

# Enrolled House Bill 2935

Sponsored by Representative BYNUM, Senators FREDERICK, MANNING JR; Representatives ALONSO LEON, CAMPOS, CLEM, DEXTER, GRAYBER, HUDSON, KOTEK, KROPF, LEVY, LIVELY, MARSH, MCLAIN, MEEK, MORGAN, NERON, NOBLE, PHAM, POWER, REARDON, REYNOLDS, RUIZ, SALINAS, SANCHEZ, SCHOUTEN, SMITH WARNER, SOLLMAN, STARK, VALDERRAMA, WILDE, WILLIAMS, Senator LIEBER (Presession filed.)

CHAPTER .....

AN ACT

Relating to discrimination; amending ORS 332.075, 659.850, 659A.001 and 659A.030.

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

**SECTION 1.** ORS 659A.001 is amended to read:

659A.001. As used in this chapter:

- (1) "Bureau" means the Bureau of Labor and Industries.
- (2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.
- (3) "Employee" does not include any individual employed by the individual's parents, spouse or child or in the domestic service of any person.
- (4)(a) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.
- (b) For the purposes of employee protections described in ORS 659A.350, "employer" means any person who, in this state, is in an employment relationship with an intern as described in ORS 659A.350.
- (5) "Employment agency" includes any person undertaking to procure employees or opportunities to work.
- (6)(a) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:
  - (A) A parent or another person having legal custody of the individual; or
  - (B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.
- (b) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.
- (7) "Labor organization" includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.
- (8) "National origin" includes ancestry.
- (9) "Person" includes:

(a) One or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(b) A public body as defined in ORS 30.260.

(c) For purposes of ORS 659A.145 and 659A.421 and the application of any federal housing law, a fiduciary, mutual company, trust or unincorporated organization.

**(10) “Protective hairstyle” means a hairstyle, hair color or manner of wearing hair that includes, but is not limited to, braids, regardless of whether the braids are created with extensions or styled with adornments, locs and twists.**

**(11) “Race” includes physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles.**

~~[(10)]~~ **(12)** “Respondent” means any person against whom a complaint or charge of an unlawful practice is filed with the commissioner or whose name has been added to such complaint or charge pursuant to ORS 659A.835.

~~[(11)]~~ **(13)** “Unlawful employment practice” means a practice specifically denominated as an unlawful employment practice in this chapter. “Unlawful employment practice” includes a practice that is specifically denominated in another statute of this state as an unlawful employment practice and that is specifically made subject to enforcement under this chapter.

~~[(12)]~~ **(14)** “Unlawful practice” means any unlawful employment practice or any other practice specifically denominated as an unlawful practice in this chapter. “Unlawful practice” includes a practice that is specifically denominated in another statute of this state as an unlawful practice and that is specifically made subject to enforcement under this chapter, or a practice that violates a rule adopted by the commissioner for the enforcement of the provisions of this chapter.

**SECTION 2.** ORS 332.075 is amended to read:

332.075. (1) Any district school board may:

(a) Fix the days of the year and the hours of the day when schools shall be in session.

(b) Adopt textbooks and other instructional materials as provided in ORS 337.120 and 337.141 and courses of study for the use of such schools as provided in ORS 336.035.

(c) Authorize the use of the schools for purposes of training students of an approved educator preparation provider, as defined in ORS 342.120, and for such purposes may enter into contracts with the approved educator preparation provider on such terms as may be agreed upon. Such contracts as they relate to student teachers shall have the same effect and be subject to the same regulations as a contract between a licensed teacher and a district school board.

(d) Develop and operate with other school districts or community college districts secondary career and technical education programs for pupils of more than one district and fix by agreement the duration of the district’s obligation to continue such activity, subject to the availability of funds therefor.

(e) Authorize the school district to be a member of and pay fees, if any, to any voluntary organization that administers interscholastic activities or that facilitates the scheduling and programming of interscholastic activities only if the organization:

(A) Implements **equity focused** policies that:

(i) Address the use of derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule that occurs at an interscholastic activity, including by spectators of the interscholastic activity;

(ii) **Prohibit discrimination as defined in ORS 659.850;**

(iii) **Permit a student to wear religious clothing in accordance with the student’s sincerely held religious belief and consistent with any safety and health requirements; and**

(iv) **Balance the health, safety and reasonable accommodation needs of participants on an activity-by-activity basis;**

(B) Maintains a transparent complaint process that:

(i) Has a reporting system to allow participants of interscholastic activities or members of the public to make complaints about student, coach or spectator behavior;

(ii) Responds to a complaint made under sub-subparagraph (i) of this subparagraph within 48 hours of the complaint being received; and

(iii) Strives to resolve a complaint received under sub-subparagraph (i) of this subparagraph within 30 days of the complaint being received;

(C) Develops and implements a system of sanctions against schools, students, coaches and spectators if a complaint made under subparagraph (B) of this paragraph is verified; and

(D) Performs an annual survey of students and their parents to understand and respond to potential violations of **equity focused** policies adopted under subparagraph (A) of this paragraph or violations of ORS 659.850.

(f) Accept money or property donated for the use or benefit of the school district and, consistent with the laws of this state, use such money or property for the purpose for which it was donated.

(g) Enter into an approved written agreement with the governing body of a federally recognized Native American tribe in Oregon to allow the use of a mascot that represents, is associated with or is significant to the Native American tribe entering into the agreement. An agreement entered into under this paragraph must:

(A) Describe the acceptable uses of the mascot;

(B) Comply with rules adopted by the State Board of Education that:

(i) Are adopted after consultation with the federally recognized tribes in Oregon pursuant to ORS 182.164 (3); and

(ii) Prescribe the requirements for approval; and

(C) Be approved by the State Board of Education, which the board must provide if the agreement meets the requirements of this paragraph and the rules adopted under this paragraph.

(2) All contracts of the school district must be approved by the district school board before an order can be drawn for payment. If a contract is made without the authority of the district school board, the individual making such contract shall be personally liable.

(3) Notwithstanding subsection (2) of this section, a district school board may, by resolution or policy, authorize its superintendent or the superintendent's designee to enter into and approve payment on contracts for products, materials, supplies, capital outlay, equipment and services that are within appropriations made by the district school board pursuant to ORS 294.456. A district school board may not authorize its superintendent or the superintendent's designee under this subsection to enter into and approve payment on contracts that are collective bargaining agreements or service contracts that include the provision of labor performed by employees of the school district.

**SECTION 3.** ORS 659.850 is amended to read:

659.850. (1) As used in this section[.]:

**(a)(A)** "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.

**(B)** "Discrimination" does not include enforcement of an otherwise valid dress code or policy, as long as the code or policy:

**(i)** Provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual; **and**

**(ii) Does not have a disproportionate adverse impact on members of a protected class to a greater extent than the policy impacts persons generally.**

**(b) "Race" includes physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles as defined in ORS 659A.001.**

(2) A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

(3) The State Board of Education and the Higher Education Coordinating Commission shall establish rules necessary to ensure compliance with subsection (2) of this section in the manner required by ORS chapter 183.

**SECTION 4.** ORS 659A.030 is amended to read:

659A.030. (1) It is an unlawful employment practice:

(a) For an employer, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to refuse to hire or employ the individual or to bar or discharge the individual from employment. However, discrimination is not an unlawful employment practice if the discrimination results from a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business.

(b) For an employer, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to discriminate against the individual in compensation or in terms, conditions or privileges of employment.

(c) For a labor organization, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to exclude or to expel from its membership the individual or to discriminate in any way against the individual or any other person.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment that expresses directly or indirectly any limitation, specification or discrimination as to an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or on the basis of an expunged juvenile record, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification. Identification of prospective employees according to race, color, religion, sex, sexual orientation, national origin, marital status or age does not violate this section unless the Commissioner of the Bureau of Labor and Industries, after a hearing conducted pursuant to ORS 659A.805, determines that the designation expresses an intent to limit, specify or discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, marital status or age.

(e) For an employment agency, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against the individual. However, it is not an unlawful employment practice for an employment agency to classify or refer for employment an individual when the classification or referral results from a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business.

(f) For any person to discharge, expel or otherwise discriminate against any other person because that other person has opposed any unlawful practice, or because that other person has filed a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so.

(g) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.

(2) The provisions of this section apply to an apprentice under ORS 660.002 to 660.210, but the selection of an apprentice on the basis of the ability to complete the required apprenticeship train-

ing before attaining the age of 70 years is not an unlawful employment practice. The commissioner shall administer this section with respect to apprentices under ORS 660.002 to 660.210 equally with regard to all employees and labor organizations.

(3) The compulsory retirement of employees required by law at any age is not an unlawful employment practice if lawful under federal law.

(4)(a) It is not an unlawful employment practice for an employer or labor organization to provide or make financial provision for child care services of a custodial or other nature to its employees or members who are responsible for a minor child.

(b) As used in this subsection, "responsible for a minor child" means having custody or legal guardianship of a minor child or acting in loco parentis to the child.

(5) This section does not prohibit an employer from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual **and the dress code or policy does not have a disproportionate adverse impact on members of a protected class to a greater extent than the policy impacts persons generally.**

**Passed by House April 28, 2021**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 2, 2021**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2021

**Approved:**

.....M,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2021

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Shemia Fagan, Secretary of State