

House Bill 2036

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian)

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**.

Lowers standard for determining whether individual is substantially limited in major life activity.

Clarifies application of statutes related to unlawful discrimination against persons with disabilities.

Gives Bureau of Labor and Industries authority to enforce provisions that allow employee to take leave to attend criminal proceeding.

Removes conflicting provisions related to authority of Bureau of Labor and Industries to enforce laws related to discriminatory practices.

Allows employer to make specified employment decisions based on credit history of certain applicants for public safety officer employment.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to discriminatory practices; creating new provisions; amending ORS 659A.104, 659A.106,
3 659A.194, 659A.303 and 659A.855 and section 2, chapter 102, Oregon Laws 2010; and declaring
4 an emergency.

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

6 **SECTION 1.** ORS 659A.104 is amended to read:

7 659A.104. (1) An individual has a disability for the purposes of ORS 659A.103 to 659A.145 if the
8 individual meets any one of the following criteria:

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

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

16 (c) The individual is regarded as having a physical or mental impairment that substantially
17 limits one or more major life activities of the individual. For the purposes of this paragraph:

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

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

24 (2) Activities and functions that are considered major life activities for the purpose of deter-
25 mining if an individual has a disability include but are not limited to:

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 (a) Caring for oneself;
- 2 (b) Performing manual tasks;
- 3 (c) Seeing;
- 4 (d) Hearing;
- 5 (e) Eating;
- 6 (f) Sleeping;
- 7 (g) Walking;
- 8 (h) Standing;
- 9 (i) Lifting;
- 10 (j) Bending;
- 11 (k) Speaking;
- 12 (L) Breathing;
- 13 (m) Learning;
- 14 (n) Reading;
- 15 (o) Concentrating;
- 16 (p) Thinking;
- 17 (q) Communicating;
- 18 (r) Working;
- 19 (s) [*Socializing*] **Socialization**;
- 20 (t) Sitting;
- 21 (u) Reaching;
- 22 (v) Interacting with others;
- 23 (w) Employment;
- 24 (x) Ambulation;
- 25 (y) Transportation;
- 26 (z) Operation of a major bodily function, including but not limited to:
- 27 (A) Functions of the immune system;
- 28 (B) Normal cell growth; and
- 29 (C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and repro-
- 30 ductive functions; and
- 31 (aa) Ability to acquire, rent or maintain property.

32 (3) An individual is substantially limited in a major life activity if the individual has an impair-
 33 ment, had an impairment or is perceived as having an impairment that [*materially*] restricts one or
 34 more major life activities of the individual. An impairment that substantially limits one major life
 35 activity of the individual need not limit other major life activities of the individual. An impairment
 36 that is episodic or in remission is considered to substantially limit a major life activity of the indi-
 37 vidual if the impairment would substantially limit a major life activity of the individual when the
 38 impairment is active.

39 (4) When determining whether an impairment substantially limits a major life activity of an in-
 40 dividual, the determination shall be made without regard to the ameliorative effects of mitigating
 41 measures, including:

- 42 (a) Medication;
- 43 (b) Medical supplies, equipment or appliances;
- 44 (c) Low vision devices or other devices that magnify, enhance or otherwise augment a visual
 45 image, except that ordinary eyeglasses or contact lenses or other similar lenses that are intended

1 to fully correct visual acuity or eliminate refractive error may be considered when determining
 2 whether an impairment substantially limits a major life activity of an individual;

- 3 (d) Prosthetics, including limbs and devices;
- 4 (e) Hearing aids, cochlear implants or other implantable hearing devices;
- 5 (f) Mobility devices;
- 6 (g) Oxygen therapy equipment or supplies;
- 7 (h) Assistive technology;
- 8 (i) Reasonable accommodations or auxiliary aids or services; or
- 9 (j) Learned behavioral or adaptive neurological modifications.

10 (5) Nothing in subsection (4)(c) of this section authorizes an employer to use qualification stan-
 11 dards, employment tests or other selection criteria based on an individual's uncorrected vision un-
 12 less the standard, test or other selection criteria, as used by the employer, are shown to be
 13 job-related for the position in question and is consistent with business necessity.

14 **SECTION 2. The amendments to ORS 659A.104 by section 1 of this 2011 Act apply only**
 15 **to conduct occurring on or after the effective date of this 2011 Act.**

16 **SECTION 3.** ORS 659A.106 is amended to read:

17 659A.106. The requirements of [*ORS 659A.103 to 659A.145*] **ORS 659A.112 to 659A.139** apply
 18 only to employers who employ six or more persons. The requirements of [*ORS 659A.103 to*
 19 *659A.145*] **ORS 659A.112 to 659A.139** do not apply to the Oregon National Guard.

20 **SECTION 4. The amendments to ORS 659A.106 by section 3 of this 2011 Act apply only**
 21 **to conduct occurring on or after the effective date of this 2011 Act.**

22 **SECTION 5.** ORS 659A.194 is amended to read:

23 659A.194. [(1)] A covered employer who denies leave to an eligible employee or who discharges,
 24 threatens to discharge, intimidates or coerces because the employee takes leave to attend a criminal
 25 proceeding commits an unlawful employment practice.

26 [(2) *Any person claiming to be aggrieved by an unlawful employment practice specified in sub-*
 27 *section (1) of this section may file a civil action under ORS 659A.885. The provisions of ORS 659A.800*
 28 *to 659A.865 do not apply to an unlawful employment practice specified in subsection (1) of this*
 29 *section.*]

30 **SECTION 6.** ORS 659A.303 is amended to read:

31 659A.303. (1) It is an unlawful employment practice for an employer to seek to obtain, to obtain
 32 or to use genetic information of an employee or a prospective employee, or of a blood relative of the
 33 employee or prospective employee, to distinguish between or discriminate against or restrict any
 34 right or benefit otherwise due or available to an employee or a prospective employee.

35 [(2) *An employee or prospective employee may bring a civil action under ORS 659A.885 for a vio-*
 36 *lation of this section.*]

37 [(3)] (2) For purposes of this section, "blood relative," "genetic information" and "obtain genetic
 38 information" have the meanings given those terms in ORS 192.531.

39 **SECTION 7.** ORS 659A.855 is amended to read:

40 659A.855. (1)(a) If the Commissioner of the Bureau of Labor and Industries files a complaint
 41 under ORS 659A.825 alleging an unlawful practice other than an unlawful employment practice, and
 42 the commissioner finds that the respondent engaged in the unlawful practice, the commissioner may,
 43 in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each
 44 respondent found to have committed the unlawful practice.

45 (b) Civil penalties under this subsection may not exceed \$1,000 for each violation.

1 (2)(a) Notwithstanding subsection (1)(b) of this section, if a complaint is filed under ORS
 2 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimi-
 3 nation under federal housing law and the commissioner finds that a respondent has engaged in an
 4 unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the
 5 commissioner may assess against the respondent, in addition to any other relief available, a civil
 6 penalty:

7 (A) In an amount not exceeding \$11,000;

8 (B) Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$27,500
 9 if the respondent has been adjudged to have engaged in one other discriminatory housing practice
 10 during the five-year period ending on the date of the filing of the formal charges leading to the
 11 hearing; or

12 (C) Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$55,000
 13 if the respondent has been adjudged to have engaged in two or more discriminatory housing prac-
 14 tices during the seven-year period ending on the date of the filing of the formal charges leading to
 15 the hearing.

16 (b) If acts constituting the discriminatory housing practice that is the object of the hearing were
 17 committed by the same individual who has been previously adjudged to have committed acts con-
 18 stituting a discriminatory housing practice, the civil penalties listed in paragraph (a)(B) and (C) of
 19 this subsection may be imposed regardless of the period of time between the previous discriminatory
 20 housing practice and the discriminatory housing practice that is the object of this hearing.

21 *[(3) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.]*

22 *[(4)]* (3) All sums collected as civil penalties under this section must first be applied toward re-
 23 imbursement of the costs incurred in determining the violations, conducting hearings and assessing
 24 and collecting the penalty. The remainder, if any, shall be paid over by the commissioner to the
 25 Department of State Lands for the benefit of the Common School Fund. The department shall issue
 26 a receipt for the money to the commissioner.

27 **SECTION 8.** Section 2, chapter 102, Oregon Laws 2010, is amended to read:

28 **Sec. 2.** (1) Except as provided in subsection (2) of this section, it is an unlawful employment
 29 practice for an employer to obtain or use for employment purposes information contained in the
 30 credit history of an applicant for employment or an employee, or to refuse to hire, discharge, de-
 31 mote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard
 32 to promotion, compensation or the terms, conditions or privileges of employment based on informa-
 33 tion in the credit history of the applicant or employee.

34 (2) Subsection (1) of this section does not apply to:

35 (a) Employers that are federally insured banks or credit unions;

36 (b) Employers that are required by state or federal law to use individual credit history for em-
 37 ployment purposes;

38 (c) The **application for employment or the** employment of a public safety officer who **will be**
 39 **or who is:**

40 (A) A member of a law enforcement unit[, *who is*];

41 (B) Employed as a peace officer commissioned by a city, port, school district, mass transit dis-
 42 trict, county, Indian reservation, the Criminal Justice Division of the Department of Justice, the
 43 Oregon State Lottery Commission or the Governor [*and who is*]; **and**

44 (C) Responsible for enforcing the criminal laws of this state or laws or ordinances related to
 45 airport security; or

1 (d) The obtainment or use by an employer of information in the credit history of an applicant
2 or employee because the information is substantially job-related and the employer's reasons for the
3 use of such information are disclosed to the employee or prospective employee in writing.

4 (3) An employee or an applicant for employment may file a complaint under ORS 659A.820 for
5 violations of this section and may bring a civil action under ORS 659A.885 and recover the relief
6 as provided by ORS 659A.885 (1) and (2).

7 (4) As used in this section, "credit history" means any written or other communication of any
8 information by a consumer reporting agency that bears on a consumer's creditworthiness, credit
9 standing or credit capacity.

10 **SECTION 9. This 2011 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
12 **on its passage.**

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