

Chapter 659

1999 EDITION

Civil Rights; Unlawful Employment Practices;
Genetic Privacy

ENFORCEMENT OF CIVIL RIGHTS

- 659.010 Definitions for ORS 659.010 to 659.110 and 659.400 to 659.545
- 659.015 Declaration of policy against discrimination in employment because of age
- 659.020 Declaration of policy against discrimination; opportunity to obtain employment without discrimination recognized as a civil right; exception of religious group
- 659.022 Purpose of ORS 659.010 to 659.110 and 659.400 to 659.545
- 659.025 State agencies to carry out policy against discrimination in employment; evaluation of supervisors; affirmative action reports
- 659.027 Affirmative action reports to include information on contracts to minority businesses
- 659.028 Seniority systems and benefit plans not unlawful employment practices
- 659.029 "Because of sex" defined
- 659.030 What are unlawful employment practices
- 659.031 "Purchaser" defined for ORS 659.033
- 659.033 Discrimination in selling, renting or leasing real property prohibited
- 659.035 Discrimination or retaliation against employee for reporting certain violations or testifying at unemployment compensation hearing prohibited; enforcement
- 659.036 Employer prohibited from obtaining, seeking to obtain or using genetic information; remedies
- 659.037 Notice that discrimination will be made in place of public accommodation prohibited; age exceptions
- 659.038 Certain prohibitions based on familial status or sex not applicable to renting of space in single-family residence; conditions
- 659.040 Complaints of unlawful employment practices
- 659.045 Complaints of discrimination in housing, in place of public accommodation or in career school
- 659.050 Investigation of complaint; cease and desist order; penalty; written settlement; relaxation of terms; effect of violation of order or settlement
- 659.055 Complainant not to be deprived of services, real property or employment pending determination of complaint

- 659.060 Hearing on complaints; findings; orders
- 659.070 Enforcement of conciliation agreements and orders; money damages as judgment
- 659.085 Judicial review of orders under ORS 659.070
- 659.095 Complainant authorized to file civil suit when conciliation agreement not obtained; termination or dismissal of proceedings
- 659.100 Elimination and prevention of discrimination by Bureau of Labor and Industries; subpoenas
- 659.103 Rules for carrying out ORS 659.010 to 659.110 and 659.400 to 659.545
- 659.105 Cause of action for violation of ORS 659.050 or 659.055; defenses
- 659.110 Willful interference with administration of law and violation of orders of commissioner prohibited
- 659.115 Advisory agencies and intergroup-relations councils
- 659.121 Civil suit for injunctive relief; civil action for damages; time for commencement; jury trial; damages recoverable; effect on other remedies

DISCRIMINATION IN EDUCATION

- 659.150 Definition of “discrimination”; prohibition on discrimination in education; rules
- 659.155 Sanctions for noncompliance with discrimination prohibitions
- 659.160 Enforcement of ORS 659.150

PROHIBITION AGAINST CERTAIN LOCAL LAWS RELATING TO SEXUAL ORIENTATION

- 659.165 Political subdivisions prohibited from enacting or enforcing certain laws relating to sexual orientation; remedy

DISCRIMINATION AGAINST ATHLETES

- 659.175 Prohibition against discrimination for participation in sanctioned athletic events

UNLAWFUL EMPLOYMENT PRACTICES

- 659.210 Deceptive representations or advertisements by persons employing labor prohibited
- 659.220 Right of worker to recover damages and attorney fees
- 659.225 Requiring breathalyzer or lie detector test prohibited; exception for breathalyzer test
- 659.227 Requiring breathalyzer, polygraph, psychological stress or brain-wave test or genetic test prohibited; exceptions
- 659.230 Blacklisting and blackmailing prohibited
- 659.240 Use of force or misrepresentation to prevent employment prohibited

- 659.250 Fraudulently accepting advancement and refusing to work prohibited
- 659.260 Employer prohibited from filing false statement with employment agency to secure labor
- 659.270 Discharge or discrimination against employee because of legislative testimony prohibited; enforcement
- 659.280 Definitions for ORS 659.280 to 659.295
- 659.285 Restriction of access to employee housing owned or controlled by employer prohibited; telephone accessibility
- 659.290 Regulations by employers concerning use and occupancy of employee housing; requirements; notice
- 659.295 Eviction from employee housing or discrimination against employee for reporting violations of ORS 659.280 to 659.295 prohibited; enforcement
- 659.297 Warrant on behalf of person entitled to access to housing; vacation of warrant; rulemaking authority
- 659.320 Employer failing to make agreed payments to employee benefit fund
- 659.322 Prohibition on limiting coverage under employee benefit plan based on eligibility to receive benefits under Title XIX of Social Security Act; prohibitions on limiting coverage under group health plans; requirements for group health plans
- 659.324 Health insurance coverage for children of employees
- 659.330 Requiring employee to pay for medical examination as condition of continued employment prohibited; exceptions
- 659.340 Refusal to employ or otherwise discriminate solely because of employment of another family member prohibited; exceptions; enforcement
- 659.358 Leave of absence to donate bone marrow; verification by employer
- 659.380 Prohibiting use of tobacco in nonworking hours

CIVIL RIGHTS OF DISABLED PERSONS

- 659.400 Definitions for ORS 659.400 to 659.460
- 659.405 Policy
- 659.410 Prohibition against discrimination against worker applying for workers' compensation benefits or use of laws relating to disability
- 659.412 Reemployment rights of injured state workers
- 659.415 Reinstatement of worker sustaining compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement; termination of right to reinstatement; when reinstatement right terminates
- 659.417 Right of reinstatement protected
- 659.420 Employment of injured worker in other available and suitable work; termination of right to reemployment;

certificate of physician; effect of collective bargaining agreement

- 659.425 Discrimination against disabled persons by employment agency, labor organization or place of public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property
- 659.430 Discrimination against disabled persons in real property transactions prohibited; advertising discriminatory preference prohibited; when necessary modification to be allowed; assisting discriminatory practices prohibited
- 659.435 Enforcement powers of commissioner

DISCRIMINATION AGAINST DISABLED PERSONS IN EMPLOYMENT

- 659.436 Discrimination against disabled persons prohibited
- 659.437 Qualification for position
- 659.439 Reasonable accommodation
- 659.440 Undue hardship
- 659.442 Illegal use of drugs
- 659.444 Permitted employer action
- 659.446 Conditions that do not constitute impairment
- 659.447 Medical examinations and inquiries; job applicants
- 659.448 Medical examinations and inquiries; employees
- 659.449 Construction

BENEFITS FOR INJURED WORKER AND COVERED DEPENDENTS

- 659.450 Definitions for ORS 659.450 to 659.460
- 659.455 Employer to continue group health benefits for injured worker and covered dependents; when ended
- 659.460 Worker may continue benefits after employer's obligation ends

FAMILY LEAVE

- 659.470 Definitions for ORS 659.470 to 659.494
- 659.472 Covered employers
- 659.474 Eligible employees
- 659.476 Purposes for which family leave may be taken
- 659.478 Length of leave; conditions
- 659.480 Notice to employer

659.482 Medical verification and scheduling of treatment

659.484 Job protection

659.486 Use of paid leave

659.488 Special rules for teachers

659.490 Postings by employer

659.492 Enforcement

659.494 Exclusivity of provisions

DISCLOSURES BY PUBLIC EMPLOYEES (WHISTLEBLOWING)

659.505 Definitions for ORS 659.505 to 659.545

659.510 Prohibited conduct by public employer

659.515 Effect on public employer's authority over employees

659.520 Effect on public record disclosures

659.525 Policy on cooperation with law enforcement officials

659.530 Civil action on behalf of employee authorized

659.535 Disclosure of employee's name without consent prohibited

659.540 Uniform application to all public employers; optional procedure for disclosures

659.545 Short title

EMPLOYMENT DISCRIMINATION BASED ON INITIATING OR AIDING CRIMINAL OR CIVIL PROCEEDING (WHISTLEBLOWING)

659.550 Prohibition against discrimination in employment based on initiating or aiding in criminal or civil proceedings; complaints

GENETIC PRIVACY

659.700 Definitions for ORS 659.700 to 659.720

659.705 Legislative findings; purposes

659.710 Informed consent required for obtaining genetic information; exceptions

659.715 Individual's rights in genetic information; retention of information; destruction of information

659.720 Disclosure of genetic information prohibited; exceptions

PENALTIES

659.990 Penalties

CROSS-REFERENCES

Action by legislator for unlawful employment practice, 171.125

Administrative procedures governing state agencies, 183.310 to 183.550

Appeals on account of unlawful employment practices:

By county employee, 241.440, 241.460

By firefighters, 242.800

By school district employees, 242.630

By state employee, 240.560

Attorney and expert witness fees in actions based on claim of discrimination, 20.107

Discharge from employment because of garnishment of earnings prohibited, 23.185

Limitation on liability of employer for disclosure of information about former employee, 30.178

Loss of tax exemption or preferential assessment for discrimination against housing purchaser with children, 456.725

Oregon National Guard, nonapplicability of civil service and employment laws, 396.330

Test for substance abuse, 438.435

Volunteer firefighters, job retention, unlawful employment practice, 476.574, 476.576

659.010 to 659.121

Discrimination prohibited:

By restrictions in conveyancing instruments, 93.270

In admittance to career schools, 345.240

In places of public accommodation, 30.670 to 30.685

Discriminatory wage rates based on sex prohibited, 652.210 to 652.230

659.020

Equality of treatment and opportunity:

In organized militia, 399.045

In state government, 243.305, 243.315

659.033

Discrimination against purchaser with children, 456.725

Discrimination by landlord, 90.390

Real estate brokers, revocation of license for violation of section, 696.301

659.115

Subsistence and mileage allowances for travel by state officers and employees, 292.210 to 292.250

659.210 to 659.340

Contracts prejudicial to freedom of employee's or employer's joining of certain organizations not enforceable, 662.030

Discharge or discrimination because of testimony at unemployment compensation hearing prohibited, 657.260

Employer prohibited from disciplining person for performing duties as member of Legislative Assembly or attending legislative session, 171.120

Employer unfair labor practices, 663.125, 663.130

Failure to grant leave of absence to employee who is member of organized militia when employee called into active service, 399.230

Misrepresentation by farm labor contractor, 658.440

659.250

Employment agencies, Ch. 658

659.320

Benefits for sick or injured employees, Ch. 655

Lien for contributions to employee benefit plan, 87.855

659.400 to 659.435

Civil action for abuse of incapacitated person, 124.100 to 124.140

Elderly and Disabled Person Abuse Prevention Act, 124.005 to 124.040

659.415

Civil service reinstatement, 240.560, 342.905

659.430

Discrimination by landlord, 90.390

Housing, dog guide, discrimination prohibited, 346.630

659.505 to 659.545

Oregon National Guard, nonapplicability of Whistle-blower Law, 396.330

659.990

Jurisdiction of justice courts and circuit courts over prosecutions, 51.060

ENFORCEMENT OF CIVIL RIGHTS

659.010 Definitions for ORS 659.010 to 659.110 and 659.400 to 659.545. As used in ORS 659.010 to 659.110 and 659.400 to 659.545, unless the context requires otherwise:

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

(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 the respondent to:

(a) Perform an act or series of acts designated therein and reasonably calculated to carry out the purposes of ORS 30.670 to 30.685, 659.010 to 659.110 and 659.400 to 659.545, 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 the commissioner's order as may be required to ensure 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 30.670 to 30.685, 659.010 to 659.110 and 659.400 to 659.545.

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

(4) "Conciliation agreement" means a written agreement settling and disposing of a complaint under ORS 659.010 to 659.110 and 659.400 to 659.545 signed by a respondent and an authorized official of the Bureau of Labor and Industries.

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

(6) "Employer" means any person 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. "Employer" also includes any public body that, 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, including all officers, agencies, departments, divisions, bureaus, boards and commissions of the legislative, judicial and administrative branches of the state, all county and city governing bodies, school districts, special districts, and municipal corporations, and all other political subdivisions of the state.

(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 career schools.

(9)(a) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

(A) A parent or another person having legal custody of the individual; or

(B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(b) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(10) "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 employees.

(11) "National origin" includes ancestry.

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

(13) "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 ORS 659.050 (1).

(14) "Unlawful employment practice" includes only those unlawful employment practices specified in ORS 25.424, 399.235, 654.062 (5), 659.030, 659.035, 659.036, 659.227, 659.270, 659.295, 659.330, 659.340, 659.358 (1) to (4) and 659.400 to 659.494.

(15) "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, 659.430 or rules adopted pursuant to ORS 659.103 (1), but does not include a refusal to furnish goods or services when the refusal is based on just cause. [Amended by 1957 c.724 s.3; 1959 c.547 s.5; 1959 c.689 s.13; 1961 c.247 s.2; 1963 c.622 s.3; 1969 c.618 s.1; 1973 c.714 s.5; 1977 c.770 s.12; 1979 c.813 s.1; 1983 c.225 s.1; 1987 c.319 s.5; 1987 c.393 s.1; 1989 c.317 s.3; 1989 c.686 s.1; 1991 c.652 s.13; 1991 c.939 s.5; 1993 c.719 s.3; 1993 c.798 s.32; 1995 c.343 s.56; 1995 c.580 s.15; 1997 c.30 s.1; 1999 c.245 s.2]

Note: Section 7 (1) and (3), chapter 245, Oregon Laws 1999, provides:

Sec. 7. (1) The amendments to ORS 659.010 and 659.121 by sections 1 and 2 of this 1999 Act apply to all conduct that occurs on or after October 4, 1997, and that constitutes an unlawful employment practice under ORS 659.436 to 659.449. The amendments to ORS 659.010 and 659.121 by sections 1 and 2 of this 1999 Act do not act to revive any claim or cause of action that is barred by reason of the operation of ORS 659.121 (3) or 659.095.

(3) The amendments to ORS 659.010 and 659.121 by sections 1 and 2 of this 1999 Act do not act to revive any civil action in which a judgment was entered before the effective date of this 1999 Act [June 10, 1999]. [1999 c.245 s.7(1), (3)]

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 age, should be the measure of the individual's fitness and qualification for employment. [1959 c.547 s.2; 1959 c.689 s.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, national origin, age or disability 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, national origin, age or disability 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 employee or applicant for employment of one religious sect or persuasion over another when:

(a) That religious sect or persuasion to which the employee 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; and

(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 s.2; 1977 c.770 s.13; 1983 c.225 s.2; 1989 c.224 s.125]

659.022 Purpose of ORS 659.010 to 659.110 and 659.400 to 659.545. The purpose of ORS 659.010 to 659.110 and 659.400 to 659.545 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 659.545 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 s.2; 1969 c.618 s.2a; 1977 c.770 s.14]

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

659.025 State agencies to carry out policy against discrimination in employment; evaluation of supervisors; affirmative action reports. (1) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, disability or age, every state agency shall be required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance.

(2) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, age or disability, every state agency shall be required to present the affirmative action objectives and performance of that agency of the current biennium and those for the following biennium to the Governor of the State of Oregon and to the Legislative Assembly. These plans shall be reviewed as part of the budget review process. [Subsection (1) enacted as 1981 c.454 s.1; subsection (2) enacted as 1981 c.242 s.1; 1989 c.224 s.126]

Note: 659.025 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

659.027 Affirmative action reports to include information on contracts to minority businesses. In carrying out the policy of affirmative action, every state agency shall include in its affirmative action reports under ORS 659.025 information concerning its awards of construction, service and personal service contracts awarded to minority businesses. [1983 c.183 s.1]

Note: 659.027 was added to the Oregon Small Business Development Act of 1983 but was not added to or made a part of ORS chapter 659 or any series therein. See ORS 285B.120. See Preface to Oregon Revised Statutes for further explanation.

659.028 Seniority systems and benefit plans not unlawful employment practices. It is not an unlawful employment practice for an employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this chapter. However, except as otherwise provided by law, no such employee benefit plan shall excuse the failure to hire any individual and no such seniority system or employee benefit plan shall require the involuntary retirement of any individual 18 years of age or older because of the age of such individual. [1969 c.618 s.8; 1981 c.643 s.1; 1987 c.279 s.1]

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 s.2]

659.030 What are unlawful employment practices. (1) For the purposes of ORS 659.010 to 659.110, 659.227, 659.330, 659.340 and 659.400 to 659.545, 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 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 419A.260 and 419A.262, of any individual, to refuse to hire or employ or to bar or discharge from employment such individual. 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 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, 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 419A.260 and 419A.262, of any individual, to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(c) 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 or because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262, of any individual to exclude or to expel from its membership such individual or to discriminate in any way against any such individual or any other person.

(d) 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 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 of the Bureau of Labor and Industries, 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.

(e) For an employment agency to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against any individual:

(A) On the basis of the individual's race, color, national origin, sex, religion, marital status or age, if the individual is 18 years of age or older;

(B) Because of the race, color, national origin, sex, religion, marital status or age of any other person with whom the individual associates; or

(C) Because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262.

However, it shall not be an unlawful practice for an employment agency to classify or refer for employment any individual where such classification or referral results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(f) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden by this section, ORS 30.670, 30.685, 659.033 and 659.400 to 659.460, or because the person has filed a complaint, testified or assisted in any proceeding under ORS 659.010 to 659.110 and 659.400 to 659.545 or has attempted to do so.

(g) 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 659.545 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 before attaining the age of 70 years is not an unlawful employment practice. The commissioner shall administer this section with respect to apprentices under ORS chapter 660 equally with regard to all employees and labor organizations.

(3) The compulsory retirement of employees required by law at any age is not an unlawful employment practice if lawful under federal law.

(4)(a) It shall not be an unlawful employment practice for an employer or labor organization to provide or make

financial provision for child care services of a custodial or other nature to its employees or members who are responsible for a minor child.

(b) As used in this subsection “responsible for a minor child” means having custody or legal guardianship of a minor child or acting in loco parentis to the child. [Amended by 1969 c.618 s.3; 1977 c.770 s.1; 1977 c.801 s.1a; 1981 c.595 s.1; 1981 c.643 s.2; 1983 c.477 s.1; 1983 c.820 s.17; 1985 c.98 s.4; 1985 c.151 s.1; 1987 c.279 s.2; 1993 c.33 s.359]

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 s.2; 1973 c.714 s.6]

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

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

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

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

(2)(a) No person or other entity whose business includes engaging in residential real estate related transactions shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, sex, marital status, source of income, familial status, religion or national origin.

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

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

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

(ii) For securing residential real estate; or

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

(3) No real estate licensee 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, source of income, familial status, religion or national origin.

(4) No person shall, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, marital status, source of income, familial status, religion or national origin.

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

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

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

(b) As used in this subsection, “housing for older persons” means housing:

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

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

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

- (i) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and
- (ii) Policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older are published and adhered to.

(c) Housing shall not fail to meet the requirements for housing for older persons if:

(A) Persons residing in such housing as of September 13, 1988, do not meet the requirements of paragraph (b)(B) or (C) of this subsection. However, new occupants of such housing shall meet the age requirements of paragraph (b)(B) or (C) of this subsection; or

(B) The housing includes unoccupied units. However, such units are reserved for occupancy by persons who meet the age requirements of paragraph (b)(B) or (C) of this subsection.

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

(8) In the sale, lease or rental of real estate, no person shall disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome. [1957 c.725 s.3; 1959 c.584 s.3; 1973 c.714 s.7; 1975 c.384 s.1; 1989 c.523 s.4; 1989 c.686 s.2; 1995 c.559 s.44; 1997 c.235 s.1]

Note: Section 5, chapter 686, Oregon Laws 1989, provides:

Sec. 5. Notwithstanding sections 1 to 4 of this Act [659.010, 659.033, 659.121 and 659.430], the commissioner need not accept or investigate any complaints or otherwise expend any funds as a result of this Act until and unless the commissioner obtains full certification from the Secretary of Housing and Urban Development pursuant to 42 U.S.C. 3610, Public Law 100-430, section 8, and obtains additional funding as necessary to meet the fiscal impact of sections 1 to 4 of this Act upon the Bureau of Labor and Industries. [1989 c.686 s.5]

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

659.035 Discrimination or retaliation against employee for reporting certain violations or testifying at unemployment compensation hearing prohibited; enforcement. (1) It is an unlawful employment practice for:

(a) An employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported possible violations of ORS chapter 441 or of ORS 443.400 to 443.455 or has testified in good faith at an unemployment compensation hearing or other hearing conducted pursuant to ORS chapter 657; or

(b) A public employer to violate ORS 659.510 or 659.535.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545.

(3) In addition to sanctions described in subsection (2) of this section, any person aggrieved by an unlawful employment practice prohibited by subsection (1)(b) of this section may seek compensatory damages or \$250, whichever is greater. [1981 c.470 s.5; 1985 c.404 s.3; 1989 c.890 s.10]

659.036 Employer prohibited from obtaining, seeking to obtain or using genetic information; remedies. (1) It shall be an unlawful employment practice for an employer to seek to obtain, to obtain, or to use genetic information, as defined in ORS 659.700, of an employee or a prospective employee to distinguish between or discriminate against or restrict any right or benefit otherwise due or available to an employee or a prospective employee. This subsection does not prohibit an employer from seeking, obtaining or using genetic information with specific authorization of the employee or prospective employee solely to determine a bona fide occupational qualification, as may be defined by rules adopted by the Commissioner of the Bureau of Labor and Industries.

(2) If an employee or a prospective employee files a complaint with the Bureau of Labor and Industries alleging violation of subsection (1) of this section, the bureau shall cause any necessary investigation to be made and shall enforce subsection (1) of this section in the manner provided in ORS 659.010 to 659.110 and 659.121. [1993 c.719 s.2; 1995 c.680 s.6]

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 of age 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 s.10; 1973 c.714 s.8; 1977 c.770 s.2; 1995 c.79 s.336]

659.038 Certain prohibitions based on familial status or sex not applicable to renting of space in single-family residence; conditions. The provisions of ORS 659.033 (1)(a) to (d) and (f) that prohibit actions based upon familial status or sex do not apply to the renting of space within a single-family residence if the owner actually maintains and occupies the residence as the owner's primary residence and all occupants share some common space within the residence. [1999 c.627 s.2]

Note: Section 3, chapter 627, Oregon Laws 1999, provides:

Sec. 3. The exemption created under section 2 of this 1999 Act [659.038] applies to rentals occurring on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.627 s.3]

659.040 Complaints of unlawful employment practices. (1) Any person claiming to be aggrieved by an alleged unlawful employment practice, may, or the attorney of the person may, make, sign and file with the Commissioner of the Bureau of Labor and Industries 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 the Attorney General or commissioner 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 employees, or any of them, refuse or threaten to refuse to abide by ORS 659.010 to 659.110 and 659.400 to 659.545 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 s.13; 1971 c.723 s.1; 1977 c.453 s.2; 1977 c.770 s.3]

659.045 Complaints of discrimination in housing, in place of public accommodation or in career 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, or the attorney of the person may, make, sign and file with the Commissioner of the Bureau of Labor and Industries a verified complaint in writing which shall state the name and address of the person, the place of accommodation or the career 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 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 and Industries may make, sign and file a complaint in a like manner as a complaint filed under subsection (1) of this section whenever the Attorney General or

commissioner 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 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 s.5; 1969 c.618 s.4; 1973 c.714 s.9; 1977 c.453 s.2; 1977 c.770 s.4; 1995 c.343 s.57]

659.050 Investigation of complaint; cease and desist order; penalty; written settlement; relaxation of terms; effect of violation of order or settlement. (1) After the filing of any complaint under ORS 659.040 or 659.045, the Commissioner of the Bureau of Labor and Industries 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 659.545.

(2) After the filing of a complaint by the commissioner under ORS 659.045, the commissioner may also issue a temporary cease and desist order requiring any respondent named in the complaint to refrain from the unlawful practice alleged. If the investigation discloses substantial evidence supporting the allegations of the complaint under ORS 659.045 (1) or (2), the commissioner may, in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each respondent found to have committed the unlawful practice, and may issue a permanent cease and desist order requiring each such respondent to refrain from the unlawful practice found. A civil penalty imposed under this section shall not exceed \$1,000 for each violation.

(3) If the commissioner imposes a penalty or issues a temporary or permanent cease and desist order under subsection (2) of this section, the commissioner shall serve upon the respondent in accordance with ORCP 7 D, an order directing the respondent to pay the penalty to the commissioner and to cease and desist as therein described. The order shall include:

- (a) A reference to the particular statutes or rules involved in the violation;
- (b) A short and concise statement of the matters which constitute the violation;
- (c) A statement of the amount of the penalty imposed;
- (d) A statement of the respondent's right to a contested case hearing and to be represented by counsel at such a hearing, provided that any request for a contested case hearing must be received by the commissioner in writing within 20 days after receipt by the respondent of the order;
- (e) A statement that the respondent must, within 20 days after receipt of the order, either pay in full the penalties assessed or present to the commissioner a written request for a contested case hearing as provided in this section;
- (f) A statement that failure to make a written request to the commissioner for a contested case hearing within the time specified shall constitute a waiver of the right thereto; and
- (g) A statement that unless the written requests provided for in paragraph (d) of this subsection are received by the commissioner within the time specified for making such requests, the order shall become final.

(4) Upon failure of the respondent to pay the amount specified in the order within the time specified, and upon failure to request a contested case hearing within the time specified, the order shall become final.

(5) All sums collected as penalties pursuant to this section shall be first applied toward reimbursement of the costs incurred in determining the violations, conducting hearings under this section and assessing and collecting such penalties. The remainder, if any, of the sums collected as penalties pursuant to this section shall be paid over by the commissioner to the Division of State Lands for the benefit of the Common School Fund of this state. The division shall issue a receipt for the money to the commissioner.

(6) 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.

(7) 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 the respondent was a party; nor shall the agent or successor in interest violate any terms or conditions thereof. [Amended by 1957 c.724 s.6; 1963 c.622 s.6; 1971 c.723 s.2; 1975 c.503 s.1; 1987 c.393 s.2]

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 the respondent under ORS 659.010 to 659.110 and 659.400 to 659.545 and subsequent to receipt of notice from the Commissioner of the Bureau of Labor and Industries or 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 complaint upon administrative determination on the merits thereof. [1963 c.622 s.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 of the Bureau of Labor and Industries that the interest of justice requires a hearing without first proceeding by conference, conciliation and persuasion, or if a written request is made by respondent in accordance with ORS 659.050, the commissioner shall cause to be prepared and served upon each respondent required to appear at such hearing such specific charges, in writing, as the respondent 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 183.310 to 183.550.

(3) After considering all the evidence, the commissioner shall cause to be issued findings of facts, and conclusions of law. The commissioner 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 659.545 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 659.545 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 659.545, reserving to the commissioner or 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 and Industries as well as to files commenced on or after June 17, 1975. [Amended by 1957 c.724 s.7; 1961 c.145 s.1; 1963 c.622 s.7; 1971 c.418 s.20; 1971 c.723 s.3; 1975 c.419 s.1; 1987 c.393 s.3]

659.070 Enforcement of conciliation agreements and orders; money damages as judgment. Any conciliation agreement or order issued by the Commissioner of the Bureau of Labor and Industries under ORS 659.060 may be enforced by mandamus or injunction or by a suit in equity to compel specific performance of such order. Any such agreement or order that awards money damages, unless paid, shall constitute a judgment and may be recorded in the County Clerk Lien Record pursuant to ORS 205.125 and may be enforced as provided in ORS 205.126. [Amended by 1963 c.622 s.10; 1983 c.225 s.3; 1999 c.245 s.3; 1999 c.788 s.44]

659.080 [Amended by 1957 c.724 s.8; 1961 c.145 s.2; 1963 c.622 s.11; repealed by 1971 c.734 s.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 183.550. [1971 c.734 s.103]

659.090 [Repealed by 1971 c.734 s.21]

659.095 Complainant authorized to file civil suit when conciliation agreement not obtained; termination or dismissal of proceedings. (1) If, within one year following the filing of a complaint pursuant to ORS 659.040 (1) or 659.045 (1) except a complaint alleging violations of ORS 30.670 or 30.685, the Commissioner of the Bureau of Labor and Industries 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 ORS 659.060 (1), 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. Within one year following the filing of the complaint, the commissioner may issue, or cause to be issued, an administrative determination. If no administrative determination has been issued at the end of the one-year period, the commissioner has no further authority to continue proceedings to resolve the

complaint, except as provided in ORS 659.070 and 659.085. 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 ORS 659.060 (3), 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.

(2) As used in this section, "administrative determination" means a written notice to the respondent and the complainant signed by the commissioner, or the commissioner's designee, which includes, but is not limited to, the following information:

(a) The name of the complainant;

(b) The name of the respondent;

(c) Allegations contained in the complaint;

(d) Facts found by the commissioner to have a bearing on the allegations contained in the complaint in the course of any investigation, conference or other information gathering function of the Bureau of Labor and Industries as such facts relate to laws within the bureau's jurisdiction; and

(e) A statement as to whether investigation of the complaint has disclosed any substantial evidence supporting the allegations of the complaint. [1977 c.453 s.4; 1979 c.843 s.1]

659.100 Elimination and prevention of discrimination by Bureau of Labor and Industries; subpoenas. (1) The Bureau of Labor and Industries may eliminate and prevent discrimination in employment because of race, religion, color, sex, national origin, marital status, physical or mental disability or age if the individual is 18 years of age and over or by employers, employees, 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 disability or age if the individual is 18 years of age and over as provided in ORS 659.010 to 659.110 and 659.400 to 659.545. To eliminate the effects of discrimination the Bureau of Labor and Industries 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 and Industries 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 disability, national origin or age of any individual 18 years of age and older by career 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 and Industries hereby is given general jurisdiction and power for such purposes.

(3) The Commissioner of the Bureau of Labor and Industries 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 Industries and the commissioner under ORS 659.010 to 659.110 and 659.400 to 659.545 and may prescribe the duties and responsibilities of such employees. The Commissioner of the Bureau of Labor and Industries may delegate any of the powers under ORS 659.010 to 659.110 and 659.400 to 659.545 to the deputy commissioner employed under this subsection.

(4) The commissioner or the designee of the commissioner may issue subpoenas to require the production of evidence necessary for the performance of any of the duties under ORS 659.010 to 659.115 and 659.400 to 659.545.

(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 659.545. [Amended by 1957 c.724 s.9; 1959 c.547 s.6; 1959 c.689 s.14; 1961 c.145 s.3; 1963 c.622 s.8; part renumbered 659.103; 1969 c.618 s.5; 1971 c.322 s.1; 1973 c.714 s.10; 1977 c.770 s.5; 1981 c.643 s.3; 1987 c.279 s.3; 1989 c.224 s.127; 1995 c.343 s.58]

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

659.103 Rules for carrying out ORS 659.010 to 659.110 and 659.400 to 659.545. (1) In accordance with any applicable provision of ORS 183.310 to 183.550, the Commissioner of the Bureau of Labor and Industries 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 the person 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 and 659.470 to 659.545.

(e) Establishing rules covering any other matter required to carry out the purpose of ORS 659.010 to 659.110 and 659.400 to 659.545.

(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 s.6; 1973 c.714 s.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 659.050 (7) or 659.055 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 the cause of action, the complaint under ORS 659.040 or 659.045 has been dismissed by the Commissioner of the Bureau of Labor and Industries or 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 deputy of the filing of the complaint of discrimination under ORS 659.010 to 659.110 and 659.400 to 659.545, 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 s.9; 1975 c.503 s.2; 1987 c.393 s.4]

659.110 Willful interference with administration of law and violation of orders of commissioner prohibited.

(1) No person shall willfully resist, prevent, impede or interfere with the Commissioner of the Bureau of Labor and Industries or any authorized agents of the commissioner in the performance of duty under ORS 659.010 to 659.110 and 659.400 to 659.545 or willfully 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 willful conduct. [Amended by 1957 c.724 s.14]

659.115 Advisory agencies and intergroup-relations councils. (1) The Commissioner of the Bureau of Labor and Industries shall create such advisory agencies and intergroup-relations councils, local, regional or statewide, as in the judgment of the commissioner will aid in effectuating the purposes of ORS 659.010 to 659.110 and 659.400 to 659.545. 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 s.1; 1969 c.618 s.7]

659.120 [Repealed by 1955 c.534 s.2]

659.121 Civil suit for injunctive relief; civil action for damages; time for commencement; jury trial; damages recoverable; effect on other remedies. (1) Any person claiming to be aggrieved by an unlawful employment practice prohibited by ORS 25.424, 399.235, 659.030, 659.035, 659.227, 659.270, 659.295, 659.330, 659.340 or 659.400 to 659.494 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 employees 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 Commissioner of the Bureau of Labor and Industries, 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 at trial and on appeal.

(2) Any person claiming to be aggrieved by alleged violations of ORS 659.033 (1) or (3), 659.295, 659.400 to 659.449 or 659.550 may file a civil action in circuit court to recover compensatory damages or \$200, whichever is greater, and punitive damages. In addition, the court may award relief authorized under subsection (1) of this section and such equitable relief as it considers appropriate. At the request of any party, the trial of such case shall be by jury. In any action brought under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Any attorney fee agreement shall be subject to approval by the court.

(3) Where no complaint has been filed pursuant to ORS 659.040 (1) or 659.045 (1) 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 ORS 659.040 (1) or 659.045 (1) 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 ORS 659.040 (1) or 659.045 (1) 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. Except as provided in subsection (5) of this section, the filing of a civil suit or action in either circuit court pursuant to subsection (1) of this section or federal district court under applicable federal law 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 ORS 659.040 (1) or 659.045 (1).

(5)(a) Where a person claiming to be aggrieved by alleged violations of ORS 659.033 or 659.430 or applicable federal law files a civil suit or action in circuit court or in federal district court, that filing does not constitute an election of remedies until such time as the trial commences.

(b) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of specific charges issued by the commissioner if a hearing referee has commenced a hearing on the record under this chapter with respect to such charge.

(6) Notwithstanding any other provision of ORS 659.010 to 659.121 and 659.470 to 659.545, a civil complaint alleging violations of ORS 659.033 or 659.430 may be filed not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under ORS 659.010 to 659.121 and 659.470 to 659.545, whichever occurs last. The two-year period shall not include any time during which an administrative proceeding was pending with respect to the housing practice or breach. [1977 c.453 s.6; 1979 c.813 s.2; 1981 c.897 s.95; 1983 c.225 s.4; 1987 c.822 s.1; 1989 c.165 s.3; 1989 c.317 s.4; 1989 c.686 s.4; 1989 c.1044 s.6; 1991 c.342 s.2; 1993 c.798 s.33; 1995 c.580 s.16; 1999 c.245 s.1]

Note: See note under 659.010.

659.130 [Repealed by 1955 c.534 s.2]

659.131 [1977 c.771 s.1; renumbered as (1),(2),(3) of 659.340]

659.136 [1977 c.771 s.2; renumbered as (4) of 659.340]

659.140 [Repealed by 1955 c.534 s.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, disability, 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 183.310 to 183.550. [1975 c.204 s.1; 1989 c.224 s.128]

659.155 Sanctions for noncompliance with discrimination prohibitions. (1) Any public elementary or secondary school determined by the Superintendent of Public Instruction or any community college determined by the Commissioner for Community College Services 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.

(3) Any public charter school determined by the sponsor of the school or the Superintendent of Public Instruction to be in noncompliance with the provisions of ORS 659.150 and this section shall be subject to appropriate sanctions, which may include the withholding of all or part of state funding by the sponsor or superintendent, as established by rule of the State Board of Education. [1975 c.204 s.3; 1989 c.491 s.64; 1999 c.200 s.35]

659.160 Enforcement of ORS 659.150. (1) Any person claiming to be aggrieved by unlawful discrimination in higher education as prohibited by ORS 659.150 may file a civil action in circuit court for equitable relief or, subject to the terms and conditions of ORS 30.265 to 30.300, damages, or both. The court may order such other relief as may be appropriate. Damages shall be \$200 or actual damages, whichever is greater.

(2) The action authorized by this section shall be filed within one year of the filing of a grievance.

(3) No action shall be filed unless, within 180 days of the alleged discrimination, a grievance has been filed with the community college board of education or the State Board of Higher Education.

(4) No action may be filed until 90 days after filing a grievance unless only injunctive relief is sought pursuant to ORCP 79. The right to temporary or preliminary injunctive relief shall be independent of the right to pursue any administrative remedy available to complainants pursuant to ORS 659.150.

(5) No action may be filed if the community college board of education or the State Board of Higher Education has obtained a conciliation agreement with the person filing the grievance or if a final determination of a grievance has been made except as provided in ORS 183.480.

(6) Notwithstanding the filing of a grievance, pursuant to subsection (3) of this section, any person seeking to maintain an action under this section shall also file a notice of claim within 180 days of the alleged discrimination as required by ORS 30.275.

(7) The court shall award reasonable attorney fees to a prevailing plaintiff in any action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

(8) Nothing in this section is intended to reduce the obligations of the education agencies under ORS 659.150 to 659.160. [1987 c.276 s.2; 1995 c.618 s.116]

PROHIBITION AGAINST CERTAIN LOCAL LAWS RELATING TO SEXUAL ORIENTATION

659.165 Political subdivisions prohibited from enacting or enforcing certain laws relating to sexual orientation; remedy. (1) A political subdivision of the state may not enact or enforce any charter provision, ordinance, resolution or policy granting special rights, privileges or treatment to any citizen or group of citizens on account of sexual orientation, or enact or enforce any charter provision, ordinance, resolution or policy that singles out citizens or groups of citizens on account of sexual orientation.

(2) Any person who believes that a political subdivision has enacted or is enforcing a charter provision, ordinance, resolution or policy in violation of this section may bring an action in circuit court to have the charter provision, ordinance, resolution or policy declared invalid, for injunctive relief and for such other relief as the court may consider appropriate. The court shall award reasonable attorney fees and costs to a plaintiff who prevails in an action under this subsection. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court. [1993 c.556 s.1; 1995 c.618 s.117]

Note: 659.165 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

DISCRIMINATION AGAINST ATHLETES

659.175 Prohibition against discrimination for participation in sanctioned athletic events. (1) No public or private organization or individual:

(a) Shall infringe in any manner on the right of an athlete to compete in or train for any athletic event duly sanctioned by the national governing body for that sport as recognized by the United States Olympic Committee.

(b) Shall levy any form of punishment or sanction against any athlete for participating in any athletic event duly sanctioned by the national governing body for that sport as recognized by the United States Olympic Committee.

(2) This section applies only to those sports under the jurisdiction of the United States Olympic Committee and known to be "Olympic" sports. [1983 c.823 s.3]

Note: 659.175 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

UNLAWFUL 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 workers to change from one place to another in this state or bring workers 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 employees.

(2) Neglecting to state in the advertisement, proposal or inducement for the employment of workers 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 worker to recover damages and attorney fees. (1) Any worker of this state, or any worker 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:

(a) Recovery of all damages sustained in consequence of the false or deceptive representations, false advertising and false pretenses used to induce the worker to change the worker's place of employment against any persons, corporations, companies, or associations, directly or indirectly causing such damages, or \$500, whichever is greater;

and

(b) Such reasonable attorney fees at trial and on appeal as the court fixes, to be taxed in any judgment recovered.

(2) In any action brought under this section, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. [Amended by 1979 c.389 s.1; 1981 c.897 s.96]

659.225 Requiring breathalyzer or lie detector test prohibited; exception for breathalyzer test. (1) No person, or agent or representative of such person, shall require, as a condition for employment or continuation of employment, any person or employee to take a breathalyzer test, polygraph test or any other form of a so-called lie detector test. However, nothing in this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test.

(2) For the purposes of this section, an individual is “under the influence of intoxicating liquor” when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision. [1963 c.249 s.1; 1981 c.301 s.1]

659.227 Requiring breathalyzer, polygraph, psychological stress or brain-wave test or genetic test prohibited; exceptions. (1) Except as provided in subsection (5) of this section, it is an unlawful employment practice for any employer to subject, directly or indirectly, any employee or prospective employee to any breathalyzer test, polygraph examination, psychological stress test, genetic test or brain-wave test.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545.

(3) As used in this section:

(a) “Breathalyzer test” means a test to detect the presence of alcohol in the body through the use of instrumentation or mechanical devices.

(b) “Genetic test” has the meaning given in ORS 659.700.

(c) “Polygraph examination or psychological stress test” means a test to detect deception or to verify the truth of statements through the use of instrumentation or mechanical devices.

(d) An individual is “under the influence of intoxicating liquor” when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision.

(4) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a polygraph examination to an individual, if the individual consents to the examination, during the course of criminal or civil judicial proceedings in which the individual is a party or witness or during the course of a criminal investigation conducted by a law enforcement agency, as defined in ORS 181.010, a district attorney or the Attorney General.

(5) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test.

(6) Subsection (1) of this section does not prohibit the administration of a genetic test to an individual if the individual or the individual's representative grants informed consent in the manner provided by ORS 659.710, and the genetic test is administered solely to determine a bona fide occupational qualification. [1979 c.318 s.1; 1981 c.301 s.2; 1989 c.892 s.1; 1995 c.680 s.7]

Note: 659.227 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.230 Blacklisting and blackmailing prohibited. (1) No corporation, company or individual shall blacklist or publish, or cause to be blacklisted or published, any employee, mechanic or laborer discharged by such corporation,

company or individual, with intent and for the purpose of preventing such employee, 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 employee 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 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 such person to employ or discharge from employment anyone, or to alter the mode of carrying on business, or to limit or increase the number of employees 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 the 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 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.

659.270 Discharge or discrimination against employee because of legislative testimony prohibited; enforcement. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment solely for the reason that the employee has testified before the Legislative Assembly or any of its interim or statutory committees, including advisory committees and subcommittees thereof, or task forces.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545. [1980 c.1 s.3]

Note: 659.270 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.280 Definitions for ORS 659.280 to 659.295. (1) For purposes of ORS 659.280 to 659.295, “access” means ingress to and egress from residential areas which are concentrated in a central location. It shall not include:

(a) The right to enter the individual residences of employees unless a resident of the household consents to the

entry;

(b) The right to use any services provided by the employer for the exclusive use of the employees;

(c) The right to enter single residences shared by employees and employers where a separate entrance to the employee's quarter is not provided; or

(d) The right to enter work areas.

(2) "Authorized person" means government officials, medical doctors, certified education providers, county health care officials, representatives of religious organizations and any other providers of services for farmworkers funded in whole or part by state, federal or local government.

(3) "Housing" means living quarters owned, rented or in any manner controlled by an employer and occupied by the employee.

(4) "Invited person" means persons invited to a dwelling unit by an employee or a member of the employee's family residing with the employee. [1981 c.867 s.2; 1989 c.165 s.1]

659.285 Restriction of access to employee housing owned or controlled by employer prohibited; telephone accessibility. (1) Employers shall not restrict access by authorized persons or invited persons to any housing owned, rented or in any manner controlled by the employer where employees are residing. Authorized persons or invited persons must announce their presence on the premises upon request. Authorized persons shall, upon request, provide credentials identifying the person as representing a qualifying agency or organization.

(2)(a) A person need not disclose to the employer the name of the employee who issued the invitation prior to gaining access to the housing, but an invited person must do so in order to assert a right to access as an invited person in any judicial proceeding concerning the right to access provided in this section. If an invited person does not disclose the name of the inviter to the employer, the employer may deny access until the invited person obtains an order pursuant to ORS 659.297.

(b) Invited persons shall not be allowed to enter work areas or to interfere with any employee's work or performance of duties on behalf of the employer.

(3)(a) The employer shall insure to the employees residing in housing owned or controlled by an employer and occupied by employees the availability of:

(A) A reasonably accessible operating telephone, whether pay or private, available 24 hours a day for emergency use; and

(B) An operating telephone, whether pay or private, located within two miles of the housing, accessible and available so as to provide reasonable opportunity for private use by employees.

(b) An employer may request a waiver from the requirements of paragraph (a) of this subsection if the employer demonstrates to the bureau that:

(A) Compliance would constitute an unreasonable hardship for the employer; and

(B) The camp meets any requirements established by the Department of Consumer and Business Services for an emergency medical plan. [1981 c.867 s.3; 1989 c.165 s.2]

659.290 Regulations by employers concerning use and occupancy of employee housing; requirements; notice. Employers may adopt reasonable rules and regulations concerning the use and occupancy of such housing including hours of access which must be posted in a conspicuous place at least three days prior to enforcement. Such rules shall be enforceable as to employees, invited persons and those authorized persons who are not governmental officials or who are not visiting the camp for emergency purposes only if:

(1) Their purpose is to promote the safety or welfare of the employees and authorized persons allowed access;

(2) They preserve the employer's property from abusive use;

(3) They are reasonably related to the purpose for which they are adopted;

(4) They apply to all employees on the premises in a fair manner; and

(5) They are sufficiently explicit in the prohibition, direction or limitation of the employee's conduct to fairly inform the employees of what must be done to comply. [1981 c.867 s.4; 1989 c.165 s.7]

659.295 Eviction from employee housing or discrimination against employee for reporting violations of ORS 659.280 to 659.295 prohibited; enforcement. (1) It is an unlawful employment practice for an employer to expel or evict from housing referred to in ORS 659.280 to 659.295 or to discharge, demote, suspend from employment or in any other manner discriminate or retaliate against an employee or any member of the employee's household for the reason that the employee or any member of the employee's household has:

(a) Reported or complained concerning possible violations of ORS 659.280 to 659.295; or

(b) Conferred with or invited to residential areas, any authorized person or invited person.

(2) Complaints may be filed with the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of ORS 659.280 to 659.295 subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.110 and 659.121. A person denied access under ORS 659.285 is a person aggrieved for purposes of ORS 659.121. [1981 c.867 s.5]

659.297 Warrant on behalf of person entitled to access to housing; vacation of warrant; rulemaking authority. (1) In the event that any person claiming to be an authorized or invited person is denied access to housing, the person may apply to any magistrate having jurisdiction to issue warrants, for an order authorizing the person to gain access to the housing.

(2) The application pursuant to this section shall be sworn and shall include allegations of the facts and circumstances under which the person alleges that the person is entitled to access under ORS 659.280 to 659.295.

(3) If, on ex parte review of the application, it appears from the sworn allegations of the application that the person is entitled to access to the housing, the magistrate shall promptly issue an order restraining the owner of the housing from interfering with the access of the applicant to the housing.

(4) No fee, bond or undertaking shall be required in connection with proceedings under this section.

(5) On sufficient cause, the magistrate may enter further orders for the protection of residents of the housing, including the temporary sealing of the application, or portions thereof.

(6) Any person subject to an order referred to in subsections (1) to (5) of this section may request that the order be vacated or modified by filing a written motion with the court which issued the order.

(7) Upon receipt of a motion to modify or vacate the order, the court shall schedule a hearing.

(8) If after hearing, the court determines that the applicant is not entitled to access, the court shall vacate or modify the order.

(9) The Bureau of Labor and Industries may adopt rules to carry out the provisions of this section, ORS 659.121 and 659.280 to 659.290. [1989 c.165 ss.4,5,6]

Note: 659.297 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.320 Employer failing to make agreed payments to employee benefit fund. Whenever an employer has agreed in writing with any employee 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 employees, or has entered into a collective bargaining agreement providing for such payments, it shall be unlawful for such an employer willfully or with intent to defraud to fail to make the payments required by the terms of any such agreement. [1957 c.548 s.1; 1973 c.140 s.1]

659.322 Prohibition on limiting coverage under employee benefit plan based on eligibility to receive benefits under Title XIX of Social Security Act; prohibitions on limiting coverage under group health plans; requirements for group health plans. (1) No employee benefit plan may include any provision which has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan because that individual is provided, or is eligible for, benefits or services pursuant to a plan under Title XIX of the Social Security Act. This section applies to employee benefit plans, whether sponsored by an employer or a labor union.

(2) A group health plan is prohibited from considering the availability or eligibility for medical assistance in this or any other state under 42 U.S.C. 1396a (section 1902 of the Social Security Act), herein referred to as Medicaid, when considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders or certificate holders.

(3) To the extent that payment for covered expenses has been made under the state Medicaid program for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services.

(4) A group health plan shall not deny enrollment of a child under the health plan of the child's parent on the

grounds that:

- (a) The child was born out of wedlock;
 - (b) The child is not claimed as a dependent on the parent's federal tax return; or
 - (c) The child does not reside with the child's parent or in the group health plan service area.
- (5) Where a child has health coverage through a group health plan of a noncustodial parent, the group health plan shall:

(a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(b) Permit the custodial parent or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(c) Make payments on claims submitted in accordance with paragraph (b) of this subsection directly to the custodial parent, the provider or the state Medicaid agency.

(6) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the group health plan shall be required:

(a) To permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) If the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application of the child's other parent, the state agency administering the Medicaid program or the state agency administering 42 U.S.C. 651 to 669, the child support enforcement program; and

(c) Not to disenroll or eliminate coverage of the child unless the group health plan is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect; or

(B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment.

(7) A group health plan may not impose requirements on a state agency, which has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for health benefits from such plan, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(8)(a) In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, the plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply to the natural, dependent children of the participants and beneficiaries, regardless of whether the adoption has become final.

(b) A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(9) As used in this section:

(a) "Child" means, in connection with any adoption, or placement for adoption of the child, an individual who has not attained 18 years of age as of the date of the adoption or placement for adoption.

(b) "Group health plan" means a group health plan as defined in 29 U.S.C. 1167.

(c) "Placement for adoption" means the assumption and retention by a person of a legal obligation for total or partial support of a child in anticipation of the adoption of the child. The child's placement with a person terminates upon the termination of such legal obligations. [1991 c.875 s.5; 1995 c.506 s.5; 1999 c.59 s.198]

659.324 Health insurance coverage for children of employees. Where a parent is required by a court or administrative order to provide health coverage that is available through an employer doing business in this state, the employer shall:

(1) Permit the parent to enroll under family coverage a child who is otherwise eligible for coverage without regard to any enrollment season restrictions.

(2) If the parent is enrolled but fails to make application to obtain coverage of the child, enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program or the state agency administering 42 U.S.C. 651 to 669, the child support enforcement program.

(3) Not disenroll or eliminate coverage of a child unless the employer is provided satisfactory written evidence that:

(a) The court order is no longer in effect;

(b) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of

disenrollment; or

(c) The employer has eliminated family health coverage for all of its employees.

(4) Withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the entity providing the coverage. [1995 c.506 s.7]

659.330 Requiring employee to pay for medical examination as condition of continued employment

prohibited; exceptions. (1) It is an unlawful employment practice for any employer to require an employee, as a condition of continuation of employment, to pay the cost of any medical examination or the cost of furnishing any health certificate.

(2) Notwithstanding subsection (1) of this section, it is not an unlawful employment practice for an employer to require the payment of medical examination or health certificate costs:

(a) From health and welfare fringe benefit moneys contributed entirely by the employer; or

(b) By the employee if the medical examination or health certificate is required pursuant to a collective bargaining agreement, state or federal statute or city or county ordinance.

(3) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545. [1979 c.595 s.1]

Note: 659.330 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.340 Refusal to employ or otherwise discriminate solely because of employment of another family member prohibited; exceptions; enforcement.

(1) Except as provided in subsection (2) of this section, it is an unlawful employment practice for an employer solely because another member of an individual's family works or has worked for that employer to:

(a) Refuse to hire or employ an individual;

(b) Bar or discharge from employment an individual; or

(c) Discriminate against an individual in compensation or in terms, conditions or privileges of employment.

(2) An employer is not required to hire or employ and is not prohibited from barring or discharging 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.

(4) Subsections (1) to (3) of this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 for enforcement of an unlawful employment practice. Violation of subsections (1) to (3) of this section subjects the violator to the same civil and criminal penalties as provided for violation of ORS 659.010 to 659.110 and 659.470 to 659.545. [(1), (2), (3) formerly 659.131; (4) formerly 659.136; 1983 c.225 s.5; 1985 c.565 s.90]

Note: 659.340 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.358 Leave of absence to donate bone marrow; verification by employer. (1) It shall be an unlawful employment practice for an employer to deny to grant already accrued paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. The total length of the leaves shall be determined by the employee, but shall not exceed the amount of already accrued paid leave or 40 work hours, whichever is less, unless agreed to by the employer.

(2) The employer may require verification by a physician of the purpose and length of each leave requested by the employee to donate bone marrow. If there is a medical determination that the employee does not qualify as a bone marrow donor, the paid leave of absence used by the employee prior to that medical determination is not affected.

(3) An employer shall not retaliate against an employee for requesting or using accrued paid leave of absence as provided by this section.

(4) This section does not:

(a) Prevent an employer from providing leave for bone marrow donations in addition to leave required under this section.

(b) Affect an employee's rights with respect to any other employment benefit.

(5) As used in this section:

(a) "Employee" means a person who performs services for hire for an employer, for an average of 20 or more hours per week, and includes all individuals employed at any site owned or operated by an employer. "Employee" does not include an independent contractor.

(b) "Employer" means a person or entity that employs any employee in at least one site and includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district or other governmental subdivision. [1991 c.652 ss.2,4]

Note: 659.358 (5) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.360 [1987 c.319 s.2; repealed by 1995 c.580 s.18]

659.365 [1987 c.319 s.3; repealed by 1995 c.580 s.18]

659.370 [1987 c.319 s.4; repealed by 1995 c.580 s.18]

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

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

(3) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545. [1989 c.892 s.3]

659.385 [1989 c.822 s.2; repealed by 1995 c.580 s.18]

659.389 [1989 c.822 s.3; repealed by 1995 c.580 s.18]

659.391 [1989 c.822 s.4; repealed by 1995 c.580 s.18]

659.393 [1989 c.822 s.5; 1991 c.939 s.6; repealed by 1995 c.580 s.18]

CIVIL RIGHTS OF DISABLED PERSONS

659.400 Definitions for ORS 659.400 to 659.460. As used in ORS 659.400 to 659.460, unless the context requires otherwise:

- (1) “Disabled person” means a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.
- (2) As used in subsection (1) of this section:
 - (a) “Major life activity” includes, but is not limited to self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.
 - (b) “Has a record of such an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
 - (c) “Is regarded as having such an impairment” means that the individual:
 - (A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer or supervisor as having such a limitation;
 - (B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or
 - (C) Has none of the impairments described in subparagraph (A) or (B) of this paragraph, but is treated by an employer or supervisor as having a mental or physical impairment that substantially limits one or more major life activities.
 - (d) “Substantially limits” means:
 - (A) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or
 - (B) The impairment significantly restricts the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.
- (3) “Drug” means a controlled substance, as classified in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C.A. 812, as amended, and as modified under ORS 475.035.
- (4) “Employer” means any person that employs six or more persons and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard.
- (5) “Illegal use of drugs” means any use of drugs, the possession or distribution of which is unlawful under state law or under the Controlled Substances Act, 21 U.S.C.A. 812, as amended, but does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized under the Controlled Substances Act or under other provisions of state or federal law. [1973 c.660 s.2; 1979 c.640 s.1; 1989 c.224 s.129; 1997 c.854 s.12]

659.405 Policy. (1) It is declared to be the public policy of Oregon to guarantee disabled 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 disability 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 disability, 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 659.460 shall be construed to effectuate such policy. [1973 c.660 s.3; 1979 c.640 s.2; 1989 c.224 s.130]

659.410 Prohibition against discrimination against worker applying for workers' compensation benefits or use of laws relating to disability. It is an unlawful employment practice for an employer to discriminate against a worker with respect to hire or tenure or any term or condition of employment because the worker has applied for benefits or invoked or utilized the procedures provided for in ORS chapter 656 or of ORS 659.400 to 659.460 or has given testimony under the provisions of such sections. [1973 c.660 s.4; 1989 c.1044 s.1; 1999 c.245 s.4]

659.412 Reemployment rights of injured state workers. (1) For the purpose of administration of ORS 659.415 and 659.420:

- (a) An injured worker employed at the time of injury by any agency in the legislative department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in

any agency in the legislative department.

(b) An injured worker employed at the time of injury by any agency in the judicial department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in any agency in the judicial department.

(c) An injured worker employed at the time of injury by any agency of the Executive or Administrative Department of the government of this state shall have the right to reinstatement as reemployment at any available and suitable position in any agency of the Executive or Administrative Department.

(2) Notwithstanding ORS 659.415 and 659.420, an injured worker referred to in subsection (1) of this section has preference for entry level and light duty assignments with agencies described in subsection (1) of this section. In accordance with the provisions of ORS 183.310 to 183.550, any agency referred to in subsection (1) of this section may adopt rules to define entry level and light duty assignments. However, the rulemaking power for all agencies referred to in subsection (1)(c) of this section shall be exercised by the Administrator of the Personnel Division.

(3) In accordance with any applicable provision of ORS chapter 240, the Administrator of the Personnel Division may compel compliance with this section, ORS 659.415 and 659.420 by any agency referred to in subsection (1)(c) of this section. [1989 c.850 s.2; 1995 c.332 s.62]

659.415 Reinstatement of worker sustaining compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement; termination of right to reinstatement; when reinstatement right terminates. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is "available" even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position which is vacant and suitable. A certificate by the attending physician that the physician approves the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(2) 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 the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment which is suitable prior to becoming medically stationary.

(E) Seven days from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

(4) Any violation of this section is an unlawful employment practice. [1973 c.660 s.5; 1979 c.813 s.3; 1981 c.874 s.14; 1989 c.1044 s.1; 1990 c.2 s.45; 1995 c.332 s.60]

659.417 Right of reinstatement protected. The rights of reinstatement afforded by ORS 659.415 and 659.420 shall not be forfeited if the worker refuses to return to the worker's regular or other offered employment without

release to such employment by the worker's attending physician. [1987 c.884 s.45]

659.420 Employment of injured worker in other available and suitable work; termination of right to reemployment; certificate of physician; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

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

(3) Notwithstanding subsection (1) of this section, the right to reemployment under this section terminates when whichever of the following events first occurs:

(a) The worker cannot return to reemployment at any position with the employer either by determination of the attending physician or upon appeal of that determination, by determination of a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

(b) The worker is eligible and participates in vocational assistance under ORS 656.340.

(c) The worker accepts suitable employment with another employer after becoming medically stationary.

(d) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(e) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for reemployment unless the worker requests reemployment within that time period.

(f) Three years elapse from the date of injury.

(4) 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 the employer's employees.

(5) Any violation of this section is an unlawful employment practice. [1973 c.660 s.6; 1979 c.813 s.4; 1995 c.332 s.61]

659.425 Discrimination against disabled persons by employment agency, labor organization or place of public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property. (1) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual is a disabled person, or to classify or refer for employment any individual because that individual is a disabled person.

(2) It is an unlawful employment practice for a labor organization, because an individual is a disabled person, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(3) 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 because a customer or patron is a disabled person.

(4) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to acquire, rent or maintain property. [1973 c.660 s.7; 1979 c.640 s.3; 1989 c.224 s.131; 1997 c.854 s.13]

659.430 Discrimination against disabled persons in real property transactions prohibited; advertising discriminatory preference prohibited; when necessary modification to be allowed; assisting discriminatory practices prohibited. (1) No person, because of a disability of a purchaser, lessee or renter, a disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any person associated with a purchaser, lessee or renter, shall discriminate by:

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

(b) Expelling a purchaser, lessee or renter;

(c) Making any distinction 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) Attempting to discourage the sale, rental or lease of any real property.

(2) For purposes of this subsection, discrimination includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full

enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; or

(b) A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(3) 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 against a disabled person.

(4) No person or other entity whose business includes engaging in residential real estate related transactions, as defined in ORS 659.033 (2)(b), shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of a disability.

(5) No real estate broker or salesperson shall accept or retain a listing of real property for sale, lease or rental with an understanding that the purchaser, lessee or renter may be discriminated against solely because a person is a disabled person.

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

(7) No person shall coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(8) No person shall, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a disabled person or persons.

(9) Any violation of this section is an unlawful practice. [1973 c.660 s.8; 1979 c.640 s.4; 1983 c.225 s.6; 1989 c.686 s.3; 1995 c.79 s.337]

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 and Industries 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 s.9]

DISCRIMINATION AGAINST DISABLED PERSONS IN EMPLOYMENT

659.436 Discrimination against disabled persons prohibited. (1) It is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because an otherwise qualified person is a disabled person.

(2) An employer violates subsection (1) of this section if the employer does any of the following:

(a) The employer limits, segregates or classifies a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because the applicant or employee is a disabled person.

(b) The employer participates in a contractual or other arrangement or relationship that has the effect of subjecting an otherwise qualified job applicant or employee who is a disabled person to the discrimination prohibited by ORS 659.436 to 659.449, including but not limited to participating in a relationship with an employment or referral agency, a labor union, an organization providing fringe benefits to an employee of the employer, or an organization providing training and apprenticeship programs.

(c) The employer utilizes standards, criteria or methods of administration that have the effect of discrimination on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

(d) The employer excludes or otherwise denies equal jobs or benefits to an otherwise qualified person because the person is known to have a relationship or association with a disabled person.

(e) The employer does not make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled person who is a job applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(f) The employer denies employment opportunities to a job applicant or employee who is an otherwise qualified

disabled person, if the denial is based on the need of the employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant.

(g) The employer uses qualification standards, employment tests or other selection criteria that screen out or tend to screen out a disabled person or a class of disabled persons unless the standard, test or other selection criterion, as used by the employer, is shown to be job-related for the position in question and is consistent with business necessity.

(h) The employer fails to select and administer tests relating to employment in the most effective manner to ensure that when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or other characteristics of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant. The provisions of this paragraph do not limit the ability of an employer to select or administer tests designed to measure sensory, manual or speaking skills of an employee or job applicant. [1997 c.854 s.2]

Note: Section 7 (2), chapter 245, Oregon Laws 1999, provides:

Sec. 7. (2) The provisions of ORS 659.436 to 659.449 apply only to conduct occurring on or after October 4, 1997. Any conduct that occurred before October 4, 1997, and that constituted an unlawful employment practice under ORS 659.425 (1) (1995 Edition), shall continue to be governed by the law in effect immediately before October 4, 1997. [1999 c.245 s.7(2)]

659.437 Qualification for position. For the purposes of ORS 659.436, a disabled person is otherwise qualified for a position if the person, with or without reasonable accommodation, can perform the essential functions of the position. For the purpose of determining the essential functions of the position, due consideration shall be given to the employer's determination as to the essential functions of a position. If an employer has prepared a written description before advertising or interviewing applicants for a job, the position description shall be considered evidence of the essential functions of the job. [1997 c.854 s.3]

Note: See note under 659.436.

659.439 Reasonable accommodation. (1) For the purposes of ORS 659.436, reasonable accommodation of an otherwise qualified disabled person may include:

- (a) Making existing facilities used by employees readily accessible to and usable by disabled persons.
- (b) Job restructuring, part-time or modified work schedules or reassignment to a vacant position.
- (c) Acquisition or modification of equipment or devices.
- (d) Appropriate adjustment or modification of examinations, training materials or policies.
- (e) The provision of qualified readers or interpreters.

(2) Notwithstanding any other provision of ORS 659.400 to 659.460, an employer may not be found to have engaged in an unlawful employment practice solely because the employer fails to provide reasonable accommodation to a person with a disability arising out of transsexualism. [1997 c.854 s.4]

Note: See note under 659.436.

659.440 Undue hardship. (1) For the purposes of ORS 659.436, an accommodation imposes an undue hardship on the operation of the business of the employer if the accommodation requires significant difficulty or expense.

(2) For the purpose of determining whether an accommodation requires significant difficulty or expense, the following factors shall be considered:

(a) The nature and the cost of the accommodation needed.

(b) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation.

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer's facilities.

(d) The type of operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer. [1997 c.854 s.5]

Note: See note under 659.436.

659.442 Illegal use of drugs. (1) Subject to the provisions of subsection (2) of this section, the protections of ORS 659.436 do not apply to any job applicant or employee who is currently engaging in the illegal use of drugs if the employer takes action based on that conduct.

(2) The protections of ORS 659.436 apply to the following persons:

(a) A person who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs.

(b) A person who is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs.

(c) A person who is erroneously regarded as engaging in the illegal use of drugs.

(3) An employer may adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that a person described in subsection (2)(a) or (b) of this section is no longer engaging in the illegal use of drugs. [1997 c.854 s.6]

Note: See note under 659.436.

659.444 Permitted employer action. ORS 659.436 to 659.449 do not affect the ability of an employer to do any of the following:

(1) An employer may prohibit the transfer, offering, sale, purchase or illegal use of drugs at the workplace by any employee. An employer may prohibit possession of drugs except for drugs prescribed by a licensed health care professional.

(2) An employer may prohibit the use of alcohol at the workplace by any employee.

(3) An employer may require that employees not be under the influence of alcohol or illegally used drugs at the workplace.

(4) An employer may require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988.

(5) An employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment, job performance and behavior to which the employer holds other employees, even if the unsatisfactory performance or behavior is related to the alcoholism of or the illegal use of drugs by the employee.

(6) An employer may require that employees comply with all federal and state statutes and regulations regarding alcohol and the illegal use of drugs. [1997 c.854 s.7]

Note: See note under 659.436.

659.446 Conditions that do not constitute impairment. (1) For the purposes of ORS 659.436 to 659.449, homosexuality and bisexuality are not physical or mental impairments. A person who is homosexual or bisexual is not a disabled person for the purposes of ORS 659.436 to 659.449 solely by reason of being homosexual or bisexual.

(2) For the purposes of ORS 659.436 to 659.449, the following conditions are not physical or mental impairments, and a person with one or more of the following conditions is not a disabled person for the purposes of ORS 659.436 to 659.449 solely by reason of that condition:

(a) Transvestism, pedophilia, exhibitionism, voyeurism or other sexual behavior disorders.

(b) Compulsive gambling, kleptomania or pyromania.

(c) Psychoactive substance use disorders resulting from current illegal use of drugs. [1997 c.854 s.8]

Note: See note under 659.436.

659.447 Medical examinations and inquiries; job applicants. (1) Except as provided in this section, an employer violates ORS 659.436 if the employer conducts a medical examination of a job applicant, makes inquiries of a job applicant as to whether the applicant is a disabled person or makes inquiries as to the nature or severity of any disability of the applicant.

(2) An employer may make inquiries into the ability of a job applicant to perform job-related functions.

(3) An employer may require a medical examination after an offer of employment has been made to a job applicant and before the commencement of the employment duties of the applicant, and condition the employment on the results of the examination, if the following conditions are met:

(a) All persons entering the employ of the employer must be subject to the examination regardless of disability.

(b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except as follows:

(A) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(C) Officers and employees of the Bureau of Labor and Industries investigating compliance with ORS 659.436 to 659.449 shall be provided relevant information on request.

(c) The results of an examination authorized under this subsection may only be used in the manner provided for in ORS 659.436 to 659.449. [1997 c.854 s.9]

Note: See note under 659.436.

659.448 Medical examinations and inquiries; employees. (1) Except as provided in this section, an employer may not require that an employee submit to a medical examination, may not make inquiries of an employee as to whether the employee is a disabled person, and may not make inquiries of an employee as to the nature or severity of any disability of the employee, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(2) An employer may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site. An employer may make inquiries into the ability of an employee to perform job-related functions.

(3) Information obtained under subsection (2) of this section relating to the medical condition or history of any employee is subject to the same restrictions applicable to information acquired from medical examinations authorized under ORS 659.447. [1997 c.854 s.10]

Note: See note under 659.436.

659.449 Construction. ORS 659.436 to 659.449 shall be construed to the extent possible in a manner that is consistent with any similar provisions of the federal Americans with Disabilities Act of 1990, as amended. [1997 c.854 s.11]

Note: See note under 659.436.

BENEFITS FOR INJURED WORKER AND COVERED DEPENDENTS

659.450 Definitions for ORS 659.450 to 659.460. As used in ORS 659.450 to 659.460, unless the context requires otherwise:

(1) "Group health benefits" means that form of health benefits provided by the State of Oregon to cover groups of employees, with or without one or more members of their families or one or more dependents. The group health benefits which are continued under ORS 659.450 to 659.460 shall be the same as the worker and the worker's dependents had immediately prior to the injury or illness, and includes, but is not limited to, medical care, dental care, vision care or prescription drug coverage, or any combination thereof, that the worker had elected prior to the injury or illness. If the plan elected prior to the injury or illness is no longer available, the worker shall have the same plan selection rights as do active employees.

(2) "Employer" means the State of Oregon.

(3) "Worker" means any state employee who has filed a workers' compensation claim pursuant to ORS chapter 656. [1989 c.1044 s.3; 1991 c.90 s.1; 1999 c.245 s.6]

659.455 Employer to continue group health benefits for injured worker and covered dependents; when

ended. (1) The State of Oregon shall cause group health benefits to continue in effect with respect to that worker and any covered dependents or family members by timely payment of the premium that includes the contribution due from the employer under the applicable benefit plan, subject to any premium contribution due from the worker that the worker paid before the occurrence of the injury or illness. If the premium increases or decreases, the employer and worker contributions shall be adjusted to remain consistent with similarly situated active employees. The employer shall continue the worker's health benefits in effect until whichever of the following events occurs first:

(a) The worker's attending physician has determined the worker to be medically stationary and a notice of closure has been entered;

(b) The worker returns to work for the employer, after a period of continued coverage under this section, and satisfies any probationary or minimum work requirement to be eligible for group health benefits;

(c) The worker takes full or part-time employment with another employer that is comparable in terms of the number of hours per week the worker was employed with the employer who is continuing coverage under ORS 659.450 to 659.460 or the worker retires;

(d) Twelve months have elapsed since the date the employer received notice that the worker filed a workers' compensation claim pursuant to ORS chapter 656;

(e) The claim is denied and the claimant fails to appeal within the time provided by ORS 656.319 or the Workers' Compensation Board or a workers' compensation hearings referee or a court issues an order finding the claim is not compensable;

(f) The worker does not pay the required premium or portion thereof in a timely manner in accordance with the terms and conditions under this section;

(g) The worker elects to discontinue coverage under this section and notifies the employer in writing of this election;

(h) The worker's attending physician has released the worker to modified or regular work, the work has been offered to the worker and the worker refuses to return to work; or

(i) The worker has been terminated from employment for reasons unrelated to the workers' compensation claim.

(2) If the workers' compensation claim of a worker for whom health benefits are provided pursuant to subsection (1) of this section is denied and the worker does not appeal or the worker appeals and does not prevail, the employer may recover from the worker the amount of the premiums plus interest at the rate authorized by ORS 82.010. The employer may recover the payments through a payroll deduction not to exceed 10 percent of gross pay for each pay period.

(3) The employer shall notify the worker of the provisions of ORS 659.121, 659.410 and 659.450 to 659.460 within a reasonable time after the employer receives notice that the worker will be absent from work as a result of an injury or illness for which a workers' compensation claim has been filed pursuant to ORS chapter 656. The employer's notice shall include the terms and conditions of the continuation of health benefits and what events will terminate the coverage.

(4) If the worker fails to make timely payment of any premium contribution owing, the employer shall notify the worker of impending cancellation of the health benefits and provide the worker with 30 days to pay the required premium prior to canceling the policy.

(5) It is an unlawful employment practice for the State of Oregon as an employer to discriminate against a worker, as defined in ORS 659.450, by terminating the worker's group health benefits while that worker is absent from the place of employment as a result of an injury or illness for which a workers' compensation claim has been filed against the same public employer pursuant to ORS chapter 656, except as provided for in this section. [1989 c.1044 s.4; 1991 c.90 s.2; 1999 c.245 s.5; 1999 c.313 s.15]

659.460 Worker may continue benefits after employer's obligation ends. If the employer's obligation to continue paying premiums for health benefits under ORS 659.455 expires or terminates, the worker may continue coverage by paying the entire premium pursuant to ORS 743.530. [1989 c.1044 s.5]

FAMILY LEAVE

659.470 Definitions for ORS 659.470 to 659.494. As used in ORS 659.470 to 659.494:

(1) "Covered employer" means an employer described in ORS 659.472.

(2) "Eligible employee" means any employee of a covered employer other than those employees exempted under the provisions of ORS 659.474.

(3) "Family leave" means a leave of absence described in ORS 659.476.

(4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.

(5) "Health care provider" means the person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, and who is a physician licensed to practice medicine and surgery, including a doctor of osteopathy, a podiatrist, a dentist, a clinical psychologist, an optometrist, a naturopath, a nurse practitioner, a direct entry midwife, a nurse-midwife or a clinical social worker, authorized to practice and performing within the scope of their professional license as provided for by law. "Health care provider" includes a Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Massachusetts, who is primarily responsible for the treatment of the eligible employee or a family member of the eligible employee. "Health care provider" includes a chiropractor, but only to the extent the chiropractor provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(6) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy, or period of absence for prenatal care. [1995 c.580 s.1]

659.472 Covered employers. (1) The requirements of ORS 659.470 to 659.494 apply only to employers who employ 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.

(2) The requirements of ORS 659.470 to 659.494 do not apply to any employer who offers to an eligible employee a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, providing, as one of its options, employee leave at least as generous as the leave required by ORS 659.470 to 659.494. [1995 c.580 s.2]

659.474 Eligible employees. (1) All employees of a covered employer are eligible to take leave for one of the purposes specified in ORS 659.476 (1)(b) to (d) except:

(a) An employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence.

(b) An employee who worked an average of fewer than 25 hours per week for the covered employer during the 180 days immediately preceding the date on which the family leave would commence.

(2) All employees of a covered employer are eligible to take leave for the purpose specified in ORS 659.476 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence. [1995 c.580 s.3]

659.476 Purposes for which family leave may be taken. (1) Family leave under ORS 659.470 to 659.494 may be taken by an eligible employee for any of the following purposes:

(a) To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability.

(b) To care for a family member with a serious health condition.

(c) To recover from or seek treatment for a serious health condition of the employee that renders the employee unable to perform at least one of the essential functions of the employee's regular position.

(d) To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care.

(2) Leave under subsection (1)(a) of this section must be completed within 12 months after birth or placement of the child, and an eligible employee is not entitled to any period of family leave under subsection (1)(a) of this section after the expiration of 12 months after birth or placement of the child. [1995 c.580 s.4]

659.478 Length of leave; conditions. (1) Except as specifically provided by ORS 659.470 to 659.494, an eligible

employee is entitled to up to 12 weeks of family leave within any one-year period.

(2)(a) In addition to the 12 weeks of leave authorized by subsection (1) of this section, a female employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing any available job duties offered by the employer.

(b) An employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659.476 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659.476 (1)(d).

(3) When two family members work for the same covered employer, the employees may not take concurrent family leave unless:

(a) One employee needs to care for the other employee who is suffering from a serious health condition; or

(b) One employee needs to care for a child who has a serious health condition while the other employee is also suffering a serious health condition.

(4) An employee may take family leave for the purposes specified in ORS 659.476 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(5) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659.476 (1)(d) if another family member is available to care for the child.

(6) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an employee or a family member of the employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this subsection shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek will not result in the loss of an employee's exempt status under the federal Fair Labor Standards Act. [1995 c.580 s.5]

659.480 Notice to employer. (1) Except as provided in subsection (2) of this section, a covered employer may require an eligible employee to give the employer written notice at least 30 days before commencing family leave. The employer may require the employee to include an explanation of the need for the leave in the notice.

(2) An eligible employee may commence taking family leave without prior notice under the following circumstances:

(a) An unexpected serious health condition of an employee or family member of an employee;

(b) An unexpected illness, injury or condition of a child of the employee that requires home care; or

(c) A premature birth, unexpected adoption or unexpected foster placement.

(3) If an employee commences leave without prior notice under subsection (2) of this section, the employee must give oral notice to the employer within 24 hours of the commencement of the leave, and must provide the written notice required by subsection (1) of this section within three days after the employee returns to work. The oral notice required by this subsection may be given by any other person on behalf of the employee taking the leave.

(4) If the employee fails to give notice as required by subsections (1) and (3) of this section, the employer may reduce the period of family leave required by ORS 659.478 by three weeks, and the employee may be subject to disciplinary action under a uniformly applied policy or practice of the employer. [1995 c.580 s.6]

659.482 Medical verification and scheduling of treatment. (1) Except as provided in subsection (2) of this section, a covered employer may require medical verification from a health care provider of the need for the leave if the leave is for a purpose described in ORS 659.476 (1)(b) to (d). If an employee is required to give notice under ORS 659.480 (1), the employer may require that medical verification be provided by the employee before the leave period commences. If the employee commences family leave without prior notice pursuant to ORS 659.480 (2), the medical verification must be provided by the employee within 15 days after the employer requests the medical verification. The employer may require an employee to obtain the opinion of a second health care provider designated by the employer, at the employer's expense. If the opinion of the second health care provider conflicts with the medical verification provided by the employee, the employer may require the two health care providers to designate a third health care provider to provide an opinion at the employer's expense. The opinion of the third health care provider shall be final and binding on the employer and employee. In addition to the medical verifications provided for in this subsection, an employer may require subsequent medical verification on a reasonable basis.

(2) A covered employer may require medical verification for leave taken for the purpose described in ORS 659.476 (1)(d) only after an employee has taken more than three days of leave under ORS 659.476 (1)(d) during any one-year period. Any medical verification required under this subsection must be paid for by the covered employer. An

employer may not require an employee to obtain the opinion of a second health care provider for the purpose of medical verification required under this subsection.

(3) Subject to the approval of the health care provider, the employee taking family leave for a serious health condition of the employee or a family member of the employee shall make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operations. [1995 c.580 s.7]

659.484 Job protection. (1) After returning to work after taking family leave under the provisions of ORS 659.470 to 659.494, an eligible employee is entitled to be restored to the position of employment held by the employee when the leave commenced if that position still exists, without regard to whether the employer filled the position with a replacement worker during the period of family leave. If the position held by the employee at the time family leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment. If an equivalent position is not available at the job site of the employee's former position, the employee may be offered an equivalent position at a job site located within 20 miles of the job site of the employee's former position.

(2) Except for employee benefits used during the period of leave, the taking of family leave under ORS 659.470 to 659.494 shall not result in the loss of any employment benefit accrued before the date on which the leave commenced.

(3) This section does not entitle any employee to:

(a) Any accrual of seniority or employment benefits during a period of family leave; or

(b) Any right, benefit or position of employment other than the rights, benefits and position that the employee would have been entitled to had the employee not taken the family leave.

(4)(a) Before restoring an employee to a position under subsection (1) of this section, an employer may require that the employee receive certification from the employee's health care provider that the employee is able to resume work. Certification under this subsection may only be required pursuant to a uniformly applied practice or policy of the employer.

(b) This subsection does not affect the ability of an employer to require an employee during a period of family leave to report periodically to the employer on the employee's status and on the employee's intention to return to work.

(5) Benefits are not required to continue to accrue during a family leave unless continuation or accrual is required under an agreement of the employer and the employee, a collective bargaining agreement or an employer policy. Notwithstanding ORS 652.610 (3), if the employer is required or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for an employee during the period of family leave that should have been paid by the employee, the employer may deduct from the employee's pay such amounts upon the employee's return to work until the amount the employer advanced toward the payments is paid. In no event may the total amount deducted for insurance under the provisions of this subsection exceed 10 percent of the employee's gross pay each pay period.

(6) Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of health, disability, life or other insurance coverage for an employee under the provisions of subsection (5) of this section, and the employee does not return to employment with the employer after taking family leave, the employer may deduct amounts paid by the employer from any amounts owed by the employer to the employee, or may seek to recover those amounts by any other legal means, unless the employee fails to return to work because of:

(a) A continuation, reoccurrence or onset of a serious health condition that would entitle the employee to leave for one of the purposes specified by ORS 659.476 (1)(b) or (c); or

(b) Other circumstances beyond the control of the employee. [1995 c.580 s.8]

659.486 Use of paid leave. (1) Except as provided in subsections (2) and (3) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy, family leave is not required to be granted with pay.

(2) An employee on family leave is entitled to utilize any paid accrued vacation leave during the period of family leave, or to utilize any other paid leave that is offered by the employer in lieu of vacation leave during the period of family leave.

(3) An employee taking family leave for the purpose specified in ORS 659.476 (1)(a) is entitled to utilize any paid accrued sick leave in addition to paid leave that may be utilized under subsection (2) of this section.

(4) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement, the employer may determine the particular order in which accrued leave is to be used in circumstances in which more than one type of accrued leave is available to the employee.

(5) Except as provided by subsection (3) of this section, ORS 659.470 to 659.494 do not require an employer to provide or allow the use of any form of paid sick leave, paid medical leave or paid family leave in any situation in which the employer would not normally provide or allow use of paid sick leave, paid medical leave or paid family leave. [1995 c.580 s.9]

659.488 Special rules for teachers. (1) Notwithstanding any other provision of ORS 659.470 to 659.494, if a teacher requests leave for one of the purposes specified in ORS 659.476 (1)(b) or (c), the need for the leave is foreseeable, and the employee will be on leave for more than 20 percent of the total number of working days in the period during which the leave would extend, the employer of the teacher may require that the employee elect one of the two following options:

(a) The employee may elect to take leave for a period or periods of a particular duration, not to exceed the duration of the anticipated medical treatment; or

(b) The employee may elect to transfer temporarily to an available alternative position that better accommodates recurring periods of leave than the regular position of the employee. The teacher must be qualified for the alternative position, and the position must have pay and benefits that are equivalent to the pay and benefits of the employee's regular position.

(2) Notwithstanding any other provision of ORS 659.470 to 659.494, if a teacher commences a period of family leave for the purpose specified in ORS 659.476 (1)(c) more than five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family leave until the end of the term if:

(a) The leave is of at least three weeks' duration; and

(b) The employee's return to employment would occur during the three-week period before the end of the term.

(3) Notwithstanding any other provision of ORS 659.470 to 659.494, if a teacher commences a period of family leave for one of the purposes specified in ORS 659.476 (1)(a) or (b) during the five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family leave until the end of the term if:

(a) The leave is of at least two weeks' duration; and

(b) The employee's return to employment would occur during the two-week period before the end of the term.

(4) Notwithstanding any other provision of ORS 659.470 to 659.494, if a teacher commences a period of family leave for one of the purposes specified in ORS 659.476 (1)(a) or (b) during the three-week period before the end of the term, and the duration of the leave is greater than five working days, the employer of the teacher may require that the employee continue on family leave until the end of the term.

(5) The provisions of this section apply only to an employee who is employed principally in an instructional capacity by a public kindergarten, elementary school, secondary school or education service district. [1995 c.580 s.9a]

659.490 Postings by employer. A covered employer shall post a notice of the requirements of ORS 659.470 to 659.494 in every establishment of the employer in which employees are employed. The Bureau of Labor and Industries shall provide notices to covered employers meeting the requirements of this section. [1995 c.580 s.10]

659.492 Enforcement. (1) A covered employer who denies family leave to an eligible employee in the manner required by ORS 659.470 to 659.494 commits an unlawful employment practice.

(2) Any employee claiming to be aggrieved by a violation of ORS 659.470 to 659.494 may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659.040. The Commissioner of the Bureau of Labor and Industries shall enforce the provisions of ORS 659.470 to 659.494 in the manner provided in ORS 659.010 to 659.110 for the enforcement of other unlawful employment practices.

(3) Any person claiming to be aggrieved by a violation of ORS 659.470 to 659.494 may bring a civil action in the manner provided by ORS 659.121 (1). [1995 c.580 s.11]

659.494 Exclusivity of provisions. (1) ORS 659.470 to 659.494 do not limit any right of an employee to family medical leave to which the employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy.

(2) ORS 659.470 to 659.494 shall be construed to the extent possible in a manner that is consistent with any similar provisions of the federal Family and Medical Leave Act of 1993. Family leave taken under ORS 659.470 to 659.494 must be taken concurrently with any leave taken under the federal Family and Medical Leave Act of 1993. [1995 c.580 s.12]

DISCLOSURES BY PUBLIC EMPLOYEES (WHISTLEBLOWING)

659.505 Definitions for ORS 659.505 to 659.545. As used in ORS 240.316, 659.035 and 659.505 to 659.545:

- (1) “Disciplinary action” includes but is not limited to any discrimination, dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.
- (2) “Employee” means a person employed by or under contract with:
 - (a) The state or any agency of or political subdivision in the state;
 - (b) Any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;
 - (c) Employees of the public corporation created under ORS 656.751;
 - (d) Employees of a contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement; and
 - (e) Any person authorized by contract to act on behalf of the state, agency or subdivision.
- (3) “Public employer” means:
 - (a) The state or any agency of or political subdivision in the state; and
 - (b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee. [1989 c.890 s.2]

659.510 Prohibited conduct by public employer. (1) Subject to ORS 659.515, except as provided in ORS 240.316, 659.035 and 659.505 to 659.545, no public employer shall:

- (a) Prohibit any employee from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly or legislative committee staff acting under the direction of a member of the Legislative Assembly the activities of:
 - (A) The state or any agency of or political subdivision in the state; or
 - (B) Any person authorized to act on behalf of the state or any agency of or political subdivision in the state.
 - (b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure of any information that the employee reasonably believes is evidence of:
 - (A) A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;
 - (B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or
 - (C) Subject to ORS 659.525 (2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States.
 - (c) Require any employee to give notice prior to making any disclosure or engaging in discussion described in this section, except as allowed in ORS 659.515 (1).
 - (d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions described in this section.
- (2) No public employer shall invoke or impose any disciplinary action against an employee for employee activity described in subsection (1) of this section or ORS 659.525. [1989 c.890 s.3]

659.515 Effect on public employer's authority over employees. ORS 240.316, 659.035 and 659.505 to 659.545 are not intended to:

- (1) Prohibit a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to official legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency or subdivision;
- (2) Permit an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and policies pertaining to leaves, unless the employee is requested by a member of the Legislative Assembly or a legislative committee to appear before a legislative committee;
- (3) Authorize an employee to represent the employee's personal opinions as the opinions of the agency or subdivision;
- (4) Except as specified in ORS 659.525 (2), authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation;

(5) Restrict or preclude disciplinary action against an employee if the information disclosed by the employee is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety; or

(6) Restrict or impair any judicial right of action an employee or an employer has under existing law. [1989 c.890 s.4]

659.520 Effect on public record disclosures. ORS 240.316, 659.035 and 659.505 to 659.545 are not intended to:

(1) Allow disclosure of records exempt from disclosure except as provided in ORS 192.501 to 192.505.

(2) Prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action. [1989 c.890 s.5]

659.525 Policy on cooperation with law enforcement officials. (1) In order to protect the safety of the citizens of this state, it is the policy of this state that all public employers and their employees cooperate with law enforcement officials in the apprehension of persons subject to a felony or misdemeanor warrant for arrest.

(2) Notwithstanding any other law, when an employee reasonably believes that a person receiving services, benefits or assistance from the state or any agency or political subdivision in the state is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States, the employee shall promptly and without delay report to the employee's immediate supervisor or a person designated by the agency by rule to receive such report.

(3) The supervisor or person designated by the agency shall notify the Oregon State Police promptly and without delay of the information supplied by the employee.

(4) The notification required by subsections (2) and (3) of this section shall include disclosure of the name and address of the person, available information concerning the felony or misdemeanor warrant for arrest and other available identifying information.

(5) Information disclosed under this section shall only be used by law enforcement officials to verify the existence of a felony or misdemeanor warrant for arrest of the person and to apprehend the person if a felony or misdemeanor warrant for arrest exists. [1989 c.890 s.6]

659.530 Civil action on behalf of employee authorized. In addition to appeal proceedings of ORS 240.560 for a state employee and any comparable provisions for employees of political subdivisions and remedies available under ORS 659.035, an employee alleging a violation of ORS 659.510 may bring a civil action for appropriate injunctive relief or damages, or both, within 90 days after the occurrence of the alleged violation. The action may be filed in the circuit court of the county in which the alleged violation occurred, or the county in which the complainant resides. If damages are awarded, the court shall award actual damages or \$250, whichever is greater. [1989 c.890 s.7]

659.535 Disclosure of employee's name without consent prohibited. The identity of the employee who discloses any of the following shall not be disclosed without the written consent of the employee during any investigation of the information provided by the employee, relating to:

(1) Matters described in ORS 659.510 (1)(b).

(2) Reports required by ORS 659.525 (2). [1989 c.890 s.8]

659.540 Uniform application to all public employers; optional procedure for disclosures. (1) The Bureau of Labor and Industries by rule shall assure that the requirements of ORS 240.316, 659.035 and 659.505 to 659.545 are applied uniformly to all public employers. Each public employer may adopt rules, consistent with the Bureau of Labor and Industries rules, which apply to that public employer and which also implement ORS 240.316, 659.035 and 659.505 to 659.545.

(2) A public employer may establish by rule an optional procedure whereby an employee who wishes to disclose information described in ORS 659.510 (1)(b) may disclose information first to the supervisor, or if the supervisor is involved, to the supervisor next higher, but the employer must protect the employee against retaliatory or disciplinary action by any supervisor for such disclosure. [1989 c.890 s.9]

659.545 Short title. ORS 240.316, 659.035 and 659.505 to 659.545 shall be known as the Whistleblower Law.

[1989 c.890 s.1]

EMPLOYMENT DISCRIMINATION BASED ON INITIATING OR AIDING CRIMINAL OR CIVIL PROCEEDING (WHISTLEBLOWING)

659.550 Prohibition against discrimination in employment based on initiating or aiding in criminal or civil proceedings; complaints. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported criminal activity by any person, has in good faith caused a complainant's information or complaint to be filed against any person, has in good faith cooperated with any law enforcement agency conducting a criminal investigation, has in good faith brought a civil proceeding against an employer or has testified in good faith at a civil proceeding or criminal trial.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545.

(3) For the purposes of this section, "complainant's information" and "complaint" have the meanings given those terms in ORS 131.005.

(4) The remedies provided by this section are in addition to any common law remedy or other remedy that may be available to an employee for the conduct constituting a violation of this section. [1991 c.342 s.1]

Note: 659.550 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.560 [1991 c.939 s.2; repealed by 1995 c.580 s.18]

659.565 [1991 c.939 s.3; repealed by 1995 c.580 s.18]

659.570 [1991 c.939 s.4; repealed by 1995 c.580 s.18]

GENETIC PRIVACY

659.700 Definitions for ORS 659.700 to 659.720. As used in ORS 659.700 to 659.720:

(1) "Anonymous research" means:

(a) Scientific or medical research conducted in such a manner that the identity of an individual who has provided a sample, or the identity of an individual from whom genetic information has been obtained, cannot be determined; or

(b) Scientific or medical research conducted in accordance with the Federal Policy for the Protection of Human Subjects with the approval of an institutional review board established in accordance with that policy.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA sample" means any human biological specimen from which DNA was extracted, or any human biological specimen that is obtained or retained for the purpose of extracting and analyzing DNA to determine a genetic characteristic. "DNA sample" includes DNA extracted from the specimen.

(4) "Genetic characteristic" means any gene or chromosome, or alteration thereof, that is scientifically or medically believed to cause a disease, disorder or syndrome, or to be associated with statistically increased risk of development of a disease, disorder or syndrome.

(5) "Genetic information" is the information about an individual or family obtained from:

(a) A genetic test; or

(b) An individual's DNA sample.

(6) "Genetic test" means a test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to diagnose a genetic characteristic.

(7) "Insurance provider" means an insurance company, health care service contractor, fraternal benefit organization, insurance agent, third party administrator, insurance support organization or other person subject to regulation by the Insurance Code.

(8) "Person" has the meaning given in ORS 433.045. [1995 c.680 s.1; 1997 c.780 s.1; 1999 c.921 s.1]

Note: The amendments to 659.700 by section 2, chapter 921, Oregon Laws 1999, become operative January 1, 2002. See section 3, chapter 921, Oregon Laws 1999. The text that is operative on and after January 1, 2002, is set forth for the user's convenience.

659.700. As used in ORS 659.700 to 659.720:

(1) "Anonymous research" means scientific or medical research conducted in such a manner that the identity of a person who has provided a sample, or the identity of a person from whom genetic information has been obtained, cannot be determined.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA sample" means any human biological specimen from which DNA was extracted, or any human biological specimen that is obtained or retained for the purpose of extracting and analyzing DNA to determine a genetic characteristic. "DNA sample" includes DNA extracted from the specimen.

(4) "Genetic characteristic" means any gene or chromosome, or alteration thereof, that is scientifically or medically believed to cause a disease, disorder or syndrome, or to be associated with statistically increased risk of development of a disease, disorder or syndrome.

(5) "Genetic information" is the information about an individual or family obtained from:

(a) A genetic test; or

(b) An individual's DNA sample.

(6) "Genetic test" means a test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to diagnose a genetic characteristic.

(7) "Insurance provider" means an insurance company, health care service contractor, fraternal benefit organization, insurance agent, third party administrator, insurance support organization or other person subject to regulation by the Insurance Code.

(8) "Person" has the meaning given in ORS 433.045.

Note: 659.700 to 659.720 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 Preface to Oregon Revised Statutes for further explanation.

659.705 Legislative findings; purposes. (1) The Legislative Assembly finds that:

(a) The DNA molecule contains information about an individual's probable medical future. This information is written in a code that is rapidly being broken.

(b) Genetic information is uniquely private and personal information that generally should not be collected, retained or disclosed without the individual's authorization.

(c) The improper collection, retention or disclosure of genetic information can lead to significant harm to the individual, including stigmatization and discrimination in areas such as employment, education, health care and insurance.

(d) An analysis of an individual's DNA provides information not only about an individual, but also about blood relatives of the individual, with the potential for impacting family privacy, including reproductive decisions.

(e) Current legal protections for medical information, tissue samples and DNA samples are inadequate to protect genetic privacy.

(f) Laws for the collection, storage and use of identifiable DNA samples and private genetic information obtained from those samples are needed both to protect individual privacy and to permit legitimate scientific and medical research.

(2) The purposes of ORS 659.700 to 659.720 and 746.135 and the provisions of ORS 659.036, 659.227 and 746.015 relating to genetic characteristics, information and testing are as follows:

(a) To define the rights of individuals whose genetic information is collected, retained or disclosed.

(b) To define the circumstances under which an individual may be subjected to genetic testing.

(c) To define the circumstances under which an individual's genetic information may be collected, retained or disclosed.

(d) To protect against discrimination by an insurer or employer based upon an individual's genetic characteristics. [1995 c.680 s.2; 1997 c.780 s.2]

Note: See second note under 659.700.

659.710 Informed consent required for obtaining genetic information; exceptions. (1) No person shall obtain genetic information from an individual, or from an individual's DNA sample, without first obtaining informed consent of the individual or the individual's representative, except:

(a) As authorized by ORS 181.085 or comparable provisions of federal criminal law relating to the identification of persons, or for the purpose of establishing the identity of a person in the course of an investigation conducted by a law enforcement agency, a district attorney, a medical examiner or the Criminal Justice Division of the Department of Justice;

(b) For anonymous research where the identity of the subject will not be revealed;

(c) As permitted by rules of the Health Division for identification of deceased individuals;

(d) As permitted by rules of the Health Division for newborn screening procedures; or

(e) As authorized by statute for the purpose of establishing paternity.

(2) A physician licensed under ORS chapter 677 shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by ORS 677.097. Any other licensed health care provider or facility must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in a manner substantially similar to that provided by ORS 677.097 for physicians.

(3) An insurance provider shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by rules adopted by the Department of Consumer and Business Services. Any other person must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by rules adopted by the Health Division.

(4) The Health Division may not adopt rules under subsection (1)(d) of this section that would require the providing of a DNA sample for the purpose of obtaining complete genetic information used to screen all newborns. [1995 c.680 s.3]

Note: See second note under 659.700.

659.715 Individual's rights in genetic information; retention of information; destruction of information. (1) Subject to the provisions of ORS 659.036, 659.700 to 659.720 and 746.135, an individual's genetic information and DNA sample are the property of the individual except when the information or sample is used in anonymous research.

(2) A person does not interfere with, infringe upon, misappropriate or otherwise damage an individual's property by obtaining, testing, retaining, disclosing or providing an individual's genetic information or DNA sample solely for anonymous research.

(3) A person may not retain another individual's genetic information or DNA sample without first obtaining authorization from the individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest or a child fatality review by a multidisciplinary child abuse team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Retention is permitted by rules of the Health Division for identification of, or testing to benefit blood relatives of, deceased individuals;

(d) Retention is permitted by rules of the Health Division for newborn screening procedures; or

(e) Retention is for anonymous research.

(4) The DNA sample of an individual from which genetic information has been obtained shall be destroyed promptly upon the specific request of that individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest or a child fatality review by a multidisciplinary child abuse team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions; or

(c) Retention is for anonymous research.

(5) A DNA sample from an individual that is the subject of a research project, other than an anonymous research project, shall be destroyed promptly upon completion of the project or withdrawal of the individual from the project, whichever occurs first, unless the individual or the individual's representative directs otherwise by informed consent.

(6) A DNA sample from an individual for insurance or employment purposes shall be destroyed promptly after the purpose for which the sample was obtained has been accomplished unless retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil, criminal and juvenile proceedings.

(7) An individual or an individual's representative, promptly upon request, may inspect, request correction of and obtain genetic information from the records of the individual, unless the genetic information has been made anonymous by destruction of all information that could allow disclosure of the identity of the individual who provided the sample.

(8) The Health Division shall coordinate the implementation of this section.

(9) This section applies only to genetic information that can be identified as belonging to an individual or family. This section does not apply to any law, contract or other arrangement that determines a person's rights to compensation relating to substances or information derived from an individual's DNA sample. [1995 c.680 s.4; 1997 c.780 s.3]

Note: See second note under 659.700.

659.720 Disclosure of genetic information prohibited; exceptions. (1) Regardless of the manner of receipt or the source of genetic information, including information received from an individual, a person may not disclose or be compelled, by subpoena or any other means, to disclose the identity of an individual upon whom a genetic test has been performed or to disclose genetic information about the individual in a manner that permits identification of the individual, unless:

(a) Disclosure is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child abuse team;

(b) Disclosure is required by specific court order entered pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Disclosure is authorized by statute for the purpose of establishing paternity;

(d) Disclosure is specifically authorized by the tested individual or the tested individual's representative by signing a consent form prescribed by rules of the Health Division;

(e) Disclosure is for the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent; or

(f) Disclosure is for the purpose of identifying bodies.

(2) The prohibitions of this section apply to any redisclosure by any person after another person has disclosed genetic information or the identity of an individual upon whom a genetic test has been performed. [1995 c.680 s.5]

Note: See second note under 659.700.

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 punishable, 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 s.1; subsection (7) enacted as 1963 c.249 s.2; 1973 c.140 s.2]
