

Senate Bill 764

Sponsored by COMMITTEE ON RULES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies lists of protected classes in civil rights law. Standardizes order of protected classes listed in civil rights law.

A BILL FOR AN ACT

1
2 Relating to lists of protected classes in civil rights law; amending ORS 659A.003, 659A.006, 659A.012,
3 659A.030, 659A.403, 659A.406, 659A.409, 659A.421, 659A.424, 659A.805 and 659A.815.

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

5 **SECTION 1.** ORS 659A.003 is amended to read:

6 659A.003. The purpose of this chapter is to encourage the fullest utilization of the available
7 workforce by removing arbitrary standards of race, **color**, religion, [*color*,] sex, [*marital status*,] na-
8 tional origin, **marital status**, [*or*] age **or disability** as a barrier to employment of the inhabitants
9 of this state, and to ensure the human dignity of all people within this state and protect their health,
10 safety and morals from the consequences of intergroup hostility, tensions and practices of discrimi-
11 nation of any kind based on race, **color**, religion, [*color*,] sex, **national origin**, marital status, [*or*
12 *national origin*] **age or disability**. To accomplish this purpose, the Legislative Assembly intends by
13 this chapter to provide:

14 (1) A program of public education calculated to eliminate attitudes upon which practices of
15 discrimination because of race, **color**, religion, [*color*,] sex, **national origin**, marital status, [*or na-*
16 *tional origin*] **age or disability** are based.

17 (2) An adequate remedy for persons aggrieved by certain acts of discrimination because of race,
18 **color**, religion, [*color*,] sex, **national origin**, marital status or [*national origin*] **disability** or unrea-
19 sonable acts of discrimination in employment based upon age.

20 (3) An adequate administrative machinery for the orderly resolution of complaints of discrimi-
21 nation through a procedure involving investigation, conference, conciliation and persuasion, to en-
22 courage the use in good faith of [*such*] **the** machinery by all parties to a complaint of discrimination
23 and to discourage unilateral action that makes moot the outcome of final administrative or judicial
24 determination on the merits of [*such a*] **the** complaint.

25 **SECTION 2.** ORS 659A.006 is amended to read:

26 659A.006. (1) It is declared to be the public policy of Oregon that practices of discrimination
27 against any of its inhabitants because of race, **color**, religion, [*color*,] sex, **national origin**, marital
28 status, [*national origin*,] age or disability are a matter of state concern and that [*such*] **this** dis-
29 crimination **not only** threatens [*not only*] the rights and privileges of its inhabitants but menaces the
30 institutions and foundation of a free democratic state.

31 (2) The opportunity to obtain employment without discrimination because of race, **color**, reli-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 gion, [*color,*] sex, **national origin**, marital status, [*national origin,*] age or disability hereby is re-
 2 cognized as and declared to be a civil right. However, this section [*shall*] **may** not be construed to
 3 prevent a bona fide church or sectarian religious institution, including but not limited to a school,
 4 hospital or church camp, from preferring an employee or applicant for employment of one religious
 5 sect or persuasion over another when:

6 (a) That religious sect or persuasion to which the employee or applicant belongs is the same as
 7 that of [*such*] **the** church or institution;

8 (b) In the opinion of [*such bona fide*] **the** church or [*sectarian religious*] institution, [*such a*] **the**
 9 preference will best serve the purposes of [*such*] **the** church or institution; and

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

13 **SECTION 3.** ORS 659A.012 is amended to read:

14 659A.012. (1) To achieve the public policy of the State of Oregon for persons in the state to at-
 15 tain employment and advancement without discrimination because of race, **color**, religion, [*color,*]
 16 sex, **national origin**, marital status, [*national origin, disability or*] age **or disability**, every state
 17 agency [*shall be*] **is** required to include in the evaluation of all management personnel the manager's
 18 or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the
 19 manager's or supervisor's performance.

20 (2) To achieve the public policy of the State of Oregon for persons in the state to attain em-
 21 ployment and advancement without discrimination because of race, **color**, religion, [*color,*] sex, **na-**
 22 **tional origin**, marital status, [*national origin,*] age or disability, every state agency [*shall be*] **is**
 23 required to present the affirmative action objectives and performance of that agency of the current
 24 biennium and those for the following biennium to the Governor of the State of Oregon and to the
 25 Legislative Assembly. These plans shall be reviewed as part of the budget review process.

26 **SECTION 4.** ORS 659A.030 is amended to read:

27 659A.030. (1) It is an unlawful employment practice:

28 (a) For an employer, because of an individual's race, **color**, religion, [*color,*] sex, national origin,
 29 marital status or age if the individual is 18 years of age or older, or because of the race, **color**,
 30 religion, [*color,*] sex, national origin, marital status or age of any other person with whom the indi-
 31 vidual associates, or because of [*a*] **an individual's** juvenile record[,] that has been expunged pur-
 32 suant to ORS 419A.260 and 419A.262, [*of any individual,*] to refuse to hire or employ or to bar or
 33 discharge **the individual** from employment [*such individual*]. However, discrimination is not an
 34 unlawful employment practice if [*such*] **the** discrimination results from a bona fide occupational
 35 [*requirement*] **qualification** reasonably necessary to the normal operation of the employer's business.

36 (b) For an employer, because of an individual's race, **color**, religion, [*color,*] sex, national origin,
 37 marital status or age if the individual is 18 years of age or older, or because of the race, **color**,
 38 religion, [*color,*] sex, national origin, marital status or age of any other person with whom the indi-
 39 vidual associates, or because of [*a*] **an individual's** juvenile record[,] that has been expunged pur-
 40 suant to ORS 419A.260 and 419A.262, [*of any individual,*] to discriminate against [*such*] **the**
 41 individual in compensation or in terms, conditions or privileges of employment.

42 (c) For a labor organization, because of an individual's race, **color**, religion, [*color,*] sex, national
 43 origin, marital status or age if the individual is 18 years of age or older, or because of [*a*] **an indi-**
 44 **vidual's** juvenile record[,] that has been expunged pursuant to ORS 419A.260 and 419A.262, [*of any*
 45 *individual*] to exclude or to expel from its membership [*such*] **the** individual or to discriminate in

1 any way against *[any such]* **the** individual or any other person.

2 (d) For any employer or employment agency to print or circulate or cause to be printed or cir-
 3 culated any statement, advertisement or publication, or to use any form of application for employ-
 4 ment or to make any inquiry in connection with prospective employment *[which]* **that** expresses
 5 directly or indirectly any limitation, specification or discrimination as to an individual's race, **color**,
 6 religion, *[color,]* sex, national origin, marital status or age if the individual is 18 years of age or
 7 older or on the basis of an expunged juvenile record, or any intent to make any such limitation,
 8 specification or discrimination, unless based upon a bona fide occupational qualification. *[But iden-*
 9 *tifying]* **Identification of** employees according to race, **color**, religion, *[color,]* sex, national origin,
 10 marital status[,] or age does not violate this section unless the Commissioner of the Bureau of Labor
 11 and Industries, after a hearing conducted pursuant to ORS 659A.805, determines that *[such a]* **the**
 12 designation expresses an intent to limit, specify or discriminate on the basis of race, **color**, religion,
 13 *[color,]* sex, national origin, marital status or age.

14 (e) For an employment agency, **because of an individual's race, color, religion, sex, national**
 15 **origin, marital status or age if the individual is 18 years of age or older, or because of the**
 16 **race, color, religion, sex, national origin, marital status or age of any other person with**
 17 **whom the individual associates, or because of an individual's juvenile record that has been**
 18 **expunged pursuant to ORS 419A.260 and 419A.262,** to classify or refer for employment, or to fail
 19 or refuse to refer for employment, or otherwise to discriminate against *[any]* **the** individual.[.]

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

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

24 *[(C) Because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and*
 25 *419A.262.]*

26
 27 However, it is not an unlawful employment practice for an employment agency to classify or refer
 28 for employment *[any]* **an** individual *[where such]* **when the** classification or referral results from a
 29 bona fide occupational *[requirement]* **qualification** reasonably necessary to the normal operation of
 30 the employer's business.

31 (f) For any person to discharge, expel or otherwise discriminate against any other person be-
 32 cause that other person has opposed any unlawful practice, or because that other person has filed
 33 a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so.

34 (g) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce
 35 the doing of any of the acts forbidden under this chapter or to attempt to do so.

36 (2) The provisions of this section apply to an apprentice under ORS 660.002 to 660.210, but the
 37 selection of an apprentice on the basis of the ability to complete the required apprenticeship train-
 38 ing before attaining the age of 70 years is not an unlawful employment practice. The commissioner
 39 shall administer this section with respect to apprentices under ORS 660.002 to 660.210 equally with
 40 regard to all employees and labor organizations.

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

43 (4)(a) It is not an unlawful employment practice for an employer or labor organization to provide
 44 or make financial provision for child care services of a custodial or other nature to its employees
 45 or members who are responsible for a minor child.

1 (b) As used in this subsection, “responsible for a minor child” means having custody or legal
2 guardianship of a minor child or acting in loco parentis to the child.

3 **SECTION 5.** ORS 659A.403 is amended to read:

4 659A.403. (1) Except as provided in subsection (2) of this section, all persons within the juris-
5 diction of this state are entitled to the full and equal accommodations, advantages, facilities and
6 privileges of any place of public accommodation, without any distinction, discrimination or re-
7 striction on account of race, **color**, religion, sex, **national origin**, marital status[, *color, national*
8 *origin*] or age if the individual is 18 years of age or older.

9 (2) Subsection (1) of this section does not prohibit:

10 (a) The enforcement of laws governing the consumption of alcoholic beverages by minors and
11 the frequenting by minors of places of public accommodation where alcoholic beverages are served;
12 or

13 (b) The offering of special rates or services to persons 50 years of age or older.

14 (3) It is an unlawful practice for any person to deny full and equal accommodations, advantages,
15 facilities and privileges of any place of public accommodation in violation of this section.

16 **SECTION 6.** ORS 659A.406 is amended to read:

17 659A.406. Except as otherwise authorized by ORS 659A.403, it is an unlawful practice for any
18 person to aid or abet any place of public accommodation, as defined in ORS 659A.400, or any person
19 acting on behalf of [*such*] **the place of public accommodation** to make any distinction, discrimi-
20 nation or restriction on account of race, **color**, religion, [*color,*] sex, **national origin**, marital
21 status[, *national origin*] or age if the individual is 18 years of age or older.

22 **SECTION 7.** ORS 659A.409 is amended to read:

23 659A.409. Except as provided by laws governing the consumption of alcoholic beverages by mi-
24 nors and the frequenting by minors of places of public accommodation where alcoholic beverages
25 are served, and except for special rates or services offered to persons 50 years of age or older, it
26 is an unlawful practice for any person acting on behalf of any place of public accommodation as
27 defined in ORS 659A.400 to publish, circulate, issue or display, or cause to be published, circulated,
28 issued or displayed, any communication, notice, advertisement or sign of any kind to the effect that
29 any of the accommodations, advantages, facilities, services or privileges of the place of public ac-
30 commodation will be refused, withheld from or denied to, or that any discrimination will be made
31 against, any person on account of race, **color**, religion, sex, **national origin**, marital status[, *color,*
32 *national origin*] or age if the individual is 18 years of age or older.

33 **SECTION 8.** ORS 659A.421 is amended to read:

34 659A.421. (1) [*No person shall*] **A person may not**, because of race, color, **religion**, sex, **na-**
35 **tional origin**, marital status, [*source of income, familial status, religion or national origin*] **familial**
36 **status or source of income** of any person:

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

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

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

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

43 (e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed,
44 any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing
45 of real property [*which*] **that** indicates any preference, limitation, specification or discrimination

1 based on race, color, **religion**, sex, **national origin**, marital status, [*source of income, religion or*
2 *national origin*] **familial status or source of income**.

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

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

8 (2)(a) [*No*] **A** person whose business includes engaging in residential real estate related trans-
9 actions [*shall*] **may not** discriminate against any person in making **a transaction** available [*such a*
10 *transaction*], or in the terms or conditions of [*such a*] **the** transaction, because of race, color, **reli-**
11 **gion**, sex, **national origin**, marital status, **familial status or** source of income[, *familial status, re-*
12 *ligion or national origin*].

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

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

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

17 (ii) For securing residential real estate; or

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

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

23 (4) [*No person shall*] **A person may not**, for profit, induce or attempt to induce any other person
24 to sell or rent any dwelling by representations regarding the entry or prospective entry into the
25 neighborhood of a person or persons of a particular race, color, **religion**, sex, **national origin**,
26 marital status, **familial status or** source of income[, *familial status, religion or national origin*].

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

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

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

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

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

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

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

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

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

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

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

5 (B) The housing includes unoccupied units[. *However, such*], **if the** units are reserved for occu-
6 pancy by persons who meet the age requirements of paragraph (b)(B) or (C) of this subsection.

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

9 (8) In the sale, lease or rental of real estate, [*no person shall*] **a person may not** disclose to any
10 person that an occupant or owner of real property has or died from human immunodeficiency virus
11 or acquired immune deficiency syndrome.

12 (9) The provisions of subsection (1)(a) to (d) and (f) of this section that prohibit actions based
13 upon familial status or sex do not apply to the renting of space within a single-family residence if
14 the owner actually maintains and occupies the residence as the owner's primary residence and all
15 occupants share some common space within the residence.

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

17 **SECTION 9.** ORS 659A.424 is amended to read:

18 659A.424. (1) As used in this section:

19 (a) "Facially neutral housing policy" means a guideline, practice, rule, or screening or admission
20 criterion regarding a real property transaction that applies equally to all persons.

21 (b) "Protected class" means a group of persons distinguished by race, color, **religion**, sex, **na-**
22 **tional origin**, marital status, **disability**, **familial status or** source of income[, *familial status, reli-*
23 *gion, national origin or disability*].

24 (c) "Real property transaction" means an act described in ORS 659A.145 or 659A.421 involving
25 the renting or leasing of residential real property subject to ORS chapter 90.

26 (2) A court or the Commissioner of the Bureau of Labor and Industries may find that a person
27 has violated ORS 659A.145 or 659A.421 if:

28 (a) The person applies a facially neutral housing policy to a member of a protected class in a
29 real property transaction involving a residential tenancy subject to ORS chapter 90; and

30 (b) Application of the policy adversely impacts members of the protected class to a greater ex-
31 tent than the policy adversely impacts persons generally.

32 (3) In determining under subsection (2) of this section whether a violation has occurred and, if
33 so, what relief should be granted, a court or the commissioner shall consider:

34 (a) The significance of the adverse impact on the protected class;

35 (b) The importance and necessity of any business purpose for the facially neutral housing policy;
36 and

37 (c) The availability of less discriminatory alternatives for achieving the business purpose for the
38 facially neutral housing policy.

39 **SECTION 10.** ORS 659A.805 is amended to read:

40 659A.805. (1) In accordance with any applicable provision of ORS chapter 183, the Commissioner
41 of the Bureau of Labor and Industries may adopt reasonable rules:

42 (a) Establishing what acts and communications constitute a notice, sign or advertisement that
43 public accommodation or real property will be refused, withheld from, or denied to any person or
44 that discrimination will be made against the person because of race, **color**, religion, sex, **national**
45 **origin**, marital status, [*color, national origin or,*] **disability or:**

1 (A) With respect to public accommodation, age.

2 (B) **With respect to real property, familial status or source of income.**

3 (b) Establishing what inquiries in connection with employment and prospective employment ex-
4 press a limitation, specification or discrimination as to race, **color**, religion, [*color*,] sex, national
5 origin, **marital status**, [*or*] age **or disability**.

6 (c) Establishing what inquiries in connection with employment and prospective employment so-
7 liciting information as to race, **color**, religion, [*color*,] sex, national origin, **marital status**, [*or*] age
8 **or disability** are based on bona fide [*job*] **occupational** qualifications.

9 (d) For internal operation and practice and procedure before the commissioner under this
10 chapter.

11 (e) Covering any other matter required to carry out the purposes of this chapter.

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

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

16 (b) Available reasonable alternative ways of obtaining requested information without soliciting
17 responses as to race, **color**, religion, [*color*,] sex, **national origin**, marital status, [*national origin*
18 *or*] age, **disability, familial status or source of income**.

19 (c) Whether a statement or inquiry soliciting information as to race, **color**, religion, [*color*,] sex,
20 **national origin**, marital status, [*national origin or*] age, **disability, familial status or source of**
21 **income** communicates an idea independent of an intention to limit, specify or discriminate as to
22 race, **color**, religion, [*color*,] sex, **national origin**, marital status, [*national origin or*] age, **disability,**
23 **familial status or source of income**.

24 (d) Whether the independent idea communicated is relevant to a legitimate objective of the kind
25 of transaction [*which*] **that** it contemplates.

26 (e) The ease with which the independent idea relating to a legitimate objective of the kind of
27 transaction contemplated could be communicated without connoting an intention to discriminate as
28 to race, **color**, religion, [*color*,] sex, **national origin**, marital status, [*national origin or*] age, **disa-**
29 **bility, familial status or source of income**.

30 **SECTION 11.** ORS 659A.815 is amended to read:

31 659A.815. (1) The Commissioner of the Bureau of Labor and Industries shall create [*such*] advi-
32 sory agencies and intergroup-relations councils[, *local, regional or statewide, as in the judgment of*]
33 **as** the commissioner [*will*] **believes necessary to** aid in effectuating the purposes of this chapter.
34 The commissioner may empower [*them*] **advisory agencies and councils**:

35 (a) To study the problems of discrimination in all or specific fields of human relationships or in
36 specific instances of discrimination because of race, **color**, religion, [*color*,] sex, [*or*] national
37 origin, **marital status, age or disability**.

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

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

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

45 (3) The commissioner may make provision for technical and clerical assistance to [*such*] **the**

1 **advisory** agencies and councils and for the expenses of [*such*] **the** assistance.

2
