

# House Bill 3081

Sponsored by Representative HUNT

## 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 contracting agency from awarding public contract to prospective contractor that discriminates in providing employee benefit between employee that has domestic partner and employee that has spouse. Provides exceptions.

Requires contracting agency to provide in public contract that contractor may not discriminate in providing employee benefit between employee that has domestic partner and employee that has spouse. Provides that contracting agency may terminate contract for failure to comply and permits contracting agency to debar or disqualify prospective contractor from obtaining contracting agency's contracts.

Becomes operative on January 1, 2012.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to discrimination in public contracting; creating new provisions; amending ORS 279B.130  
3 and 279C.440; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 279A.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Domestic partner" means an individual joined in a domestic partnership, as defined**  
8 **in ORS 106.310.**

9 (b) **"Employee benefit" means a plan, program or policy that a prospective contractor**  
10 **provides to or on behalf of an employee of the prospective contractor as part of the**  
11 **employee's compensation, such as:**

12 (A) **Health insurance, life insurance, disability insurance or other insurance;**

13 (B) **A retirement benefit such as a pension, contribution to a tax-deferred savings plan**  
14 **or other compensation deferred until retirement;**

15 (C) **Paid vacation or paid or unpaid leave for any reason;**

16 (D) **A travel benefit or discount;**

17 (E) **A membership or membership discount;**

18 (F) **An expense reimbursement for moving or other job-related expenses that are not tax**  
19 **deductible; or**

20 (G) **Another benefit that is not otherwise required under federal law or the laws of this**  
21 **state.**

22 (c) **"Prospective contractor" means a person from which a contracting agency has re-**  
23 **ceived a response to an advertisement or other solicitation for a procurement and to which**  
24 **the contracting agency intends to award a public contract.**

25 (2)(a) **Except as provided in paragraph (b) of this subsection, a contracting agency may**  
26 **not award a public contract to a prospective contractor if the contracting agency finds that**  
27 **the prospective contractor, in providing an employee benefit, has a policy or practice of dis-**

**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 **crimination between an employee of the prospective contractor who has a domestic partner**  
 2 **and an employee of the prospective contractor who has a spouse.**

3 **(b) A contracting agency may award a contract despite the finding described in paragraph**  
 4 **(a) of this subsection if the prospective contractor demonstrates that:**

5 **(A) The actual cost of providing an employee benefit for an employee who has a domestic**  
 6 **partner exceeds the cost of providing the employee benefit for an employee who has a spouse**  
 7 **and the prospective contractor requires or permits the employee to pay the difference in cost**  
 8 **in order to receive the employee benefit; or**

9 **(B) The prospective contractor, despite making reasonable efforts to provide an employee**  
 10 **benefit without discriminating between an employee who has a domestic partner and an**  
 11 **employee who has a spouse, is unable to provide the employee benefit to an employee who**  
 12 **has a domestic partner, but has provided the employee with a cash equivalent of the em-**  
 13 **ployee benefit.**

14 **(c) The provisions of this subsection do not preclude a prospective contractor that does**  
 15 **not discriminate in providing an employee benefit between an employee who has a domestic**  
 16 **partner and an employee who has a spouse from:**

17 **(A) Electing not to provide an employee benefit on behalf of an employee's spouse or**  
 18 **domestic partner;**

19 **(B) Electing to provide an employee benefit to a person other than the employee's spouse**  
 20 **or domestic partner; or**

21 **(C) Electing to provide an employee benefit without regard to whether an employee has**  
 22 **a spouse or a domestic partner.**

23 **(3) A contracting agency may waive the requirement set forth in subsection (2) of this**  
 24 **section if the prospective contractor requests a waiver in a manner and on a form that the**  
 25 **contracting agency specifies by rule and:**

26 **(a) The procurement is for goods or services to which ORS 279B.080 applies;**

27 **(b) The contracting agency has not received a response to an advertisement or other**  
 28 **solicitation for a procurement from a prospective contractor that meets the requirement set**  
 29 **forth in subsection (2) of this section;**

30 **(c) The prospective contractor is a public body, as defined in ORS 174.109;**

31 **(d) The terms under which the contracting agency receives a grant or other funds for**  
 32 **use in a procurement prohibit the contracting agency from implementing the requirement**  
 33 **set forth in subsection (2) of this section; or**

34 **(e) The terms of a price agreement or cooperative procurement prohibit the contracting**  
 35 **agency from implementing the requirement set forth in subsection (2) of this section.**

36 **(4)(a) A contracting agency shall provide in each public contract that, during the term**  
 37 **of the contract, a contractor may not discriminate in providing an employee benefit between**  
 38 **an employee who has a domestic partner and an employee who has a spouse. The public**  
 39 **contract must identify the provision as a covenant of the contract that is material and**  
 40 **binding on the contractor and must provide the ability for the contracting agency to termi-**  
 41 **nate the contract if the contractor fails to comply with the provision. The contract may**  
 42 **provide for liquidated damages for the contractor's failure to comply with the provision.**

43 **(b) A contracting agency may debar under ORS 279B.130 or disqualify under ORS 279C.440**  
 44 **a prospective contractor who fails to comply with the contract provision described in para-**  
 45 **graph (a) of this subsection.**

1       **(5) The requirement set forth in subsection (2) of this section does not apply to:**

2       **(a) Operations of the prospective contractor that occur outside this state, except for**  
 3 **operations related to providing an employee benefit to employees who live or work within**  
 4 **this state;**

5       **(b) An affiliate or agent of a prospective contractor, the operations of which are outside**  
 6 **this state, unless the contracting agency finds that the affiliate or agent was created for or**  
 7 **has as a significant purpose the evasion of the requirement set forth in subsection (2) of this**  
 8 **section; or**

9       **(c) A subcontractor of the prospective contractor.**

10       **SECTION 3.** ORS 279B.130 is amended to read:

11       279B.130. (1)(a) A contracting agency may debar a prospective bidder or proposer from consid-  
 12 eration for award of the contracting agency's contracts for the reasons listed in subsection (2) of  
 13 this section after providing the prospective bidder or proposer with notice and a reasonable oppor-  
 14 tunity to be heard.

15       (b) A contracting agency may not debar a prospective bidder or proposer under this section for  
 16 more than three years.

17       (2) A prospective bidder or proposer may be debarred from consideration for award of a con-  
 18 tracting agency's contracts if:

19       (a) The prospective bidder or proposer [*has been*] **was** convicted of a criminal offense as an in-  
 20 cident in obtaining or attempting to obtain a public or private contract or subcontract or in [*the*  
 21 *performance of*] **performing** a public or private contract or subcontract.

22       (b) The prospective bidder or proposer [*has been*] **was** convicted under state or federal statutes  
 23 of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen  
 24 property or [*any other*] **another** offense [*indicating*] **that indicates** a lack of business integrity or  
 25 business honesty that currently, seriously and directly affects the prospective bidder's or proposer's  
 26 responsibility as a contractor.

27       (c) The prospective bidder or proposer [*has been*] **was** convicted under state or federal antitrust  
 28 statutes.

29       (d) The prospective bidder or proposer [*has committed a violation of*] **violated** a contract pro-  
 30 vision that [*is regarded by*] the contracting agency or the Construction Contractors Board [*to be*]  
 31 **regards as** so serious as to justify [*disqualification*] **debarment**. A violation may include but is not  
 32 limited to [*a failure*] **failing** to perform the terms of a contract or an unsatisfactory performance in  
 33 accordance with the terms of the contract. However, a failure to perform or an unsatisfactory per-  
 34 formance caused by acts beyond the control of the contractor [*may not be considered to be*] **is not**  
 35 a basis for debarment.

36       **(e) The prospective bidder or proposer failed during the term of a public contract to**  
 37 **comply with the contract provision described in section 2 (4)(a) of this 2011 Act.**

38       [*e*] (f) The prospective bidder or proposer does not carry workers' compensation or unemploy-  
 39 ment insurance as required by statute.

40       (3) A contracting agency shall issue a written decision to debar a prospective bidder or proposer  
 41 under this section. The decision must:

42       (a) State the reasons for the action taken; and

43       (b) Inform the debarred prospective bidder or proposer of the appeal rights of the prospective  
 44 bidder or proposer under ORS 279B.425.

45       (4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise

1 furnished immediately to the debarred prospective bidder or proposer.

2 (5) A prospective bidder or proposer that wishes to appeal debarment shall, within three busi-  
 3 ness days after *[receipt of]* **receiving** notice of debarment, notify the contracting agency that the  
 4 prospective bidder or proposer appeals the debarment as provided in ORS 279B.425.

5 **SECTION 4.** ORS 279C.440 is amended to read:

6 279C.440. (1)(a) A contracting agency may disqualify a person from consideration for award of  
 7 the contracting agency’s contracts for the reasons listed in subsection (2) of this section after pro-  
 8 viding the person with notice and a reasonable opportunity to be heard.

9 (b) In lieu of the disqualification process described in paragraph (a) of this subsection, a con-  
 10 tracting agency *[contracting]* **that contracts** for a public improvement may petition the Con-  
 11 struction Contractors Board to disqualify a person from consideration for award of the contracting  
 12 agency’s public improvement contracts for the reasons listed in subsection (2) of this section. The  
 13 Construction Contractors Board shall provide the person with notice and a reasonable opportunity  
 14 to be heard.

15 (c) A contracting agency or the Construction Contractors Board may not disqualify a person  
 16 under this section for a period of more than three years.

17 (2) A person may be disqualified from consideration for award of a contracting agency’s con-  
 18 tracts for any of the following reasons:

19 (a) The person *[has been]* **was** convicted of a criminal offense as an incident in obtaining or at-  
 20 tempting to obtain a public or private contract or subcontract, or in *[the performance of such]* **per-**  
 21 **forming the** contract or subcontract.

22 (b) The person *[has been]* **was** convicted under state or federal statutes of embezzlement, theft,  
 23 forgery, bribery, falsification or destruction of records, receiving stolen property or *[any other]* **an-**  
 24 **other** offense *[indicating]* **that indicates** a lack of business integrity or business honesty that cur-  
 25 rently, seriously and directly affects the person’s responsibility as a contractor.

26 (c) The person *[has been]* **was** convicted under state or federal antitrust statutes.

27 (d) The person *[has committed a violation of]* **violated** a contract provision that *[is regarded by]*  
 28 the contracting agency or the Construction Contractors Board *[to be]* **regards as** so serious as to  
 29 justify disqualification. A violation may include but is not limited to *[a failure]* **failing** to perform  
 30 the terms of a contract or an unsatisfactory performance in accordance with the terms of the con-  
 31 tract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the  
 32 control of the contractor *[may not be considered to be]* **is not** a basis for disqualification.

33 **(e) The prospective bidder or proposer failed during the term of a public contract to**  
 34 **comply with the contract provision described in section 2 (4)(a) of this 2011 Act.**

35 *[(e)]* **(f)** The person does not carry workers’ compensation or unemployment insurance as re-  
 36 quired by statute.

37 (3) A contracting agency or the Construction Contractors Board shall issue a written decision  
 38 to disqualify a person under this section. The decision *[shall]* **must**:

39 (a) State the reasons for the action taken; and

40 (b) Inform the disqualified person of the appeal right of the person under:

41 (A) ORS 279C.445 and 279C.450 if *[the]* **a contracting agency issued the** decision to disqualify  
 42 *[was issued by a contracting agency];* or

43 (B) ORS chapter 183 if the **Construction Contractors Board issued the** decision to disqualify  
 44 *[was issued by the Construction Contractors Board].*

45 (4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise

1 furnished immediately to the disqualified person.

2 **SECTION 5.** Section 2 of this 2011 Act and the amendments to ORS 279B.130 and 279C.440  
3 by sections 3 and 4 of this 2011 Act apply to a contract that a contracting agency first ad-  
4 vertises or otherwise solicits on or after the operative date set forth in section 6 of this 2011  
5 Act or, if the contracting agency does not advertise or solicit the contract, to a contract that  
6 the contracting agency enters into on or after the operative date set forth in section 6 of this  
7 2011 Act.

8 **SECTION 6.** (1) Section 2 of this 2011 Act and the amendments to ORS 279B.130 and  
9 279C.440 by sections 3 and 4 of this 2011 Act become operative on January 1, 2012.

10 (2) The Director of the Oregon Department of Administrative Services, the Attorney  
11 General or a contracting agency that adopts rules under ORS 279A.065 may take any action  
12 before the operative date set forth in subsection (1) of this section that is necessary to en-  
13 able the director, the Attorney General or the contracting agency to exercise, on and after  
14 the operative date set forth in subsection (1) of this section, all of the duties, functions and  
15 powers conferred on the director, the Attorney General or the contracting agency by section  
16 2 of this 2011 Act and the amendments to ORS 279B.130 and 279C.440 by sections 3 and 4 of  
17 this 2011 Act.

18 **SECTION 7.** This 2011 Act being necessary for the immediate preservation of the public  
19 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
20 on its passage.

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