

House Bill 3449

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**.

Prohibits discrimination against individual because of individual's height or weight.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A BILL FOR AN ACT

Relating to discrimination based on certain physical characteristics; creating new provisions; and amending ORS 10.030, 20.107, 179.750, 240.306, 336.067, 338.125, 418.648, 443.739, 659.850, 659A.003, 659A.006, 659A.030, 659A.403, 659A.406, 659A.409, 659A.421, 659A.805, 659A.815 and 659A.885 and section 2, chapter 36, Oregon Laws 2008.

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

SECTION 1. ORS 10.030, as amended by section 4, chapter 70, Oregon Laws 2007, and section 13, chapter 100, Oregon Laws 2007, is amended to read:

10.030. (1) Except as otherwise specifically provided by statute, the opportunity for jury service may not be denied or limited on the basis of race, religion, sex, sexual orientation, national origin, **height, weight**, age, income, occupation or any other factor that discriminates against a cognizable group in this state.

(2) Any person is eligible to act as a juror in a civil trial unless the person:

- (a) Is not a citizen of the United States;
- (b) Does not live in the county in which summoned for jury service;
- (c) Is less than 18 years of age; or
- (d) Has had rights and privileges withdrawn and not restored under ORS 137.281.

(3)(a) Any person is eligible to act as a juror in a criminal trial, beginning on or after December 5, 1996, unless the person:

- (A) Is not a citizen of the United States;
- (B) Does not live in the county in which summoned for jury service;
- (C) Is less than 18 years of age;
- (D) Has had rights and privileges withdrawn and not restored under ORS 137.281; or
- (E) Has been convicted of a felony or served a felony sentence within the prior 15 years.

(b) As used in this subsection:

(A) "Felony sentence" includes any incarceration, post-prison supervision, parole or probation imposed upon conviction of a felony or served as a result of conviction of a felony.

(B) "Has been convicted of a felony" has the meaning given that term in ORS 166.270.

(4) A person who is blind, hard of hearing or speech impaired or who has a physical disability is not ineligible to act as a juror and may not be excluded from a jury list or jury service on the basis of blindness, hearing or speech impairment or physical disability alone.

(5) A person is ineligible to act as a juror in any circuit court of this state within 24 months

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 after being discharged from jury service in a federal court in this state or circuit court of this state
 2 unless that person's service as a juror is required because of a need for additional jurors.

3 (6) In addition to the disqualifications listed in subsection (2) of this section, a person is ineli-
 4 gible to act as a juror on a grand jury if the person has been convicted of a felony, other than a
 5 felony traffic offense, or has served a felony sentence, other than a sentence for a felony traffic of-
 6 fense, within the prior 15 years. As used in this subsection, "conviction" means an adjudication of
 7 guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

8 **SECTION 2.** ORS 20.107, as amended by section 14, chapter 100, Oregon Laws 2007, is amended
 9 to read:

10 20.107. (1) In any civil judicial proceeding, including judicial review of an administrative pro-
 11 ceeding based on a claim of unlawful discrimination, the court shall award to the prevailing plaintiff
 12 attorney and expert witness fees reasonably and necessarily incurred in connection with the dis-
 13 crimination claim, at the trial court or agency level and on appeal. The court may award reasonable
 14 attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court
 15 determines that the plaintiff had no objectively reasonable basis for asserting a claim or no rea-
 16 sonable basis for appealing an adverse decision of a trial court or agency.

17 (2) In making an award under this section, the court shall calculate attorney and expert witness
 18 fees on the basis of a reasonable hourly rate at the time the award is made, multiplied by the
 19 amount of time actually and reasonably spent in connection with the discrimination claim.

20 (3) When an award under this section is made against a state agency or an officer or employee
 21 of a state agency, the award shall be paid by the agency directly from funds available to it.

22 (4) As used in this section, "unlawful discrimination" means discrimination based upon personal
 23 characteristics including, but not limited to, race, religion, sex, sexual orientation, national origin,
 24 **height, weight**, alienage, marital status or age.

25 **SECTION 3.** ORS 179.750, as amended by section 20, chapter 100, Oregon Laws 2007, is
 26 amended to read:

27 179.750. (1) Discrimination may not be made in the admission, accommodation, care, education
 28 or treatment of any person in a state institution because the person does or does not contribute to
 29 the cost of the care.

30 (2) Discrimination may not be made in the provision of or access to educational facilities and
 31 services and recreational facilities and services to any person in the state institutions enumerated
 32 in ORS 420.005 or Department of Corrections institutions as defined in ORS 421.005 on the basis of
 33 race, religion, sex, sexual orientation, national origin, **height, weight** or marital status of the per-
 34 son. This subsection does not require combined domiciliary facilities at the state institutions to
 35 which it applies.

36 **SECTION 4.** ORS 240.306, as amended by section 22, chapter 100, Oregon Laws 2007, is
 37 amended to read:

38 240.306. (1) Recruiting, selecting and promoting employees shall be on the basis of their relative
 39 ability, knowledge, experience and skills, determined by open competition and consideration of
 40 qualified applicants, without regard to an individual's race, color, religion, sex, sexual orientation,
 41 national origin, **height, weight**, marital status, age, disability, political affiliation or other nonjob
 42 related factors, with proper regard for an individual's privacy. Nothing in this subsection shall be
 43 construed to enlarge or diminish the obligation of the state or the rights of employees concerning
 44 claims of employment discrimination as prescribed by applicable state and federal employment dis-
 45 crimination laws.

1 (2) The Oregon Department of Administrative Services shall establish procedures to provide for
 2 statewide open recruitment and selection for classifications that are common to state agencies. The
 3 procedures shall include adequate public notice, affirmative action to seek out underutilized mem-
 4 bers of protected minorities, and job related testing. The department may delegate to individual op-
 5 erating agencies the responsibility for recruitment and selection of classifications where appropriate.

6 (3) Competition for appropriate positions may be limited to facilitate employment of those with
 7 a substantial disability or who are economically disadvantaged, or for purposes of implementing a
 8 specified affirmative action program.

9 (4) Appointments to positions in state service shall be made on the basis of qualifications and
 10 merit by selection from eligible lists established by the department or a delegated operating agency.

11 (5)(a) Noncompetitive selection and appointment procedures may be used for unskilled or semi-
 12 skilled positions, or where job related ranking measures are not practical or appropriate.

13 (b) Noncompetitive selection and appointment or direct appointment also may be used by agency
 14 appointing authorities to fill positions that:

15 (A) Require special or unique skills such as expert professional level or executive positions; or

16 (B) Have critical timing requirements affecting recruitment.

17 (6) Minimum qualifications and performance requirements and duties of a classification may be
 18 appropriately modified to permit the appointment and promotion of trainees to positions normally
 19 filled at full proficiency level.

20 (7) The department or delegated agencies shall establish systems to provide opportunities for
 21 promotion through meritorious service, training, education and career development assignments.
 22 The department shall certify to the eligibility of persons selected for promotion or delegate that
 23 responsibility to operating agencies in appropriate situations. Provision shall be made to bring per-
 24 sons into state service through open competition at higher levels when the competition provides
 25 abilities not available among existing employees, enrich state service or contribute to improved
 26 employment opportunity for underrepresented groups.

27 **SECTION 5.** ORS 336.067 is amended to read:

28 336.067. (1) In public schools special emphasis shall be given to instruction in:

29 (a) Honesty, morality, courtesy, obedience to law, respect for the national flag, the Constitution
 30 of the United States and the Constitution of the State of Oregon, respect for parents and the home,
 31 the dignity and necessity of honest labor and other lessons that tend to promote and develop an
 32 upright and desirable citizenry.

33 (b) Respect for all humans, regardless of race, color, creed, national origin, **height, weight,** re-
 34 ligious, age, sex or disability.

35 (c) Acknowledgment of the dignity and worth of individuals and groups and their participative
 36 roles in society.

37 (d) Humane treatment of animals.

38 (e) The effects of tobacco, alcohol, drugs and controlled substances upon the human system.

39 (2) The Superintendent of Public Instruction shall prepare an outline with suggestions that will
 40 best accomplish the purpose of this section, and shall incorporate the outline in the courses of study
 41 for all public schools.

42 **SECTION 6.** ORS 338.125, as amended by section 23, chapter 100, Oregon Laws 2007, is
 43 amended to read:

44 338.125. (1) Student enrollment in a public charter school shall be voluntary. All students who
 45 reside within the school district where the public charter school is located are eligible for enroll-

1 ment at a public charter school. If the number of applications from students who reside within the
 2 school district exceeds the capacity of a program, class, grade level or building, the public charter
 3 school shall select students through an equitable lottery selection process. However, after a public
 4 charter school has been in operation for one or more years, the public charter school may give
 5 priority for admission to students:

6 (a) Who were enrolled in the school in the prior year; or

7 (b) Who have siblings who are presently enrolled in the school and who were enrolled in the
 8 school in the prior year.

9 (2)(a) If space is available a public charter school may admit students who do not reside in the
 10 school district in which the public charter school is located.

11 (b) Notwithstanding paragraph (a) of this subsection, if a public charter school offers any online
 12 courses as part of the curriculum of the school, then 50 percent or more of the students who attend
 13 the public charter school must reside in the school district in which the public charter school is
 14 located.

15 (3) A public charter school may not limit student admission based on race, religion, sex, sexual
 16 orientation, ethnicity, national origin, **height, weight**, disability, income level, proficiency in the
 17 English language or athletic ability, but may limit admission to students within a given age group
 18 or grade level.

19 (4) A public charter school may conduct fund-raising activities. However, a public charter school
 20 may not require a student to participate in fund-raising activities as a condition of admission to the
 21 public charter school.

22 **SECTION 7.** ORS 418.648, as amended by section 24, chapter 100, Oregon Laws 2007, is
 23 amended to read:

24 418.648. A foster parent has the right to:

25 (1) Be treated with dignity, respect and trust as a member of a team, including respect for the
 26 family values and routines of the foster parent.

27 (2) Be included as a valued member of a team that provides care and planning for a foster child
 28 placed in the home of the foster parent.

29 (3) Receive support services, as resources permit, from the Department of Human Services that
 30 are designed to assist in the care of the foster child placed in the home of the foster parent.

31 (4) Be informed of any condition that relates solely to a foster child placed in the home of the
 32 foster parent that may jeopardize the health or safety of the foster parent or other members of the
 33 home or alter the manner in which foster care should be provided to the foster child. The informa-
 34 tion shall include complete access to written reports, psychological evaluations and diagnoses that
 35 relate solely to a foster child placed in the home of the foster parent provided that confidential in-
 36 formation given to a foster parent must be kept confidential by the foster parent, except as neces-
 37 sary to promote or to protect the health and welfare of the foster child and the community.

38 (5) Have input into a permanency plan for a foster child placed in the home of the foster parent.

39 (6) Receive assistance from the department in dealing with family loss and separation when the
 40 foster child leaves the home of the foster parent.

41 (7) Be informed of all policies and procedures of the department that relate to the role of the
 42 foster parent.

43 (8) Be informed of how to receive services and to have access to department personnel or ser-
 44 vice providers 24 hours a day, seven days a week.

45 (9) Initiate an inactive referral status for a reasonable period of time, not to exceed 12 months,

1 to allow a foster parent relief from caring for foster children.

2 (10) Not be discriminated against on the basis of race, color, religion, sex, sexual orientation,
3 national origin, **height, weight**, age or disability.

4 (11) Be notified of the foster parent’s right to limited participation in proceedings in the juvenile
5 court and provided with an explanation of that right.

6 **SECTION 8.** ORS 443.739, as amended by section 27, chapter 100, Oregon Laws 2007, is
7 amended to read:

8 443.739. Residents of adult foster homes have the following rights. Providers shall guarantee
9 these rights and help residents exercise them. The provider shall post a copy of the Residents’ Bill
10 of Rights in the entry or other equally prominent place in the adult foster home. The Residents’ Bill
11 of Rights states that each resident of an adult foster home has the right to:

12 (1) Be treated as an adult, with respect and dignity.

13 (2) Be informed of all resident rights and all house rules.

14 (3) Be encouraged and assisted to exercise legal rights, including the right to vote.

15 (4) Be informed of the resident’s medical condition and the right to consent to or refuse treat-
16 ment.

17 (5) Receive appropriate care and services, and prompt medical care as needed.

18 (6) A safe and secure environment.

19 (7) Be free from mental and physical abuse.

20 (8) Be free from chemical or physical restraints except as ordered by a physician or other
21 qualified practitioner.

22 (9) Complete privacy when receiving treatment or personal care.

23 (10) Associate and communicate privately with any person the resident chooses.

24 (11) Send and receive personal mail unopened.

25 (12) Participate in activities of social, religious and community groups.

26 (13) Have medical and personal information kept confidential.

27 (14) Keep and use a reasonable amount of personal clothing and belongings, and to have a rea-
28 sonable amount of private, secure storage space.

29 (15) Manage the resident’s own money and financial affairs unless legally restricted.

30 (16) Be free from financial exploitation. The provider may not charge or ask for application fees
31 or nonrefundable deposits and may not solicit, accept or receive money or property from a resident
32 other than the amount agreed to for services.

33 (17) A written agreement regarding the services to be provided and the rate schedule to be
34 charged. The provider must give 30 days’ written notice before any change in the rates or the
35 ownership of the home.

36 (18) Not to be transferred or moved out of the adult foster home without 30 days’ advance
37 written notice and an opportunity for a hearing. A provider may transfer or discharge a resident
38 only for medical reasons including a medical emergency described in ORS 443.738 (11)(b), or for the
39 welfare of the resident or other residents, or for nonpayment.

40 (19) Be free of discrimination in regard to race, color, religion, sex, sexual orientation, [or] na-
41 tional origin, **height or weight**.

42 (20) Make suggestions and complaints without fear of retaliation.

43 **SECTION 9.** ORS 659.850, as amended by section 29, chapter 100, Oregon Laws 2007, is
44 amended to read:

45 659.850. (1) As used in this section, “discrimination” means any act that unreasonably differen-

1 tiates treatment, intended or unintended, or any act that is fair in form but discriminatory in oper-
 2 ation, either of which is based on race, color, religion, sex, sexual orientation, national origin,
 3 **height, weight**, marital status, age or disability. “Discrimination” does not include enforcement of
 4 an otherwise valid dress code or policy, as long as the code or policy provides, on a case-by-case
 5 basis, for reasonable accommodation of an individual based on the health and safety needs of the
 6 individual.

7 (2) A person may not be subjected to discrimination in any public elementary, secondary or
 8 community college education program or service, school or interschool activity or in any higher
 9 education program or service, school or interschool activity where the program, service, school or
 10 activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

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

14 **SECTION 10.** ORS 659A.003, as amended by section 2, chapter 100, Oregon Laws 2007, and
 15 section 1a, chapter 903, Oregon Laws 2007, is amended to read:

16 659A.003. The purpose of this chapter is to encourage the fullest utilization of the available
 17 workforce by removing arbitrary standards of race, color, religion, sex, sexual orientation, national
 18 origin, **height, weight**, marital status, age or disability as a barrier to employment of the inhabit-
 19 ants of this state, and to ensure the human dignity of all people within this state and protect their
 20 health, safety and morals from the consequences of intergroup hostility, tensions and practices of
 21 unlawful discrimination of any kind based on race, color, religion, sex, sexual orientation, national
 22 origin, **height, weight**, marital status, age, disability or familial status. To accomplish this purpose,
 23 the Legislative Assembly intends by this chapter to provide:

24 (1) A program of public education calculated to eliminate attitudes upon which practices of un-
 25 lawful discrimination because of race, color, religion, sex, sexual orientation, national origin,
 26 **height, weight**, marital status, age, disability or familial status are based.

27 (2) An adequate remedy for persons aggrieved by certain acts of unlawful discrimination because
 28 of race, color, religion, sex, sexual orientation, national origin, **height, weight**, marital status, dis-
 29 ability or familial status, or unreasonable acts of discrimination in employment based upon age.

30 (3) An adequate administrative machinery for the orderly resolution of complaints of unlawful
 31 discrimination through a procedure involving investigation, conference, conciliation and persuasion,
 32 to encourage the use in good faith of the machinery by all parties to a complaint of unlawful dis-
 33 crimination and to discourage unilateral action that makes moot the outcome of final administrative
 34 or judicial determination on the merits of the complaint.

35 **SECTION 11.** ORS 659A.006, as amended by section 3, chapter 100, Oregon Laws 2007, and
 36 section 2, chapter 903, Oregon Laws 2007, is amended to read:

37 659A.006. (1) It is declared to be the public policy of Oregon that practices of unlawful dis-
 38 crimination against any of its inhabitants because of race, color, religion, sex, sexual orientation,
 39 national origin, **height, weight**, marital status, age, disability or familial status are a matter of state
 40 concern and that this discrimination not only threatens the rights and privileges of its inhabitants
 41 but menaces the institutions and foundation of a free democratic state.

42 (2) The opportunity to obtain employment or housing or to use and enjoy places of public ac-
 43 commodation without unlawful discrimination because of race, color, religion, sex, sexual orien-
 44 tation, national origin, **height, weight**, marital status, age or disability hereby is recognized as and
 45 declared to be a civil right.

1 (3) It is not an unlawful practice for a bona fide church or other religious institution to take
 2 any action with respect to housing or the use of facilities based on a bona fide religious belief about
 3 sexual orientation as long as the housing or the use of facilities is closely connected with or related
 4 to the primary purposes of the church or institution and is not connected with a commercial or
 5 business activity that has no necessary relationship to the church or institution.

6 (4) It is not an unlawful employment practice for a bona fide church or other religious institu-
 7 tion, including but not limited to a school, hospital or church camp, to prefer an employee, or an
 8 applicant for employment, of one religious sect or persuasion over another if:

9 (a) The religious sect or persuasion to which the employee or applicant belongs is the same as
 10 that of the church or institution;

11 (b) In the opinion of the church or institution, the preference will best serve the purposes of the
 12 church or institution; and

13 (c) The employment involved is closely connected with or related to the primary purposes of the
 14 church or institution and is not connected with a commercial or business activity that has no nec-
 15 essary relationship to the church or institution.

16 (5) It is not an unlawful employment practice for a bona fide church or other religious institu-
 17 tion to take any employment action based on a bona fide religious belief about sexual orientation:

18 (a) In employment positions directly related to the operation of a church or other place of
 19 worship, such as clergy, religious instructors and support staff;

20 (b) In employment positions in a nonprofit religious school, nonprofit religious camp, nonprofit
 21 religious day care center, nonprofit religious thrift store, nonprofit religious bookstore, nonprofit
 22 religious radio station or nonprofit religious shelter; or

23 (c) In other employment positions that involve religious activities, as long as the employment
 24 involved is closely connected with or related to the primary purposes of the church or institution
 25 and is not connected with a commercial or business activity that has no necessary relationship to
 26 the church or institution.

27 **SECTION 12.** ORS 659A.030, as amended by section 4, chapter 100, Oregon Laws 2007, is
 28 amended to read:

29 659A.030. (1) It is an unlawful employment practice:

30 (a) For an employer, because of an individual's race, color, religion, sex, sexual orientation, na-
 31 tional origin, **height, weight**, marital status or age if the individual is 18 years of age or older, or
 32 because of the race, color, religion, sex, sexual orientation, national origin, **height, weight**, marital
 33 status or age of any other person with whom the individual associates, or because of an individual's
 34 juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to refuse to hire
 35 or employ the individual or to bar or discharge the individual from employment. However, discrim-
 36 ination is not an unlawful employment practice if the discrimination results from a bona fide occu-
 37 pational qualification reasonably necessary to the normal operation of the employer's business.

38 (b) For an employer, because of an individual's race, color, religion, sex, sexual orientation, na-
 39 tional origin, **height, weight**, marital status or age if the individual is 18 years of age or older, or
 40 because of the race, color, religion, sex, sexual orientation, national origin, **height, weight**, marital
 41 status or age of any other person with whom the individual associates, or because of an individual's
 42 juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to discriminate
 43 against the individual in compensation or in terms, conditions or privileges of employment.

44 (c) For a labor organization, because of an individual's race, color, religion, sex, sexual orien-
 45 tation, national origin, **height, weight**, marital status or age if the individual is 18 years of age or

1 older, or because of an individual's juvenile record that has been expunged pursuant to ORS
 2 419A.260 and 419A.262, to exclude or to expel from its membership the individual or to discriminate
 3 in any way against the individual or any other person.

4 (d) For any employer or employment agency to print or circulate or cause to be printed or cir-
 5 culated any statement, advertisement or publication, or to use any form of application for employ-
 6 ment or to make any inquiry in connection with prospective employment that expresses directly or
 7 indirectly any limitation, specification or discrimination as to an individual's race, color, religion,
 8 sex, sexual orientation, national origin, **height, weight**, marital status or age if the individual is 18
 9 years of age or older, or on the basis of an expunged juvenile record, or any intent to make any such
 10 limitation, specification or discrimination, unless based upon a bona fide occupational qualification.
 11 Identification of prospective employees according to race, color, religion, sex, sexual orientation,
 12 national origin, **height, weight**, marital status or age does not violate this section unless the Com-
 13 missioner of the Bureau of Labor and Industries, after a hearing conducted pursuant to ORS
 14 659A.805, determines that the designation expresses an intent to limit, specify or discriminate on the
 15 basis of race, color, religion, sex, sexual orientation, national origin, **height, weight**, marital status
 16 or age.

17 (e) For an employment agency, because of an individual's race, color, religion, sex, sexual ori-
 18 entation, national origin, **height, weight**, marital status or age if the individual is 18 years of age
 19 or older, or because of the race, color, religion, sex, sexual orientation, national origin, **height,**
 20 **weight**, marital status or age of any other person with whom the individual associates, or because
 21 of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262,
 22 to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to
 23 discriminate against the individual. However, it is not an unlawful employment practice for an
 24 employment agency to classify or refer for employment an individual when the classification or re-
 25 ferral results from a bona fide occupational qualification reasonably necessary to the normal oper-
 26 ation of the employer's business.

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

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

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

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

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

42 (b) As used in this subsection, "responsible for a minor child" means having custody or legal
 43 guardianship of a minor child or acting in loco parentis to the child.

44 (5) This section does not prohibit an employer from enforcing an otherwise valid dress code or
 45 policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of

1 an individual based on the health and safety needs of the individual.

2 **SECTION 13.** ORS 659A.403, as amended by section 5, chapter 100, Oregon Laws 2007, is
3 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, sexual orientation, national origin, **height, weight,**
8 marital status 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 enforcement of laws imposing restrictions on persons who have a specified height**
14 **or weight, if the restrictions are imposed for the preservation of the public accommodation**
15 **or the safety of the person or others; or**

16 [(b)] (c) The offering of special rates or services to persons 50 years of age or older.

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

19 **SECTION 14.** ORS 659A.406, as amended by section 6, chapter 100, Oregon Laws 2007, is
20 amended to read:

21 659A.406. Except as otherwise authorized by ORS 659A.403, it is an unlawful practice for any
22 person to aid or abet any place of public accommodation, as defined in ORS 659A.400, or any em-
23 ployee or person acting on behalf of the place of public accommodation to make any distinction,
24 discrimination or restriction on account of race, color, religion, sex, sexual orientation, national
25 origin, **height, weight,** marital status or age if the individual is 18 years of age or older.

26 **SECTION 15.** ORS 659A.409, as amended by section 7, chapter 100, Oregon Laws 2007, is
27 amended to read:

28 659A.409. (1) Except as provided by [*laws governing the consumption of alcoholic beverages by*
29 *minors and the frequenting by minors of places of public accommodation where alcoholic beverages are*
30 *served, and except for special rates or services offered to persons 50 years of age or older]* **subsection**
31 **(2) of this section,** it is an unlawful practice for any person acting on behalf of any place of public
32 accommodation as defined in ORS 659A.400 to publish, circulate, issue or display, or cause to be
33 published, circulated, issued or displayed, any communication, notice, advertisement or sign of any
34 kind to the effect that any of the accommodations, advantages, facilities, services or privileges of
35 the place of public accommodation will be refused, withheld from or denied to, or that any discrim-
36 ination will be made against, any person on account of race, color, religion, sex, sexual orientation,
37 national origin, **height, weight,** marital status or age if the individual is 18 years of age or older.

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

39 **(a) The enforcement of laws governing the consumption of alcoholic beverages by minors**
40 **and the frequenting by minors of places of public accommodation where alcoholic beverages**
41 **are served;**

42 **(b) The enforcement of laws imposing restrictions on persons who have a specified height**
43 **or weight, if the restrictions are imposed for the preservation of the public accommodation**
44 **or the safety of the person or others; or**

45 **(c) The offering of special rates or services to persons 50 years of age or older.**

1 **SECTION 16.** ORS 659A.421, as amended by section 8, chapter 100, Oregon Laws 2007, section
 2 4a, chapter 903, Oregon Laws 2007, and section 6, chapter 36, Oregon Laws 2008, is amended to
 3 read:

4 659A.421. (1) As used in this section:

5 (a) “Dwelling” means:

6 (A) A building or structure, or portion of a building or structure, that is occupied, or designed
 7 or intended for occupancy, as a residence by one or more families; or

8 (B) Vacant land offered for sale or lease for the construction or location of a building or
 9 structure, or portion of a building or structure, that is occupied, or designed or intended for occu-
 10 pancy, as a residence by one or more families.

11 (b) “Purchaser” includes an occupant, prospective occupant, renter, prospective renter, lessee,
 12 prospective lessee, buyer or prospective buyer.

13 (c) “Real property” includes a dwelling.

14 (d) “Source of income” does not include federal rent subsidy payments under 42 U.S.C. 1437f,
 15 income derived from a specific occupation or income derived in an illegal manner.

16 (2) A person may not, because of the race, color, religion, sex, sexual orientation, national ori-
 17 gin, **height, weight**, marital status, familial status or source of income of any person:

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

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

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

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

24 (e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed,
 25 any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing
 26 of real property that indicates any preference, limitation, specification or unlawful discrimination
 27 based on race, color, religion, sex, sexual orientation, national origin, **height, weight**, marital sta-
 28 tus, familial status or source of income.

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

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

34 (h) Deny access to, or membership or participation in, any multiple listing service, real estate
 35 brokers’ organization or other service, organization or facility relating to the business of selling or
 36 renting dwellings, or discriminate against any person in the terms or conditions of the access,
 37 membership or participation.

38 (i) Represent to a person that a dwelling is not available for inspection, sale or rental when the
 39 dwelling in fact is available for inspection, sale or rental.

40 (j) Otherwise make unavailable or deny a dwelling to a person.

41 (3)(a) A person whose business includes engaging in residential real estate related transactions
 42 may not discriminate against any person in making a transaction available, or in the terms or con-
 43 ditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin,
 44 **height, weight**, marital status, familial status or source of income.

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

1 following:

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

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

4 (ii) Secured by residential real estate; or

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

6 (4) A real estate licensee may not accept or retain a listing of real property for sale, lease or
 7 rental with an understanding that a purchaser may be discriminated against with respect to the sale,
 8 rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin,
 9 **height, weight,** marital status, familial status or source of income.

10 (5) A person may not, for profit, induce or attempt to induce any other person to sell or rent
 11 any dwelling by representations regarding the entry or prospective entry into the neighborhood of
 12 a person or persons of a particular race, color, religion, sex, sexual orientation, national origin,
 13 **height, weight,** marital status, familial status or source of income.

14 (6) This section does not apply with respect to:

15 (a) Sex distinction, discrimination or restriction if the real property involved is such that the
 16 application of this section would necessarily result in common use of bath or bedroom facilities by
 17 unrelated persons of opposite sex[.]; or

18 (b) **Weight distinction, discrimination or restriction that is imposed for the preservation**
 19 **of the real property or the safety of the person or others.**

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

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

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

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

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

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

30 (ii) Policies and procedures that demonstrate an intent by the owner or manager to provide
 31 housing for persons 55 years of age or older are published and adhered to.

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

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

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

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

40 (8) The provisions of subsection (2)(a) to (d) and (f) of this section that prohibit actions based
 41 upon sex, sexual orientation or familial status do not apply to the renting of space within a single-
 42 family residence if the owner actually maintains and occupies the residence as the owner's primary
 43 residence and all occupants share some common space within the residence.

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

45 **SECTION 17.** ORS 659A.805, as amended by section 10, chapter 100, Oregon Laws 2007, and

1 section 5a, chapter 903, Oregon Laws 2007, is amended to read:

2 659A.805. (1) In accordance with any applicable provision of ORS chapter 183, the Commissioner
3 of the Bureau of Labor and Industries may adopt reasonable rules:

4 (a) Establishing what acts and communications constitute a notice, sign or advertisement that
5 public accommodation or real property will be refused, withheld from, or denied to any person or
6 that the person will be unlawfully discriminated against because of race, color, religion, sex, sexual
7 orientation, national origin, **height, weight**, marital status, disability or:

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

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

10 (b) Establishing what inquiries in connection with employment and prospective employment ex-
11 press a limitation, specification or unlawful discrimination as to race, color, religion, sex, sexual
12 orientation, national origin, **height, weight**, marital status, age or disability.

13 (c) Establishing what inquiries in connection with employment and prospective employment so-
14 liciting information as to race, color, religion, sex, sexual orientation, national origin, **height,**
15 **weight**, marital status, age or disability are based on bona fide occupational qualifications.

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

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

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

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

23 (b) Available reasonable alternative ways of obtaining requested information without soliciting
24 responses as to race, color, religion, sex, sexual orientation, national origin, **height, weight**, marital
25 status, age, disability, source of income or, with respect to real property transactions, familial sta-
26 tus.

27 (c) Whether a statement or inquiry soliciting information as to race, color, religion, sex, sexual
28 orientation, national origin, **height, weight**, marital status, age, disability, source of income or, with
29 respect to real property transactions, familial status, communicates an idea independent of an in-
30 tention to limit, specify or unlawfully discriminate as to race, color, religion, sex, sexual orientation,
31 national origin, **height, weight**, marital status, age, disability, source of income or, with respect to
32 real property transactions, familial status.

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

35 (e) The ease with which the independent idea relating to a legitimate objective of the kind of
36 transaction contemplated could be communicated without connoting an intention to unlawfully dis-
37 criminate as to race, color, religion, sex, sexual orientation, national origin, **height, weight**, marital
38 status, age, disability, source of income or, with respect to real property transactions, familial sta-
39 tus.

40 **SECTION 18.** ORS 659A.815, as amended by section 11, chapter 100, Oregon Laws 2007, is
41 amended to read:

42 659A.815. (1) The Commissioner of the Bureau of Labor and Industries shall create such advisory
43 agencies and intergroup-relations councils as the commissioner believes necessary to aid in
44 effectuating the purposes of this chapter. The commissioner may empower advisory agencies and
45 councils:

1 (a) To study the problems of discrimination in all or specific fields of human relationships or in
 2 specific instances of discrimination because of race, color, religion, sex, sexual orientation, national
 3 origin, **height, weight**, marital status, age, disability, familial status or source of income.

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

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

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

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

13 **SECTION 19.** ORS 659A.885, as amended by section 12, chapter 100, Oregon Laws 2007, section
 14 8, chapter 180, Oregon Laws 2007, section 3, chapter 278, Oregon Laws 2007, section 1, chapter 280,
 15 Oregon Laws 2007, section 4, chapter 525, Oregon Laws 2007, section 13, chapter 903, Oregon Laws
 16 2007, and section 16, chapter 36, Oregon Laws 2008, is amended to read:

17 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 18 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 19 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 20 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 21 court may order back pay in an action under this subsection only for the two-year period imme-
 22 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 23 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 24 year period immediately preceding the filing of the action. In any action under this subsection, the
 25 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 26 cept as provided in subsection (3) of this section:

27 (a) The judge shall determine the facts in an action under this subsection; and

28 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
 29 review the judgment pursuant to the standard established by ORS 19.415 (3).

30 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 31 25.337, 25.424, 171.120, 399.235, 408.230, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043,
 32 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203,
 33 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.300, 659A.306,
 34 659A.309, 659A.315, 659A.318 or 659A.421.

35 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 36 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to
 37 659A.262, 659A.318 or 659A.421:

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

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

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

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

44 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 45 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,

1 compensatory damages or \$200, whichever is greater.

2 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 3 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 4 of this section, compensatory damages or \$250, whichever is greater.

5 (6) Any individual against whom any distinction, discrimination or restriction on account of
 6 race, color, religion, sex, sexual orientation, national origin, **height, weight**, marital status or age,
 7 if the individual is 18 years of age or older, has been made by any place of public accommodation,
 8 as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any
 9 person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action
 10 against the operator or manager of the place, the employee or person acting on behalf of the place
 11 or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an
 12 action under this subsection:

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

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

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

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

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

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

26 (7) When the commissioner or the Attorney General has reasonable cause to believe that a
 27 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 28 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 29 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 30 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 31 manner as a person or group of persons may file a civil action under this section. In a civil action
 32 filed under this subsection, the court may assess against the respondent, in addition to the relief
 33 authorized under subsections (1) and (3) of this section, a civil penalty:

34 (a) In an amount not exceeding \$50,000 for a first violation; and

35 (b) In an amount not exceeding \$100,000 for any subsequent violation.

36 (8) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 37 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 38 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 39 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 40 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 41 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 42 appealing an adverse decision of the trial court.

43 (9) In an action under subsection (1) or (7) of this section alleging a violation of ORS 659A.145
 44 or 659A.421 or discrimination under federal housing law:

45 (a) "Aggrieved person" includes a person who believes that the person:

1 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

2 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
3 occur.

4 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
5 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
6 tifies that the case is of general public importance. The court may allow an intervenor prevailing
7 party costs and reasonable attorney fees at trial and on appeal.

8 **SECTION 20.** Section 2, chapter 36, Oregon Laws 2008, is amended to read:

9 **Sec. 2.** (1) As used in this section:

10 (a) “Facially neutral housing policy” means a guideline, practice, rule or screening or admission
11 criterion, regarding a real property transaction, that applies equally to all persons.

12 (b) “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual
13 orientation, national origin, **height, weight**, marital status, familial status, source of income or
14 disability.

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

17 (2) A court or the Commissioner of the Bureau of Labor and Industries may find a person to
18 have violated ORS 659A.145 or 659A.421 if:

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

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

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

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

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

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

30 **SECTION 21.** The amendments to ORS 10.030, 20.107, 179.750, 240.306, 336.067, 338.125,
31 418.648, 443.739, 659.850, 659A.003, 659A.006, 659A.030, 659A.403, 659A.406, 659A.409, 659A.421,
32 659A.805, 659A.815 and 659A.885 and section 2, chapter 36, Oregon Laws 2008, by sections 1
33 to 20 of this 2009 Act apply to conduct occurring on or after the effective date of this 2009
34 Act.

35