

House Bill 3411

Sponsored by Representatives NOBLE, WILLIAMS; Representatives BOLES, BONHAM, BOSHART DAVIS, DOHERTY, DRAZAN, EVANS, FINDLEY, HELT, HERNANDEZ, LEIF, MARSH, MCKEOWN, MITCHELL, POST, POWER, SCHOUTEN, WALLAN, WITT, ZIKA

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**.

Requires reporting of physical sexual harassment by legislative officials and registered lobbyists. Specifies procedure for reporting. Punishes failure to report by maximum of \$2,000 fine.

Creates crime of false reporting of harassment. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both.

Creates crime of unlawful interference with a harassment investigation. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both.

Provides that public servant commits crime of official misconduct in the first degree if public servant knowingly harasses or annoys another person by subjecting other person to certain offensive physical contact. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both.

A BILL FOR AN ACT

1
2 Relating to physical sexual harassment; creating new provisions; and amending ORS 162.415.

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

SECTION 1. As used in sections 1 to 3 of this 2019 Act:

4
5 (1) **"Legislative official" means a member of the Legislative Assembly, legislative em-**
6 **ployee, legislative volunteer or legislative intern.**

7 (2) **"Physical sexual harassment" means offensive physical contact consisting of touching**
8 **another person's sexual or intimate parts.**

9 (3) **"Registered lobbyist" means a lobbyist as defined in ORS 171.725 who is registered**
10 **with the Oregon Government Ethics Commission under ORS 171.740.**

11 **SECTION 2. (1)(a) A legislative official or a registered lobbyist shall immediately cause**
12 **a report to be made, in the manner required in section 3 of this 2019 Act, when the legislative**
13 **official or registered lobbyist has reasonable cause to believe that an incident of physical**
14 **sexual harassment has been committed:**

15 (A) **By a legislative official, an elected official or a registered lobbyist against any other**
16 **person; or**

17 (B) **By any person against a legislative official or registered lobbyist.**

18 (b) **Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this**
19 **section, except that a psychiatrist, psychologist, member of the clergy or attorney is not**
20 **required to report such information communicated by a person if the communication is**
21 **privileged under ORS 40.225 to 40.295. An attorney is not required to make a report under**
22 **this section by reason of information communicated to the attorney in the course of repre-**
23 **senting a client if disclosure of the information would be detrimental to the client.**

24 (2) **Notwithstanding subsection (1) of this section, a report need not be made under this**
25 **section if the legislative official or registered lobbyist acquires information relating to the**
26 **physical sexual harassment by reason of a report made under this section, or by reason of**

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 proceeding arising out of a report made under this section, and the legislative official or
 2 registered lobbyist reasonably believes that the information is already known by a law
 3 enforcement agency.

4 (3) The duty to report under this section is personal to the legislative official or regis-
 5 tered lobbyist alone, and exists regardless of whether the entity or organization that employs
 6 the legislative official or registered lobbyist has its own procedures or policies for reporting
 7 physical sexual harassment internally within the entity or organization.

8 (4) A person who violates subsection (1) of this section commits a Class A violation.
 9 Prosecution under this subsection shall be commenced at any time within 18 months after
 10 commission of the offense.

11 **SECTION 3.** (1)(a) A legislative official or registered lobbyist making a report of physical
 12 sexual harassment under section 2 of this 2019 Act shall make an oral report by telephone
 13 or otherwise to a law enforcement agency within the county where the physical sexual
 14 harassment took place. The report shall contain, if known, the names and addresses of the
 15 person committing physical sexual harassment and the victim, the nature and extent of the
 16 physical sexual harassment, and any other information that the person making the report
 17 believes might be helpful.

18 (b) The name and address of, and other identifying information about, the person who
 19 made the report may not be disclosed except as authorized under this section.

20 (2) Upon a law enforcement agency's receiving a report of physical sexual harassment
 21 under subsection (1) of this section, the agency shall immediately cause an investigation to
 22 be made to collect all relevant information concerning the physical sexual harassment and
 23 whether a prosecution should occur.

24 (3) If the law enforcement agency conducting the investigation finds reasonable cause to
 25 believe that physical sexual harassment has occurred, the agency shall notify the Attorney
 26 General and the district attorney with jurisdiction over prosecution of the physical sexual
 27 harassment and provide the Attorney General and district attorney all information necessary
 28 for prosecution.

29 (4) When the law enforcement agency completes an investigation under this section, if
 30 the person who made the report of physical sexual harassment provided contact information
 31 to the agency, the agency shall notify the person about whether a prosecution will occur.

32 **SECTION 4.** (1) A person commits the crime of false reporting of harassment if the per-
 33 son intentionally makes a false report of physical sexual harassment under sections 1 to 3
 34 of this 2019 Act.

35 (2) False reporting of harassment is a Class A misdemeanor.

36 **SECTION 5.** (1) A person commits the crime of unlawful interference with a harassment
 37 investigation if, based on the person's perception that another person is a victim or witness
 38 of an offense under ORS 162.415 (1)(c), or a reporter, victim or witness of physical sexual
 39 harassment reported under sections 1 to 3 of this 2019 Act, and with the intent to interfere
 40 with the investigation into the offense or report, the person:

41 (a) While acting as a supervisor of the other person, takes a retaliatory action against
 42 the other person; or

43 (b) Induces or attempts to induce the other person to:

44 (A) Offer false testimony or unlawfully withhold any testimony; or

45 (B) Be absent from an official proceeding to which the other person has been legally

1 **summoned.**

2 **(2) Unlawful interference with a harassment investigation is a Class A misdemeanor.**

3 **(3) As used in this section:**

4 **(a) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial**
5 **of employment or promotion, or layoff of an employee, or other adverse action taken against**
6 **an employee in the terms or conditions of employment of the employee.**

7 **(b) "Supervisor" means a person having the authority, in the interest of an employer, to**
8 **hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline an**
9 **employee.**

10 **SECTION 6.** ORS 162.415 is amended to read:

11 162.415. (1) A public servant commits the crime of official misconduct in the first degree if:

12 (a) With intent to obtain a benefit or to harm another:

13 (A) The public servant knowingly fails to perform a duty imposed upon the public servant by law
14 or one clearly inherent in the nature of office; or

15 (B) The public servant knowingly performs an act constituting an unauthorized exercise in offi-
16 cial duties; [or]

17 (b) The public servant, while acting as a supervisory employee, violates ORS 162.405 and is
18 aware of and consciously disregards the fact that the violation creates a risk of:

19 (A) Physical injury to a vulnerable person;

20 (B) The commission of a sex crime as defined in ORS 163A.005 against a vulnerable person; or

21 (C) The withholding from a vulnerable person of necessary and adequate food, physical care or
22 medical attention; or

23 **(c) The public servant knowingly harasses or annoys another person by subjecting the**
24 **other person to offensive physical contact consisting of touching the sexual or intimate parts**
25 **of the other person.**

26 (2) Official misconduct in the first degree is a Class A misdemeanor.

27 (3) As used in this section:

28 (a) "Supervisory employee" means a person having the authority, in the interest of an employer,
29 to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other em-
30 ployees.

31 (b) "Vulnerable person" has the meaning given that term in ORS 136.427.

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