

House Bill 2319

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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**.

Changes unlawful discrimination laws that determine if individual is person with disability to be more similar to federal Americans with Disabilities Act.

A BILL FOR AN ACT

1
2 Relating to persons with disabilities; creating new provisions; and amending ORS 659A.100, 659A.103
3 and 659A.112.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 659A.100 to**
6 **659A.145.**

7 **SECTION 2. (1) An individual is a person with a disability under ORS 659A.100 to 659A.145**
8 **if the individual meets any one of the following criteria:**

9 (a) **The individual has a physical or mental impairment that substantially limits one or**
10 **more major life activities of the individual.**

11 (b) **The individual has a record of having a physical or mental impairment that substan-**
12 **tially limits one or more major life activities of the individual. For the purposes of this par-**
13 **agraph, an individual has a record of having a physical or mental impairment if the individual**
14 **has a history of, or has been misclassified as having, a physical or mental impairment that**
15 **substantially limits one or more major life activities of the individual.**

16 (c) **The individual is regarded as having a physical or mental impairment that substan-**
17 **tially limits one or more major life activities of the individual. For the purposes of this par-**
18 **agraph:**

19 (A) **An individual is regarded as having a physical or mental impairment if the individual**
20 **has been subjected to an unlawful practice because of an actual or perceived physical or**
21 **mental impairment, whether or not the impairment limits or is perceived to limit a major**
22 **life activity of the individual.**

23 (B) **An individual is not regarded as having a physical or mental impairment if the indi-**
24 **vidual has an impairment that is minor and that has an actual or expected duration of six**
25 **months or less.**

26 (2) **Activities that are considered major life activities for the purpose of determining if**
27 **an individual is a person with a disability include:**

28 (a) **Caring for oneself;**

29 (b) **Performing manual tasks;**

30 (c) **Seeing;**

31 (d) **Hearing;**

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 (e) Eating;
- 2 (f) Sleeping;
- 3 (g) Walking;
- 4 (h) Standing;
- 5 (i) Lifting;
- 6 (j) Bending;
- 7 (k) Speaking;
- 8 (L) Breathing;
- 9 (m) Learning;
- 10 (n) Reading;
- 11 (o) Concentrating;
- 12 (p) Thinking;
- 13 (q) Communicating;
- 14 (r) Working;
- 15 (s) Operation of a major bodily function, including:
- 16 (A) Functions of the immune system;
- 17 (B) Normal cell growth; and
- 18 (C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and
- 19 reproductive functions; and
- 20 (t) Ability to acquire, rent or maintain property.

21 (3) An individual is substantially limited in a major life activity if the individual has an
22 impairment, had an impairment or is perceived as having an impairment that materially re-
23 stricts one or more major life activities of the individual. An impairment that substantially
24 limits one major life activity of the individual need not limit other major life activities of the
25 individual. An impairment that is episodic or in remission is considered to substantially limit
26 a major life activity of the individual if the impairment would substantially limit a major life
27 activity of the individual when the impairment is active.

28 (4) When determining whether an impairment substantially limits a major life activity
29 of an individual, the determination shall be made without regard to the ameliorative effects
30 of mitigating measures, including:

- 31 (a) Medication;
- 32 (b) Medical supplies, equipment or appliances;
- 33 (c) Low vision devices or other devices that magnify, enhance or otherwise augment a
34 visual image, except that ordinary eyeglasses or contact lenses or other similar lenses that
35 are intended to fully correct visual acuity or eliminate refractive error may be considered
36 when determining whether an impairment substantially limits a major life activity of an in-
37 dividual;
- 38 (d) Prosthetics, including limbs and devices;
- 39 (e) Hearing aids, cochlear implants or other implantable hearing devices;
- 40 (f) Mobility devices;
- 41 (g) Oxygen therapy equipment or supplies;
- 42 (h) Assistive technology;
- 43 (i) Reasonable accommodations or auxiliary aids or services; or
- 44 (j) Learned behavioral or adaptive neurological modifications.

45 **SECTION 3.** ORS 659A.100 is amended to read:

1 659A.100. [(1)] As used in **this section and** [ORS 659A.100 to 659A.145, unless the context re-
 2 quires otherwise] **ORS 659A.124, 659A.127 and 659A.130:**

3 [(a)] (1) “Drug” means a controlled substance, as classified in schedules I through V of section
 4 202 of the Controlled Substances Act, 21 U.S.C.A. 812, as amended, and as modified under ORS
 5 475.035.

6 [(b)] (2) “Illegal use of drugs” means any use of drugs, the possession or distribution of which
 7 is unlawful under state law or under the Controlled Substances Act, 21 U.S.C.A. 812, as amended,
 8 but does not include the use of a drug taken under supervision of a licensed health care professional,
 9 or other uses authorized under the Controlled Substances Act or under other provisions of state or
 10 federal law.

11 [(c) “Person with a disability” means an individual who has a physical or mental impairment that
 12 substantially limits one or more major life activities, has a record of such an impairment or is regarded
 13 as having such an impairment.]

14 [(d) “State government” has the meaning given that term in ORS 174.111.]

15 [(2) As used in subsection (1) of this section:]

16 [(a) “Major life activity” includes but is not limited to self-care, ambulation, communication,
 17 transportation, education, socialization, employment and ability to acquire, rent or maintain property.]

18 [(b) “Has a record of such an impairment” means that the individual has a history of, or has been
 19 misclassified as having, a mental or physical impairment that substantially limits one or more major
 20 life activities.]

21 [(c) “Is regarded as having such an impairment” means that the individual:]

22 [(A) Has a physical or mental impairment that does not substantially limit major life activities but
 23 is treated by an employer or supervisor as having such a limitation;]

24 [(B) Has a physical or mental impairment that substantially limits major life activities only as a
 25 result of the attitude of others toward such impairment; or]

26 [(C) Has none of the impairments described in subparagraph (A) or (B) of this paragraph, but is
 27 treated by an employer or supervisor as having a mental or physical impairment that substantially
 28 limits one or more major life activities.]

29 [(d) “Substantially limits” means:]

30 [(A) The impairment renders the individual unable to perform a major life activity that the average
 31 person in the general population can perform; or]

32 [(B) The impairment significantly restricts the condition, manner or duration under which an in-
 33 dividual can perform a particular major life activity as compared to the condition, manner or duration
 34 under which the average person in the general population can perform the same major life activity.]

35 **SECTION 4.** ORS 659A.103 is amended to read:

36 659A.103. (1) It is declared to be the public policy of Oregon to guarantee persons with disabili-
 37 ties the fullest possible participation in the social and economic life of the state, to engage in
 38 remunerative employment, to use and enjoy places of public accommodation, resort or amusement,
 39 to participate in and receive the benefits of the services, programs and activities of state govern-
 40 ment and to secure housing accommodations of their choice, without discrimination. **In order to**
 41 **achieve this policy, section 2 of this 2009 Act shall be liberally construed.**

42 (2) The right to otherwise lawful employment without discrimination because of disability where
 43 the reasonable demands of the position do not require such a distinction, and the right to use and
 44 enjoy places of public accommodation, resort or amusement, to participate in and receive the bene-
 45 fits of the services, programs and activities of state government and to purchase or rent property

1 without discrimination because of disability, are hereby recognized and declared to be the rights of
 2 all the people of this state. It is hereby declared to be the policy of the State of Oregon to protect
 3 these rights and ORS 659A.100 to 659A.145 shall be construed to effectuate such policy.

4 **SECTION 5.** ORS 659A.112 is amended to read:

5 659A.112. (1) It is an unlawful employment practice for any employer to refuse to hire, employ
 6 or promote, to bar or discharge from employment or to discriminate in compensation or in terms,
 7 conditions or privileges of employment because an otherwise qualified person is a person with a
 8 disability.

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

10 (a) The employer limits, segregates or classifies a job applicant or employee in a way that ad-
 11 versely affects the opportunities or status of the applicant or employee because the applicant or
 12 employee is a person with a disability.

13 (b) The employer participates in a contractual or other arrangement or relationship that has the
 14 effect of subjecting an otherwise qualified job applicant or employee who is a person with a disa-
 15 bility to the discrimination prohibited by ORS 659A.112 to 659A.139, including but not limited to
 16 participating in a relationship with an employment or referral agency, a labor union, an organization
 17 providing fringe benefits to an employee of the employer, or an organization providing training and
 18 apprenticeship programs.

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

22 (d) The employer excludes or otherwise denies equal jobs or benefits to an otherwise qualified
 23 person because the person is known to have a relationship or association with a person with a dis-
 24 ability.

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

29 (f) The employer denies employment opportunities to a job applicant or employee who is an
 30 otherwise qualified person with a disability, if the denial is based on the need of the employer to
 31 make reasonable accommodation to the physical or mental impairments of the employee or applicant.

32 (g) The employer uses qualification standards, employment tests or other selection criteria, **in-**
 33 **cluding those based on a person's uncorrected vision or unaided hearing**, that screen out or
 34 tend to screen out a person with a disability or a class of persons with disabilities unless the
 35 standard, test or other selection criterion, as used by the employer, is shown to be job-related for
 36 the position in question and is consistent with business necessity.

37 (h) The employer fails to select and administer tests relating to employment in the most effective
 38 manner to ensure that when the test is administered to a job applicant or employee who has a dis-
 39 ability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills,
 40 aptitude or other characteristics of the applicant or employee that the test purports to measure,
 41 rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant.
 42 The provisions of this paragraph do not limit the ability of an employer to select or administer tests
 43 designed to measure sensory, manual or speaking skills of an employee or job applicant.

44 **SECTION 6. Section 2 of this 2009 Act and the amendments to ORS 659A.100, 659A.103**
 45 **and 659A.112 by sections 3 to 5 of this 2009 Act apply only to conduct occurring on or after**

1 **the effective date of this 2009 Act.**

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