

Senate Bill 874

Sponsored by Senator BONAMICI; Senator PROZANSKI

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**.

Updates and clarifies discrimination laws related to individuals who have disabilities.

A BILL FOR AN ACT

1
2 Relating to individuals with disabilities; creating new provisions; and amending ORS 659A.100,
3 659A.103, 659A.109, 659A.112, 659A.115, 659A.118, 659A.124, 659A.130, 659A.133, 659A.136,
4 659A.139, 659A.142 and 659A.145.

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

6 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 659A.100 to**
7 **659A.145.**

8 **SECTION 2. (1) An individual has a disability for the purposes of ORS 659A.100 to**
9 **659A.145 if the individual meets any one of the following criteria:**

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

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

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

20 (A) **An individual is regarded as having a physical or mental impairment if the individual**
21 **has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an**
22 **actual or perceived physical or mental impairment, whether or not the impairment limits or**
23 **is perceived to limit a major life activity of the individual.**

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

27 (2) **Activities and functions that are considered major life activities for the purpose of**
28 **determining if an individual has a disability include:**

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

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

31 (c) **Seeing;**

32 (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 (5) Nothing in subsection (4)(c) of this section authorizes an employer to use qualification

1 **standards, employment tests or other selection criteria based on an individual's uncorrected**
 2 **vision unless the standard, test or other selection criteria, as used by the employer, are**
 3 **shown to be job-related for the position in question and is consistent with business necessity.**

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

5 659A.100. [(1)] As used in **this section and [ORS 659A.100 to 659A.145, unless the context re-**
 6 **quires otherwise] ORS 659A.124, 659A.127 and 659A.130:**

7 [(a)] (1) "Drug" means a controlled substance, as classified in schedules I through V of section
 8 202 of the **federal** Controlled Substances Act, [21 U.S.C.A. 812,] as amended, and as modified under
 9 ORS 475.035.

10 [(b)] (2) "Illegal use of drugs" means any use of drugs, the possession or distribution of which
 11 is unlawful under state law or under the **federal** Controlled Substances Act, [21 U.S.C.A. 812,] as
 12 amended, but does not include the use of a drug taken under supervision of a licensed health care
 13 professional, or other uses authorized under the Controlled Substances Act or under other pro-
 14 visions of state or federal law.

15 [(c) "Person with a disability" means an individual who has a physical or mental impairment that
 16 substantially limits one or more major life activities, has a record of such an impairment or is regarded
 17 as having such an impairment.]

18 [(d) "State government" has the meaning given that term in ORS 174.111.]

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

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

22 [(b) "Has a record of such an impairment" means that the individual has a history of, or has been
 23 misclassified as having, a mental or physical impairment that substantially limits one or more major
 24 life activities.]

25 [(c) "Is regarded as having such an impairment" means that the individual:]

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

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

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

33 [(d) "Substantially limits" means:]

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

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

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

40 659A.103. (1) It is declared to be the public policy of Oregon to guarantee [persons with disa-
 41 bilities] **individuals** the fullest possible participation in the social and economic life of the state, to
 42 engage in remunerative employment, to use and enjoy places of public accommodation, resort or
 43 amusement, to participate in and receive the benefits of the services, programs and activities of
 44 state government and to secure housing accommodations of their choice, without discrimination **on**
 45 **the basis of disability.**

1 (2) *[The right to otherwise lawful employment without discrimination because of disability where*
 2 *the reasonable demands of the position do not require such a distinction, and the right to use and enjoy*
 3 *places of public accommodation, resort or amusement, to participate in and receive the benefits of the*
 4 *services, programs and activities of state government and to purchase or rent property without dis-*
 5 *crimination because of disability, are hereby recognized and declared to be the rights of all the people*
 6 *of this state. It is]* **The guarantees expressed in subsection (1) of this section are** hereby de-
 7 clared to be the policy of the State of Oregon to protect, *[these rights]* and ORS 659A.100 to
 8 659A.145 shall be construed to effectuate such policy.

9 **SECTION 5.** ORS 659A.109 is amended to read:

10 659A.109. It is an unlawful employment practice for an employer to discriminate against *[a*
 11 *worker]* **an individual** with respect to hire or tenure or any term or condition of employment be-
 12 cause the *[worker has applied for benefits or invoked or utilized the procedures provided for in]* **in-**
 13 **dividual has invoked** ORS 659A.100 to 659A.145 or has given testimony under the provisions of
 14 *[such sections]* **ORS 659A.100 to 659A.145.**

15 **SECTION 6.** ORS 659A.112 is amended to read:

16 659A.112. (1) It is an unlawful employment practice for any employer to refuse to hire, employ
 17 or promote, to bar or discharge from employment or to discriminate in compensation or in terms,
 18 conditions or privileges of employment *[because an otherwise qualified person is a person with a*
 19 *disability]* **on the basis of disability.**

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

21 (a) The employer limits, segregates or classifies a job applicant or employee in a way that ad-
 22 versely affects the opportunities or status of the applicant or employee because the applicant or
 23 employee *[is a person with]* **has** a disability.

24 (b) The employer participates in a contractual or other arrangement or relationship that has the
 25 effect of subjecting *[an otherwise]* **a** qualified job applicant or employee *[who is a person]* with a
 26 disability to the discrimination prohibited by ORS 659A.112 to 659A.139, including but not limited
 27 to participating in a relationship with an employment or referral agency, a labor union, an organ-
 28 ization providing fringe benefits to an employee of the employer, or an organization providing
 29 training and apprenticeship programs.

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

33 (d) The employer excludes or otherwise denies equal jobs or benefits to *[an otherwise qualified*
 34 *person]* **a qualified individual** because the *[person]* **individual** is known to have a relationship or
 35 association with *[a person]* **an individual** with a disability.

36 (e) The employer does not make reasonable accommodation to the known physical or mental
 37 limitations of *[an otherwise qualified person]* **a qualified individual** with a disability who is a job
 38 applicant or employee, unless the employer can demonstrate that the accommodation would impose
 39 an undue hardship on the operation of the business of the employer.

40 (f) The employer denies employment opportunities to a job applicant or employee who is *[an*
 41 *otherwise qualified person]* **a qualified individual** with a disability, if the denial is based on the need
 42 of the employer to make reasonable accommodation to the physical or mental impairments of the
 43 employee or applicant.

44 (g) The employer uses qualification standards, employment tests or other selection criteria, **in-**
 45 **cluding those based on an individual's uncorrected vision or unaided hearing,** that screen out

1 or tend to screen out [*a person*] **an individual** with a disability or a class of [*persons*] **individuals**
 2 with disabilities unless the standard, test or other selection criterion, as used by the employer, is
 3 shown to be job-related for the position in question and is consistent with business necessity.

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

11 **SECTION 7.** ORS 659A.115 is amended to read:

12 659A.115. For the purposes of ORS 659A.112, [*a person with a disability is otherwise*] **an indi-**
 13 **vidual is** qualified for a position if the [*person*] **individual**, with or without reasonable accommo-
 14 dation, can perform the essential functions of the position. For the purpose of determining the
 15 essential functions of the position, due consideration shall be given to the employer's determination
 16 as to the essential functions of a position. If an employer has prepared a written description before
 17 advertising or interviewing applicants for a job, the position description shall be considered evi-
 18 dence of the essential functions of the job.

19 **SECTION 8.** ORS 659A.118 is amended to read:

20 659A.118. (1) For the purposes of ORS 659A.112, reasonable accommodation [*of an otherwise*
 21 *qualified person with a disability*] may include:

- 22 (a) Making existing facilities used by employees readily accessible to and usable by [*persons*]
 23 **individuals** with disabilities.
 24 (b) Job restructuring, part-time or modified work schedules or reassignment to a vacant position.
 25 (c) Acquisition or modification of equipment or devices.
 26 (d) Appropriate adjustment or modification of examinations, training materials or policies.
 27 (e) The provision of qualified readers or interpreters.

28 (2) Notwithstanding any other provision of ORS 659A.100 to 659A.145, an employer may not be
 29 found to have engaged in an unlawful employment practice solely because the employer fails to
 30 provide reasonable accommodation to [*a person*] **an individual** with a disability arising out of
 31 transsexualism.

32 **(3) An employer is not required to provide a reasonable accommodation to an individual**
 33 **who satisfies the criteria for being an individual with a disability for the purposes of ORS**
 34 **659A.100 to 659A.145 solely because the individual meets the criterion described in section 2**
 35 **(1)(c) of this 2009 Act.**

36 **SECTION 9.** ORS 659A.124 is amended to read:

37 659A.124. (1) Subject to the provisions of subsection (2) of this section, the protections of ORS
 38 659A.112 do not apply to any job applicant or employee who is currently engaging in the illegal use
 39 of drugs if the employer takes action based on that conduct.

40 (2) The protections of ORS 659A.112 apply to the following [*persons*] **individuals**:

41 (a) [*A person*] **An individual** who has successfully completed a supervised drug rehabilitation
 42 program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated
 43 successfully and is no longer engaging in the illegal use of drugs.

44 (b) [*A person*] **An individual** who is participating in a supervised rehabilitation program and is
 45 no longer engaging in the illegal use of drugs.

1 (c) [A person] **An individual** who is erroneously regarded as engaging in the illegal use of drugs.

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

5 **SECTION 10.** ORS 659A.130 is amended to read:

6 659A.130. (1) For the purposes of ORS 659A.112 to 659A.139, homosexuality and bisexuality are
7 not physical or mental impairments. [A person] **An individual** who is homosexual or bisexual [*is not*
8 *a person with*] **does not have** a disability for the purposes of ORS 659A.112 to 659A.139 solely by
9 reason of being homosexual or bisexual.

10 (2) For the purposes of ORS 659A.112 to 659A.139, the following conditions are not physical or
11 mental impairments, and [a person] **an individual** with one or more of the following conditions [*is*
12 *not a person with*] **does not have** a disability for the purposes of ORS 659A.112 to 659A.139 solely
13 by reason of that condition:

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

15 (b) Compulsive gambling, kleptomania or pyromania.

16 (c) Psychoactive substance use disorders resulting from current illegal use of drugs.

17 **SECTION 11.** ORS 659A.133 is amended to read:

18 659A.133. (1) Except as provided in this section, an employer violates ORS 659A.112 if the em-
19 ployer conducts a medical examination of a job applicant, makes inquiries of a job applicant as to
20 whether the applicant [*is a person with*] **has** a disability or makes inquiries as to the nature or se-
21 verity of any disability of the applicant.

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

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

27 (a) All [*persons*] **individuals** entering the employ of the employer must be subject to the exam-
28 ination regardless of disability.

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

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

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

36 (C) Officers and employees of the Bureau of Labor and Industries investigating compliance with
37 ORS 659A.112 to 659A.139 shall be provided relevant information on request.

38 (c) The results of an examination authorized under this subsection may only be used in the
39 manner provided for in ORS 659A.112 to 659A.139.

40 **SECTION 12.** ORS 659A.136 is amended to read:

41 659A.136. (1) Except as provided in this section, an employer may not require that an employee
42 submit to a medical examination, may not make inquiries of an employee as to whether the employee
43 [*is a person with*] **has** a disability, and may not make inquiries of an employee as to the nature or
44 severity of any disability of the employee, unless the examination or inquiry is shown to be job-
45 related and consistent with business necessity.

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

4 (3) Information obtained under subsection (2) of this section relating to the medical condition
 5 or history of any employee is subject to the same restrictions applicable to information acquired
 6 from medical examinations authorized under ORS 659A.133.

7 **SECTION 13.** ORS 659A.139 is amended to read:

8 659A.139. (1) [ORS 659A.112 to 659A.139] **ORS 659A.100 to 659A.145** shall be construed to the
 9 extent possible in a manner that is consistent with any similar provisions of the federal Americans
 10 with Disabilities Act of 1990, as amended **by the federal ADA Amendments Act of 2008 and as**
 11 **otherwise amended.**

12 (2) **The determination of whether an individual has a disability as provided in section 2**
 13 **(1) of this 2009 Act shall be construed in favor of broad coverage of individuals under ORS**
 14 **659A.100 to 659A.145, to the maximum extent permitted by the terms of ORS 659A.100 to**
 15 **659A.145.**

16 **SECTION 14.** ORS 659A.142 is amended to read:

17 659A.142. (1) It is an unlawful employment practice for an employment agency to fail or refuse
 18 to refer for employment, or otherwise discriminate against, any individual because that individual
 19 [*is a person with*] **has** a disability, or to classify or refer for employment any individual because that
 20 individual [*is a person with*] **has** a disability.

21 (2) It is an unlawful employment practice for a labor organization, because an individual [*is a*
 22 *person with*] **has** a disability, to exclude or to expel from its membership such individual or to dis-
 23 criminate in any way against such individual.

24 (3) It is an unlawful practice for any place of public accommodation, resort or amusement as
 25 defined in ORS 659A.400, or any person acting on behalf of such place, to make any distinction,
 26 discrimination or restriction because a customer or patron is [*a person*] **an individual** with a disa-
 27 bility.

28 (4)(a) It is an unlawful practice for state government to exclude an individual from participation
 29 in or deny an individual the benefits of the services, programs or activities of state government or
 30 to make any distinction, discrimination or restriction because the individual [*is a person with*] **has**
 31 a disability.

32 (b) Paragraph (a) of this subsection is intended to ensure equal access to available services,
 33 programs and activities of state government.

34 (c) Paragraph (a) of this subsection is not intended to:

35 (A) Create an independent entitlement to any service, program or activity of state government;
 36 or

37 (B) Require state government to take any action that state government can demonstrate would
 38 result in a fundamental alteration in the nature of a service, program or activity of state govern-
 39 ment or would result in undue financial or administrative burdens on state government.

40 (5) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence
 41 of an individual's inability to acquire, rent or maintain property.

42 **SECTION 15.** ORS 659A.145, as amended by section 5, chapter 36, Oregon Laws 2008, is
 43 amended to read:

44 659A.145. (1) As used in this section:

45 (a) "Discrimination" includes:

1 (A) A refusal to permit, at the expense of [*the person with*] **an individual with** a disability,
2 reasonable modifications of existing premises occupied or to be occupied by the [*person*] **individual**
3 if:

4 (i) The modifications may be necessary to afford the [*person*] **individual** full enjoyment of the
5 premises; and

6 (ii) In the case of a rental, when it is reasonable to do so, the renter agrees to restore the in-
7 terior of the premises to the condition that existed before the modification, reasonable wear and tear
8 excepted;

9 (B) A refusal to make reasonable accommodations in rules, policies, practices or services when
10 the accommodations may be necessary to afford [*the person with*] **an individual with** a disability
11 equal opportunity to use and enjoy a dwelling; and

12 (C) Failure to design and construct a covered multifamily dwelling as required by the Fair
13 Housing Act (42 U.S.C. 3601 et seq.).

14 (b) “Dwelling” has the meaning given that term in ORS 659A.421.

15 (c) “Purchaser” has the meaning given that term in ORS 659A.421.

16 (2) A person may not discriminate because of a disability of a purchaser, a disability of [*a*
17 *person*] **an individual** residing in or intending to reside in a dwelling after it is sold, rented or made
18 available or a disability of any [*person*] **individual** associated with a purchaser by:

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

20 (b) Expelling a purchaser;

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

24 (d) Attempting to discourage the sale, rental or lease of any real property; or

25 (e) Representing that a dwelling is not available for inspection, sale, rental or lease when the
26 dwelling is in fact available for inspection, sale, rental or lease.

27 (3) A person may not publish, circulate, issue or display or cause to be published, circulated,
28 issued or displayed any communication, notice, advertisement, or sign of any kind relating to the
29 sale, rental or leasing of real property that indicates any preference, limitation, specification or
30 discrimination against [*a person with a*] **an individual on the basis of** disability.

31 (4) A person whose business includes engaging in residential real estate related transactions,
32 as defined in ORS 659A.421 (3), may not discriminate against any [*person*] **individual** in making a
33 transaction available, or in the terms or conditions of the transaction, because of a disability.

34 (5) A real estate broker or principal real estate broker may not accept or retain a listing of real
35 property for sale, lease or rental with an understanding that the purchaser, lessee or renter may
36 be discriminated against solely because [*a person is a person with*] **an individual has** a disability.

37 (6) A person may not deny access to, or membership or participation in, any multiple listing
38 service, real estate brokers’ organization or other service, organization or facility relating to the
39 business of selling or renting dwellings, or discriminate against any [*person*] **individual** in the terms
40 or conditions of the access, membership or participation, because that [*person is a person with*] **in-**
41 **dividual has** a disability.

42 (7) A person may not assist, induce, incite or coerce another person to commit an act or engage
43 in a practice that violates this section.

44 (8) A person may not coerce, intimidate, threaten or interfere with any [*person*] **individual** in
45 the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having

1 aided or encouraged any other [*person*] **individual** in the exercise or enjoyment of, any right granted
2 or protected by this section.

3 (9) A person may not, for profit, induce or attempt to induce any other person to sell or rent
4 any dwelling by representations regarding the entry or prospective entry into the neighborhood of
5 [*a person with*] **an individual who has** a disability.

6 (10) In the sale, lease or rental of real property, a person may not disclose to any person that
7 an occupant or owner of the real property has or died from human immunodeficiency virus or ac-
8 quired immune deficiency syndrome.

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

10 **SECTION 16. Section 2 of this 2009 Act and the amendments to ORS 659A.100, 659A.103,**
11 **659A.109, 659A.112, 659A.115, 659A.118, 659A.124, 659A.130, 659A.133, 659A.136, 659A.139,**
12 **659A.142 and 659A.145 by sections 3 to 15 of this 2009 Act apply only to conduct occurring on**
13 **or after the effective date of this 2009 Act.**

14
