

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Janelle Bynum)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2935**

1 On page 1 of the printed bill, delete lines 4 through 28 and delete pages
2 2 through 5 and insert:

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

4 “659A.001. As used in this chapter:

5 “(1) ‘Bureau’ means the Bureau of Labor and Industries.

6 “(2) ‘Commissioner’ means the Commissioner of the Bureau of Labor and
7 Industries.

8 “(3) ‘Employee’ does not include any individual employed by the
9 individual’s parents, spouse or child or in the domestic service of any person.

10 “(4)(a) ‘Employer’ means any person who in this state, directly or through
11 an agent, engages or uses the personal service of one or more employees,
12 reserving the right to control the means by which such service is or will be
13 performed.

14 “(b) For the purposes of employee protections described in ORS 659A.350,
15 ‘employer’ means any person who, in this state, is in an employment re-
16 lationship with an intern as described in ORS 659A.350.

17 “(5) ‘Employment agency’ includes any person undertaking to procure
18 employees or opportunities to work.

19 “(6)(a) ‘Familial status’ means the relationship between one or more in-
20 dividuals who have not attained 18 years of age and who are domiciled with:

21 “(A) A parent or another person having legal custody of the individual;

1 or

2 “(B) The designee of the parent or other person having such custody, with
3 the written permission of the parent or other person.

4 “(b) ‘Familial status’ includes any individual, regardless of age or
5 domicile, who is pregnant or is in the process of securing legal custody of
6 an individual who has not attained 18 years of age.

7 “(7) ‘Labor organization’ includes any organization which is constituted
8 for the purpose, in whole or in part, of collective bargaining or in dealing
9 with employers concerning grievances, terms or conditions of employment
10 or of other mutual aid or protection in connection with employees.

11 “(8) ‘National origin’ includes ancestry.

12 “(9) ‘Person’ includes:

13 “(a) One or more individuals, partnerships, associations, labor organiza-
14 tions, limited liability companies, joint stock companies, corporations, legal
15 representatives, trustees, trustees in bankruptcy or receivers.

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

17 “(c) For purposes of ORS 659A.145 and 659A.421 and the application of
18 any federal housing law, a fiduciary, mutual company, trust or unincor-
19 porated organization.

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

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

27 “[~~(10)~~] (12) ‘Respondent’ means any person against whom a complaint or
28 charge of an unlawful practice is filed with the commissioner or whose name
29 has been added to such complaint or charge pursuant to ORS 659A.835.

30 “[~~(11)~~] (13) ‘Unlawful employment practice’ means a practice specifically

1 denominated as an unlawful employment practice in this chapter. ‘Unlawful
2 employment practice’ includes a practice that is specifically denominated in
3 another statute of this state as an unlawful employment practice and that
4 is specifically made subject to enforcement under this chapter.

5 “[(12)] (14) ‘Unlawful practice’ means any unlawful employment practice
6 or any other practice specifically denominated as an unlawful practice in
7 this chapter. ‘Unlawful practice’ includes a practice that is specifically de-
8 nominated in another statute of this state as an unlawful practice and that
9 is specifically made subject to enforcement under this chapter, or a practice
10 that violates a rule adopted by the commissioner for the enforcement of the
11 provisions of this chapter.

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

13 “332.075. (1) Any district school board may:

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

16 “(b) Adopt textbooks and other instructional materials as provided in ORS
17 337.120 and 337.141 and courses of study for the use of such schools as pro-
18 vided in ORS 336.035.

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

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

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

5 “(A) Implements policies that:

6 “(i) Address the use of derogatory or inappropriate names, insults, verbal
7 assaults, profanity or ridicule that occurs at an interscholastic activity, in-
8 cluding by spectators of the interscholastic activity;

9 “(ii) **Prohibit discrimination based on race, color or national origin;**
10 **and**

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

14 “(B) Maintains a transparent complaint process that:

15 “(i) Has a reporting system to allow participants of interscholastic activ-
16 ities or members of the public to make complaints about student, coach or
17 spectator behavior;

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

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

22 “(C) Develops and implements a system of sanctions against schools, stu-
23 dents, coaches and spectators if a complaint made under subparagraph (B)
24 of this paragraph is verified; and

25 “(D) Performs an annual survey of students and their parents to under-
26 stand and respond to potential violations of policies adopted under subpara-
27 graph (A) of this paragraph or violations of ORS 659.850.

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

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

6 “(A) Describe the acceptable uses of the mascot;

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

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

10 “(ii) Prescribe the requirements for approval; and

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

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

18 “(3) Notwithstanding subsection (2) of this section, a district school board
19 may, by resolution or policy, authorize its superintendent or the
20 superintendent’s designee to enter into and approve payment on contracts for
21 products, materials, supplies, capital outlay, equipment and services that are
22 within appropriations made by the district school board pursuant to ORS
23 294.456. A district school board may not authorize its superintendent or the
24 superintendent’s designee under this subsection to enter into and approve
25 payment on contracts that are collective bargaining agreements or service
26 contracts that include the provision of labor performed by employees of the
27 school district.

28 “(4) **As used in this section, ‘race’ includes physical characteristics**
29 **that are historically associated with race, including but not limited to**
30 **natural hair, hair texture, hair type and protective hairstyles as de-**

1 **fined in ORS 659A.001.**

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

3 **“659.850. (1) As used in this section[,]:**

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

8 **“(B) ‘Discrimination’ does not include enforcement of an otherwise valid**
9 **dress code or policy, as long as the code or policy:**

10 **“(i) Provides, on a case-by-case basis, for reasonable accommodation of**
11 **an individual based on the health and safety needs of the individual **or any****
12 **other individual;**

13 **“(ii) Reasonably accommodates the ability of an individual to wear**
14 **religious clothing in accordance with the individual’s sincerely held**
15 **religious beliefs; and**

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

19 **“(b) ‘Race’ includes physical characteristics that are historically**
20 **associated with race, including but not limited to natural hair, hair**
21 **texture, hair type and protective hairstyles as defined in ORS**
22 **659A.001.**

23 **“(2) A person may not be subjected to discrimination in any public ele-**
24 **mentary, secondary or community college education program or service,**
25 **school or interschool activity or in any higher education program or service,**
26 **school or interschool activity where the program, service, school or activity**
27 **is financed in whole or in part by moneys appropriated by the Legislative**
28 **Assembly.**

29 **“(3) The State Board of Education and the Higher Education Coordinating**
30 **Commission shall establish rules necessary to ensure compliance with sub-**

1 section (2) of this section in the manner required by ORS chapter 183.

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

3 “659A.030. (1) It is an unlawful employment practice:

4 “(a) For an employer, because of an individual’s race, color, religion, sex,
5 sexual orientation, national origin, marital status or age if the individual is
6 18 years of age or older, or because of the race, color, religion, sex, sexual
7 orientation, national origin, marital status or age of any other person with
8 whom the individual associates, or because of an individual’s juvenile record
9 that has been expunged pursuant to ORS 419A.260 and 419A.262, to refuse to
10 hire or employ the individual or to bar or discharge the individual from
11 employment. However, discrimination is not an unlawful employment prac-
12 tice if the discrimination results from a bona fide occupational qualification
13 reasonably necessary to the normal operation of the employer’s business.

14 “(b) For an employer, because of an individual’s race, color, religion, sex,
15 sexual orientation, national origin, marital status or age if the individual is
16 18 years of age or older, or because of the race, color, religion, sex, sexual
17 orientation, national origin, marital status or age of any other person with
18 whom the individual associates, or because of an individual’s juvenile record
19 that has been expunged pursuant to ORS 419A.260 and 419A.262, to discrim-
20 inate against the individual in compensation or in terms, conditions or
21 privileges of employment.

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

28 “(d) For any employer or employment agency to print or circulate or
29 cause to be printed or circulated any statement, advertisement or publica-
30 tion, or to use any form of application for employment or to make any in-

1 quiry in connection with prospective employment that expresses directly or
2 indirectly any limitation, specification or discrimination as to an individual's
3 race, color, religion, sex, sexual orientation, national origin, marital status
4 or age if the individual is 18 years of age or older, or on the basis of an
5 expunged juvenile record, or any intent to make any such limitation, spec-
6 ification or discrimination, unless based upon a bona fide occupational
7 qualification. Identification of prospective employees according to race,
8 color, religion, sex, sexual orientation, national origin, marital status or age
9 does not violate this section unless the Commissioner of the Bureau of Labor
10 and Industries, after a hearing conducted pursuant to ORS 659A.805, deter-
11 mines that the designation expresses an intent to limit, specify or discrimi-
12 nate on the basis of race, color, religion, sex, sexual orientation, national
13 origin, marital status or age.

14 “(e) For an employment agency, because of an individual's race, color,
15 religion, sex, sexual orientation, national origin, marital status or age if the
16 individual is 18 years of age or older, or because of the race, color, religion,
17 sex, sexual orientation, national origin, marital status or age of any other
18 person with whom the individual associates, or because of an individual's
19 juvenile record that has been expunged pursuant to ORS 419A.260 and
20 419A.262, to classify or refer for employment, or to fail or refuse to refer for
21 employment, or otherwise to discriminate against the individual. However,
22 it is not an unlawful employment practice for an employment agency to
23 classify or refer for employment an individual when the classification or re-
24 ferral results from a bona fide occupational qualification reasonably neces-
25 sary to the normal operation of the employer's business.

26 “(f) For any person to discharge, expel or otherwise discriminate against
27 any other person because that other person has opposed any unlawful prac-
28 tice, or because that other person has filed a complaint, testified or assisted
29 in any proceeding under this chapter or has attempted to do so.

30 “(g) For any person, whether an employer or an employee, to aid, abet,

1 incite, compel or coerce the doing of any of the acts forbidden under this
2 chapter or to attempt to do so.

3 “(2) The provisions of this section apply to an apprentice under ORS
4 660.002 to 660.210, but the selection of an apprentice on the basis of the
5 ability to complete the required apprenticeship training before attaining the
6 age of 70 years is not an unlawful employment practice. The commissioner
7 shall administer this section with respect to apprentices under ORS 660.002
8 to 660.210 equally with regard to all employees and labor organizations.

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

11 “(4)(a) It is not an unlawful employment practice for an employer or labor
12 organization to provide or make financial provision for child care services
13 of a custodial or other nature to its employees or members who are respon-
14 sible for a minor child.

15 “(b) As used in this subsection, ‘responsible for a minor child’ means
16 having custody or legal guardianship of a minor child or acting in loco
17 parentis to the child.

18 “(5) This section does not prohibit an employer from enforcing an other-
19 wise valid dress code or policy, *[as long as]* **if:**

20 “(a) The employer provides, on a case-by-case basis, for reasonable ac-
21 commodation of an individual based on the health and safety needs of the
22 individual;

23 “(b) **The employer reasonably accommodates the ability of an em-
24 ployee to wear religious clothing in accordance with the employee’s
25 sincerely held religious beliefs as provided in ORS 659A.033; and**

26 “(c) **The dress code or policy does not have a disproportionate ad-
27 verse impact on members of a protected class to a greater extent than
28 the policy impacts persons generally.”**

29