on or after the effective date of this Act [October 4, 1977]

659.100 Elimination and prevention of discrimination by Bureau of Labor; subpenas. (1) The Bureau of Labor may eliminate and prevent discrimination in employment because of race, religion, color, sex, national origin, marital status, physical or mental handicap or age if the individual is 18 years of age and over and under 65 years of age, or by employers, employes, labor organizations, employment agencies or other persons and take other actions against discrimination because of race, religion, color, sex, national origin, marital status, physical or mental handicap or age if the individual is 18 years of age and over and under 65 years of age as provided in ORS 659.010 to 659.110 and 659.400 to 659.435. To eliminate the effects of discrimination the Bureau of Labor may promote voluntarily affirmative action by employers, labor organizations, governmental agencies, private organizations and individuals and may accept financial assistance and grants or funds for such purpose.

(2) The Bureau of Labor may eliminate and prevent violations of ORS 659.033 and may eliminate and prevent discrimination or restrictions because of race, religion, color, sex, marital status, physical or mental handicap, national origin or age of any individual 18 years of age and older by vocational, professional and trade schools licensed under any law of the State of Oregon, or by any place of public accommodation as defined in ORS 30.675 or by any person acting on behalf of such place or by any person aiding or abetting such place or person in violation of ORS 30.685. The Bureau of Labor hereby is given general jurisdiction and power for such purposes.

(3) The commissioner shall employ a deputy commissioner and such other personnel as may be necessary to carry into effect the powers and duties conferred upon the Bureau of Labor and the commissioner under ORS 659.010 to 659.110 and 659.400 to 659.435 and may prescribe the duties and responsibilities of such employes. The Commissioner of the Bureau of Labor may delegate any of his powers under ORS 659.010 to 659.110 and 659.400 to 659.435 to the deputy commissioner employed under this subsection.

(4) The commissioner or his designee may issue subpenas to require the production of

evidence necessary for the performance of any of his duties under ORS 659.010 to 659.115 and 659.400 to 659.435.

(5) No person delegated any powers or duties under this section and ORS 659.103 shall act as prosecutor and examiner in processing any violation under ORS 659.010 to 659.110 and 659.400 to 659.435.

[Amended by 1957 c.724 §9; 1959 c.547 §6; 1959 c.689 §14; 1961 c.145 §3; 1963 c.622 §8; part renumbered 659.103; 1969 c.618 §5; 1971 c.322 §1; 1973 c.714 §10; 1977 c.770 §5]

659.102 [Subsection (1) enacted as 1959 c.547 §4; subsection (2) enacted as 1959 c.689 §4; repealed by 1977 c.770 §15]

659.103 Rules for carrying out ORS 659.010 to 659.110 and 659.400 to 659.435.

(1) In accordance with any applicable provision of ORS chapter 183, the commissioner may adopt reasonable rules:

(a) Establishing what acts and communications constitute a notice, sign or advertisement that public accommodation or real property will be refused, withheld from, or denied to any person or that discrimination will be made against him because of race, religion, sex, marital status, color or national origin.

(b) Establishing what inquiries in connection with employment and prospective employment express a limitation, specification or discrimination as to race, religion, color, sex, national origin or age.

(c) Establishing what inquiries in connection with employment and prospective employment soliciting information as to race, religion, color, sex, national origin or age are based on bona fide job qualifications.

(d) Establishing rules for internal operation and rules of practice and procedure before the commissioner under ORS 659.010 to 659.110.

(e) Establishing rules covering any other matter required to carry out the purpose of ORS 659.010 to 659.110 and 659.400 to 659.435.

(2) In adopting rules under this section the commissioner shall consider the following factors, among others:

(a) The relevance of information requested to job performance in connection with which it is requested.

(b) Available reasonable alternative ways of obtaining requested information without soliciting responses as to race, religion, color, sex, marital status, national origin or age.

(c) Whether a statement or inquiry soliciting information as to race, religion, color, sex, marital status, national origin or age communicates an idea independent of an intention to limit, specify or discriminate as to race, religion, color, sex, marital status, national origin or age.

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind of transaction which it contemplates.

(e) The ease with which the independent idea relating to a legitimate objective of the kind of transaction contemplated could be communicated without connoting an intention to discriminate as to race, religion, color, sex, marital status, national origin or age.

[Formerly part of 659.100; 1969 c.618 §6; 1973 c.714 §11]

659.105 Cause of action for violation of ORS 659.050 or 659.055; defenses. (1)

Any person aggrieved by a violation of ORS 659.055 or subsection (3) of 659.050 shall have a cause of action against the violator thereof for damages sustained thereby and also for such additional sum as may be reasonable as exemplary damages.

(2) As a defense to any cause of action arising under this section based on a violation of ORS 659.055 the defendant may plead and prove that either:

(a) Subsequent to the defendant's conduct on which the plaintiff bases his cause of action, the complaint under ORS 659.040 or 659.045 has been dismissed by the commissioner or his deputy, or the court, either for want of evidence to proceed to a hearing or for lack of merit after such hearing; or

(b) In the case of the sale of real property defendant's conduct giving rise to plaintiff's cause of action was neither committed within the first two years after notice by the commissioner or his deputy of the filing of the complaint of discrimination under ORS 659.010 to 659.110 and 659.400 to 659.435, nor within any extended period of time obtained at the request of respondent for disposition of the case. The two-year provision in this paragraph shall apply to all defenses with regard to which, On June 30, 1975, either 90 days has not expired after the notice or the extended period of time has not expired.

[1963 c.622 §9; 1975 c.503 §2]

659.110 Wilful interference with administration of law and violation of orders of commissioner prohibited. (1) No person shall wilfully resist, prevent, impede or interfere with the commissioner or any of his authorized agents in the performance of duty

under ORS 659.010 to 659.110 and 659.400 to 659.435 or wilfully violate an order of the commissioner.

(2) An appeal or other procedure for the review of any such order is not deemed to be such wilful conduct.

[Amended by 1957 c.724 §14]

659.115 Advisory agencies and intergroup-relations councils. (1) The Commissioner of the Bureau of Labor shall create such advisory agencies and intergroup-relations councils, local, regional or state-wide, as in his judgment will aid in effectuating the purposes of ORS 659.010 to 659.110 and 659.400 to 659.435. The commissioner may empower them:

(a) To study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, religion, color, sex or national origin.

(b) To foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the state.

(c) To make recommendations to the commissioner for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education.

(2) Such advisory agencies and councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary expenses in accordance with laws and regulations governing state officers.

(3) The commissioner may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance.

[1955 c.534 §1; 1969 c.618 §7]

659.120 [Repealed by 1955 c.534 §2]

659.121 Civil suit for injunctive relief from unlawful employment practices; time for commencement; damages recoverable; effect on other remedies. (1) Any person claiming to be aggrieved by an unlawful employment practice prohibited by ORS 659.024, 659.026, 659.030, 659.410, 659.415 or subsection (1) of 659.425 may file a civil suit in circuit court for injunctive relief and the court may order such other equitable relief as may be appropriate, including but not limited to reinstatement or the hiring of employes with or without back pay. Back pay liability shall not accrue from a date more than two

years prior to the filing of a complaint with the Labor Commissioner, pursuant to ORS 659.040, or if no such complaint has first been filed, then, more than two years prior to the filing of the civil suit provided for in ORS 659.040, 659.045, 659.095 and this section. In any suit brought under this subsection, the court may allow the prevailing party costs and reasonable attorney fees.

(2) Any person claiming to be aggrieved by alleged violations of subsection (1) or (2) of ORS 659.033, subsection (2) of 659.425 or ORS 659.430 may file a civil action in circuit court to recover compensatory damages or \$200, whichever is greater, and punitive damages not to exceed \$2,500. The court may provide such equitable relief as it deems appropriate. In any action brought under this subsection, the court may allow the prevailing party costs and reasonable attorney fees.

(3) Where no complaint has been filed pursuant to subsection (1) of ORS 659.040 or subsection (1) of 659.045 and except as otherwise provided herein, the civil suit or action shall be commenced within one year of the occurrence of the alleged unlawful employment practice. Where a complaint has been filed pursuant to subsection (1) of ORS 659.040 or subsection (1) of 659.045 the civil suit or action provided for herein shall be commenced only in accordance with the time limitations provided for in ORS 659.095. The filing of a complaint with the commissioner under subsection (1) of ORS 659.040 or subsection (1) of 659.045 shall not be a condition precedent to the filing of civil suit or action under this section.

(4) This section shall not be construed to limit or alter in any way the authority or power of the commissioner or to limit or alter in any way any of the rights of an individual complainant until and unless the complainant commences civil suit or action. The filing of a civil suit or action shall constitute both an election of remedies as to the rights of that individual with respect to those matters alleged in the complaint filed with the commissioner, and a waiver with respect to the right to file a complaint with the commissioner pursuant to subsection (1) of ORS 659.040 or subsection (1) of 659.045.

[1977 c.453 §6]

659.130 [Repealed by 1955 c.534 §2]

659.131 Refusal to employ solely because of employment of another family member prohibited. (1) Except as provided in subsection (2) of this section, it is an unlaw-

ful employment practice for an employer to refuse to hire or to terminate the employment of an individual solely because another member of that individual's family presently works for that employer.

(2) An employer is not required to hire or to continue the employment of an individual if such action:

(a) Would constitute a violation of any law of this state or of the United States, or any rule promulgated pursuant thereto, with which the employer is required to comply;

(b) Would constitute a violation of the conditions of eligibility for receipt by the employer of financial assistance from the government of this state or the United States;

(c) Would place the individual in a position of exercising supervisory, appointment or grievance adjustment authority over a member of the individual's family or in a position of being subject to such authority which a member of the individual's family exercises; or

(d) Would cause the employer to disregard a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(3) As used in this section:

(a) "Employer" has the meaning for that term provided in ORS 659.010.

(b) "Member of an individual's family" means the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of the individual.

[1977 c.771 §1]

Note: 659.131 and 659.136 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 659 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

659.136 Enforcement of ORS 659.131.

ORS 659.131 shall be enforced by the Commissioner of the Bureau of Labor in the same manner as provided in ORS 659.040 to 659.110 for enforcement of an unlawful employment practice. Violation of ORS 659.131 subjects the violator to the same civil and criminal penalties as provided for violation of ORS 659.010 to 659.110.

[1977 c.771 §2]

Note: See note under 659.131.

659.140 [Repealed by 1955 c.534 §2]

DISCRIMINATION IN EDUCATION

659.150 Definition of "discrimination"; prohibition on discrimination in education; rules. (1) As used in this section, "discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, handicap, national origin, race, marital status, religion or sex.

(2) No person in Oregon shall be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

(3) The State Board of Education and the State Board of Higher Education shall establish rules necessary to insure compliance with subsection (2) of this section in the manner required by ORS chapter 183.

[1975 c.204 §1]

659.155 Sanctions for noncompliance with discrimination prohibitions. (1) Any public elementary or secondary school or community college determined by the Superintendent of Public Instruction to be in noncompliance with provisions of ORS 659.150 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Education.

(2) Any public institution of higher education determined by the Chancellor of the State Board of Higher Education to be in noncompliance with provisions of ORS 659.150 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Higher Education.

[1975 c.204 §3]

DECEPTIVE AND FRAUDULENT EMPLOYMENT PRACTICES

659.210 Deceptive representations or advertisements by persons employing labor prohibited. No person, firm, company, corporation, or association of any kind employing labor, shall, either in person or through any agent, manager or other legal representatives, induce, influence, persuade or

engage workmen to change from one place to another in this state or bring workmen of any class or calling into this state to work in any of the departments of labor by:

(1) Any false or deceptive representation or false advertising, concerning the amount or character of the compensation to be paid for any work, or as to the existence or nonexistence of a strike, lockout or other labor troubles pending between employer or employes.

(2) Neglecting to state in the advertisement, proposal or inducement for the employment of workmen that there is a strike, lockout or unsettled condition of labor, when such strike, lockout or unsettled condition of labor actually exists.

659.220 Right of workmen to recover damages and attorney fees. Any workman of this state, or any workman of another state, who is influenced, induced or persuaded to engage with any persons mentioned in ORS 659.210, through or by means of any of the things prohibited in that statute, shall have a right of action for recovery of all damages sustained in consequence of the false or deceptive representations, false advertising and false pretenses used to induce him to change his place of employment against any persons, corporations, companies, or associations, directly or indirectly causing such damages. In addition to all actual damages such workman may have sustained, he is entitled to recover such reasonable attorney fees as the court fixes, to be taxed as costs in any judgment recovered.

659.225 Requiring polygraph or lie detector test prohibited. No person, or agent or representative of such person, shall require, as a condition for employment or continuation of employment, any person or employe to take a polygraph test or any form of a so-called lie detector test.

[1963 c.249 §1]

659.230 Blacklisting and blackmailing prohibited. (1) No corporation, company or individual shall blacklist or publish, or cause to be blacklisted or published, any employe, mechanic or laborer discharged by such corporation, company or individual, with intent and for the purpose of preventing such employe, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual.

(2) No officer or agent of any corporation or any other person shall, in any manner,

conspire or contrive by correspondence or otherwise to prevent an employe discharged by such corporation or such person from securing employment.

659.240 Use of force or misrepresentation to prevent employment prohibited.

(1) No person shall, by force, threats, or intimidation, prevent, or endeavor to prevent, any person employed by another from continuing or performing his work, or from accepting any new work or employment.

(2) No person shall circulate any false written or printed matter, or be concerned in the circulation of any such matter, to induce others not to buy from or sell to or have dealings with any person, for the purpose or with the intent to prevent such person from employing any person, or to force or compel him to employ or discharge from his employment anyone, or to alter his mode of carrying on his business, or to limit or increase the number of his employes or the rate of wages or time of service.

659.250 Fraudulently accepting advancement and refusing to work prohibited.

(1) No person shall, with intent to defraud, sign for and accept or receive transportation to or in the direction of a place of employment provided by or at the instance or expense of the proposed employer, or knowingly or with intent to defraud accept or receive the benefit of any other pecuniary advancements made by or at the instance or expense of his employer, as advances against wages for labor to be performed, and neglect to render service or perform labor or pay in money equal in value to such transportation or other benefits accepted or received.

(2) The failure of any person to render service, perform labor, or pay in money for such transportation or other benefits, shall be prima facie evidence of his intent to defraud if:

(a) At or prior to the time of advancing such transportation or other benefits, the employer has delivered directly to such laborer or has filed in duplicate with the employment agency through which any such laborer is secured, one copy of which shall be delivered to such laborer, a written or printed statement setting forth the wages to be paid, the character of the work to be performed, and the living and working conditions; and

(b) The wages to be paid, the character of the work to be performed and the living and working conditions are as represented in such written or printed statement.

659.260 Employer prohibited from filing false statement with employment agency to secure labor. (1) No employer of labor shall directly or through any agent, knowing and with intent to deceive, file with any employment agency as a preliminary to securing labor, a false written or printed statement of wages to be paid, work to be performed or living and working conditions.

(2) The failure or refusal of such employer to employ any laborer, to whom such written or printed statement has been delivered, is prima facie evidence of intent to deceive.

659.320 Employer failing to make agreed payments to employe benefit fund. Whenever an employer has agreed in writing with any employe to make payments to a health and welfare, dental, pension, vacation, apprenticeship and industry fund or any other such plan for the benefit of the employes, or has entered into a collective bargaining agreement providing for such payments, it shall be unlawful for such an employer wilfully or with intent to defraud to fail to make the payments required by the terms of any such agreement.

[1957 c.548 §1; 1973 c.140 §1]

CIVIL RIGHTS OF PHYSICALLY AND MENTALLY HANDICAPPED

659.400 Definitions for ORS 659.400 to 659.435. As used in ORS 659.400 to 659.435, unless the context requires otherwise:

(1) "Employer" means any person who has six or more persons in his employ and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard.

(2) "Physical or mental handicap" means a physical or mental disability including but not limited to sensory disabilities and resulting in a handicap unrelated to a person's ability to perform the duties of a particular job or position for which he would otherwise be eligible and qualified for employment or promotion, or a handicap unrelated to a person's ability to acquire, rent or maintain property.

[1973 c.660 §2]

659.405 Policy. (1) It is declared to be the public policy of Oregon to guarantee physically and mentally handicapped persons

the fullest possible participation in the social and economic life of the state, to engage in remunerative employment, to use and enjoy places of public accommodation, resort or amusement, and to secure housing accommodations of their choice, without discrimination.

(2) The right to otherwise lawful employment without discrimination because of physical or mental handicap where the reasonable demands of the position do not require such a distinction, and the right to use and enjoy places of public accommodation, resort or amusement, and to purchase or rental of property without discrimination because of physical or mental handicap, are hereby recognized and declared to be the rights of all the people of this state. It is hereby declared to be the policy of the State of Oregon to protect these rights and ORS 659.400 to 659.435 shall be construed to effectuate such policy.

[1973 c.660 §3]

659.410 Discrimination against workmen applying for workmen's compensation benefits prohibited. It is an unlawful employment practice for an employer to discriminate against a workman with respect to hire or tenure or any term or condition of employment because the workman has applied for benefits or invoked or utilized the procedures provided for in ORS 656.001 to 656.794 and 656.802 to 656.824, or of 659.400 to 659.435 or has given testimony under the provisions of such sections.

[1973 c.660 §4]

659.415 Reinstatement of workmen receiving compensable injuries; certificate of physician evidencing ability to work. A workman who has sustained a compensable injury shall be reinstated by his employer to his former position of employment or employment which is available and suitable upon demand for such reinstatement, provided that the workman is not disabled from performing the duties of such position. A certificate by a duly licensed physician that the physician approves the workman's return to his regular employment shall be prima facie evidence that the workman is able to perform such duties.

[1973 c.660 §5]

659.420 Employment of injured workmen in other available and suitable work; certificate of physician; effect of collective bargaining agreement. (1) A workman who

has sustained a compensable injury and is disabled from performing the duties of his former regular employment shall, upon demand, be reemployed by his employer at employment which is available and suitable.

(2) A certificate of the workman's attending physician that he is able to perform described types of work shall be prima facie evidence of such ability.

(3) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of his employees.

[1973 c.660 §6]

659.425 Discrimination against mentally or physically handicapped in employment or public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property. (1) It is an unlawful employment practice for any employer to refuse to hire, employ or promote or to bar, discharge, dismiss, reduce in compensation, suspend, demote or discriminate in work activities, terms or conditions because an individual has a physical or mental handicap, unless it can be shown that the particular handicap prevents the performance of the work involved.

(2) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 30.675, or any person acting on behalf of such place, to make any distinction, discrimination or restriction on account of any physical or mental handicap of a customer or patron.

(3) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to perform the duties of a particular job or position, or of a person's inability to acquire, rent or maintain property.

[1973 c.660 §7]

659.430 Discrimination against mentally or physically handicapped persons in real property transactions prohibited; advertising discriminatory preference prohibited; assisting discriminatory practices prohibited. (1) No person engaged in the business of selling, renting or leasing real property shall solely because of physical or mental handicap of any person:

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

(b) Expel a purchaser, lessee or renter from any real property;

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

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

(2) No person shall publish, circulate, issue or display or cause to be published, circulated, issued or displayed any communication, notice, advertisement, or sign of any kind relating to the sale, rental or leasing of real property which indicates any preference, limitation, specification or discrimination based on physical or mental handicap.

(3) No real estate broker or salesman shall accept or retain a listing of real property for sale, lease, or rental with an understanding that the purchaser may be discriminated against with respect to the sale, rental or lease thereof solely because of physical or mental handicap.

(4) No person shall assist, induce, incite or coerce another person to permit an act or engage in a practice that violates this section.

(5) Any violation of this section is an unlawful practice.

[1973 c.660 §8]

659.435 Enforcement powers of commissioner. Any person claiming to be aggrieved by an unlawful employment practice may file a complaint under ORS 659.040, and any person claiming to be aggrieved by an unlawful practice may file a complaint under ORS 659.045. The Commissioner of the Bureau of Labor may then proceed and shall have the same enforcement powers, and if the complaint is found to be justified the complainant shall be entitled to the same remedies, under ORS 659.050 to 659.085 as in the case of any other complaint filed under ORS 659.040 or 659.045.

[1973 c.660 §9]

PENALTIES

659.990 Penalties. (1) Violation of ORS 659.110 is punishable, upon conviction, by imprisonment in the county jail for not more than one year or by a fine of not more than \$500, or by both.

(2) Violation of ORS 659.210 is punish-

able, upon conviction, by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year, or both.

(3) Violation of ORS 659.230 by any officer or agent of a corporation or any other person is punishable, upon conviction, by a fine of not less than \$50 nor more than \$250, or by imprisonment in the county jail not less than 30 nor more than 90 days, or both.

(4) Violation of ORS 659.240 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$200 or by imprisonment in the county jail for not less than one month nor more than six months.

(5) Violation of ORS 659.250 or 659.260 is punishable, upon conviction, by a fine of not more than \$100 or imprisonment in the county jail for not more than 60 days, or both.

(6) Any person who violates ORS 659.320, upon conviction, shall be required to make immediate restitution of delinquent payments to the fund or funds mentioned in ORS 659.320 and shall be punished by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year, or both.

(7) Violation of ORS 659.225 is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for not more than one year, or by both.

[Subsection (6) enacted as last sentence of 1957 c.548 §1; subsection (7) enacted as 1963 c.249 §2, 1973 c 140 §2]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law
Done at Salem, Oregon,
October 1, 1977.

Thomas G Clifford
Legislative Counsel

