



# Oregon Bureau of Labor and Industries

MEASURE: HB 4053  
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## Memo

**DATE:** February 3, 2012  
**TO:** House Committee on Business and Labor  
**FROM:** Marcia Ohlemiller, Legal Policy Advisor, Bureau of Labor and Industries  
**REGARDING:** HB 4053

### Introduction

I am the Legal Policy Advisor for BOLI, including the Civil Rights Division, which as part of its work enforces Oregon statutes prohibiting discrimination by places of public accommodation and in the sale, rental or leasing of housing, against individuals with disabilities.

### Background

The statute BOLI enforces prohibiting disability discrimination by places of public accommodation is ORS 659A.142 (4).<sup>1</sup> It is part of the statutory scheme in ORS chapter 659A that was legislated specifically to make Oregon law consistent with the federal Americans with Disabilities Act (ADA), and which covers disability discrimination by employers as well as public accommodations. The Oregon statutes specifically state that our disability law is to be enforced "consistent with any similar provisions of the (ADA)."

### HB 4053

The statutes that would be amended by HB 4053, which include ORS 346.610 to ORS 346.991, were enacted before the ADA and before Oregon law was amended to make it consistent with the ADA. They provide protections for persons with vision impairments to use "dog guides" and persons with hearing impairments to use "hearing ear dogs" in places of public accommodation, public transportation and rental housing. The definition of "assistance animal" in this series of statutes covering all "persons with physical impairment" does not exclude any type of animal. It protects the right to have an assistance animal in places of public accommodation and transportation without an additional fee.

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<sup>1</sup> The definition of "place of public accommodation" for purposes of Oregon disability discrimination law is found at ORS 659A.400.



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These statutes provided protections to persons with disabilities before broader laws came into being. I am not sufficiently familiar with their current application to conclude that they have been replaced by the ADA and Oregon disability law, but there is at least some duplication. BOLI is aware of these statutes but with the exception of a housing provision discussed below, does not rely on them in our enforcement work. However, having two sets of statutes that prohibit the same actions, raises some issues of which the Legislature should be aware.

Here are our concerns with HB 4053 regarding amendments it would make:

Section 2, paragraphs (1) and (2): Would narrow the definition of “assistance animal” to include only dogs and miniature horses. The current statute, ORS 346.680 (1), does not exclude any type of animal.

Section 2, paragraph (3) defines “major life activities” for purposes of determining who has an impairment, narrowly. “Major life activities” is an important legal term from the ADA, included in Oregon law at ORS 659A.104(2) with a much broader definition. HB 4053 would create inconsistent definitions of the same term in Oregon statutes.

Section 2, paragraphs (5) and (6) define “physical or mental impairment” or “person with a physical or mental impairment” as the persons protected under the subject laws. These terms are from the ADA, and are also found at ORS 659A.104(1), as a core element of the definition of disability: “An individual has a disability for the purposes of ORS 659A.103 to 659A.145 if the individual meets any one of the following criteria: (a) The individual has a physical or mental impairment that substantially limits one or more major life activities of the individual.” Again, HB 4053 would create a more narrow definition of “physical or mental impairment” than currently exists in state and federal disability law.

Section 2, paragraph (7) defines “public accommodation” “as defined in ORS 659A.400...” [(1) A place of public accommodation, subject to the exclusion in subsection (2) of this section, means any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise. (2) However, a place of public accommodation does not include any institution, bona fide club or place of accommodation which is in its nature distinctly private.]; but HB 4053 goes on to add “including but not limited to, educational institutions, airlines and restaurants. However, the exception stated in ORS 659A.400 (2) is not an exception under ORS 90.390 and 346.680 to 346.690.” BOLI does not oppose expanding the definition of “public accommodation” for purposes of discrimination law, but the expanded definition in HB 4053 would result in some entities being covered under the law that are not currently covered and would only apply to discrimination against persons with physical or mental impairments with assistance dogs and miniature horses. This makes compliance and enforcement more difficult.



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### Housing Discrimination

So far this memo has only discussed the amendments by HB 4053 to laws regarding discrimination by places of public accommodation. But from BOLI's perspective, the most serious implications are the changes it would make to laws governing housing discrimination.

Here is some background. In 2007, after years of negotiations by BOLI with the federal Department of Housing and Urban Development (HUD), and a great deal of work by the Oregon legislature over some five legislative sessions, Oregon achieved "substantial equivalency" of Oregon housing discrimination law with federal law. The import of this is that it qualified Oregon, through BOLI, to work as a partner with the federal government in enforcing laws against housing discrimination. The benefits to Oregon are better and more consistent enforcement of housing discrimination laws, and HUD support to BOLI in the form of funding and training in the specific area of enforcing housing rights.

The right of persons with disabilities to have assistance animals as a reasonable accommodation in housing, is a central tenet of federal housing law. Federal housing law does not exclude any type of animals from the definition of "assistance animal" but provides that certification by a health care provider of the need for the animal as an accommodation of the individual's disability, is sufficient to establish the right.

As part of Oregon's process of achieving substantial equivalency, the Legislature amended ORS 346.690 to clarify that a landlord may not refuse to rent housing on the basis of the tenant's use of an assistance animal. The statute further states that the individual with the disability may not be required to pay a fee for having an assistance animal but is liable for any damage done by the animal.

HB 4053 would apply the definition of assistance animal that includes only dogs and miniature horses, to ORS 346.690. This would put Oregon out of compliance with federal housing law, jeopardizing Oregon's hard-fought achievement in establishing its enforcement partnership with HUD and a substantial amount of BOLI's federal funding.

There is an additional problem as well. ORS 90.390 provides "(1) A landlord may not discriminate against a tenant in violation of local, state or federal law, including ORS...346.690, 659A.145 and 659A.421." ORS 659A.145 is the Oregon statute which BOLI enforces that prohibits housing discrimination based on disability. It is tied to the definition of "individual with a disability" found in ORS 659A.104. However, ORS 346.690 if amended by HB 4053, would be tied to the definition of "person with a physical or mental impairment" found in Section 2 (5) and (6) of the bill. Again, this inconsistency causes needless difficulty in compliance and enforcement.

### Conclusion



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If the Legislature chooses to review Oregon laws regarding disability rights to determine whether changes are warranted with respect to such important issues as who is in the protected class, what entities are covered as “places of public accommodation” and the use of assistance animals to accommodate disabilities, BOLI would respectfully request that the process be done with awareness of the history, purpose and complexity of the current statutory schemes. We would be happy to offer our assistance in any such endeavor.