

Requested by Representative WILDE

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4073**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the  
2 line and insert “161.209, 161.225 and 161.229 and ORCP 57 D.”.

3 Delete lines 4 through 27 and delete pages 2 through 4 and insert:  
4

5 **“PEREMPTORY CHALLENGES**

6  
7 **“SECTION 1. ORCP 57 D is amended to read:**

8 **“D Challenges.**

9 **“D(1) Challenges for cause; grounds. Challenges for cause may be taken**  
10 **on any one or more of the following grounds:**

11 **“D(1)(a) The want of any qualification prescribed by ORS 10.030 for a**  
12 **person eligible to act as a juror.**

13 **“D(1)(b) The existence of a mental or physical defect which satisfies the**  
14 **court that the challenged person is incapable of performing the duties of a**  
15 **juror in the particular action without prejudice to the substantial rights of**  
16 **the challenging party.**

17 **“D(1)(c) Consanguinity or affinity within the fourth degree to any party.**

18 **“D(1)(d) Standing in the relation of guardian and ward, physician and**  
19 **patient, master and servant, landlord and tenant, or debtor and creditor to**  
20 **the adverse party; or being a member of the family of, or a partner in busi-**  
21 **ness with, or in the employment for wages of, or being an attorney for or a**

1 client of the adverse party; or being surety in the action called for trial, or  
2 otherwise, for the adverse party.

3 “D(1)(e) Having served as a juror on a previous trial in the same action,  
4 or in another action between the same parties for the same cause of action,  
5 upon substantially the same facts or transaction.

6 “D(1)(f) Interest on the part of the juror in the outcome of the action, or  
7 the principal question involved therein.

8 “D(1)(g) Actual bias on the part of a juror. Actual bias is the existence  
9 of a state of mind on the part of a juror that satisfies the court, in the ex-  
10 ercise of sound discretion, that the juror cannot try the issue impartially and  
11 without prejudice to the substantial rights of the party challenging the juror.  
12 Actual bias may be in reference to: the action; either party to the action; the  
13 sex of the party, the party’s attorney, a victim, or a witness; or a racial or  
14 ethnic group of which the party, the party’s attorney, a victim, or a witness  
15 is a member, or is perceived to be a member. A challenge for actual bias may  
16 be taken for the cause mentioned in this paragraph, but on the trial of such  
17 challenge, although it should appear that the juror challenged has formed  
18 or expressed an opinion upon the merits of the cause from what the juror  
19 may have heard or read, such opinion shall not of itself be sufficient to  
20 sustain the challenge, but the court must be satisfied, from all of the cir-  
21 cumstances, that the juror cannot disregard such opinion and try the issue  
22 impartially.

23 “D(2) Peremptory challenges; number. A peremptory challenge is an ob-  
24 jection to a juror for which no reason need be given, but upon which the  
25 court shall exclude such juror. Either party is entitled to no more than three  
26 peremptory challenges if the jury consists of more than six jurors, and no  
27 more than two peremptory challenges if the jury consists of six jurors. Where  
28 there are multiple parties plaintiff or defendant in the case, or where cases  
29 have been consolidated for trial, the parties plaintiff or defendant must join  
30 in the challenge and are limited to the number of peremptory challenges

1 specified in this subsection except the court, in its discretion and in the in-  
2 terest of justice, may allow any of the parties, single or multiple, additional  
3 peremptory challenges and permit them to be exercised separately or jointly.

4 “D(3) Conduct of peremptory challenges. After the full number of jurors  
5 has been passed for cause, peremptory challenges shall be conducted by  
6 written ballot or outside of the presence of the jury as follows: the plaintiff  
7 may challenge one and then the defendant may challenge one, and so alter-  
8 nating until the peremptory challenges shall be exhausted. After each chal-  
9 lenge, the panel shall be filled and the additional juror passed for cause  
10 before another peremptory challenge shall be exercised, and neither party is  
11 required to exercise a peremptory challenge unless the full number of jurors  
12 is in the jury box at the time. The refusal to challenge by either party in  
13 the order of alternation shall not defeat the adverse party of such adverse  
14 party’s full number of challenges, and such refusal by a party to exercise a  
15 challenge in proper turn shall conclude that party as to the jurors once ac-  
16 cepted by that party and, if that party’s right of peremptory challenge is not  
17 exhausted, that party’s further challenges shall be confined, in that party’s  
18 proper turn, to such additional jurors as may be called. The court may, for  
19 good cause shown, permit a challenge to be taken as to any juror before the  
20 jury is completed and sworn, notwithstanding that the juror challenged may  
21 have been previously accepted, but nothing in this subsection shall be con-  
22 strued to increase the number of peremptory challenges allowed.

23 “D(4) Challenge of peremptory challenge exercised on [basis of race,  
24 ethnicity, or sex] **certain bases.**

25 “D(4)(a) A party may not exercise a peremptory challenge on the basis  
26 of race, ethnicity, [or] sex, **religion, sexual orientation or gender**  
27 **identity.** Courts shall presume that a peremptory challenge does not violate  
28 this paragraph, but the presumption may be rebutted in the manner provided  
29 by this section.

30 “D(4)(b) If a party believes that the adverse party is exercising a

1 peremptory challenge on a basis prohibited under paragraph (a) of this sub-  
2 section, the party may object to the exercise of the challenge. The objection  
3 must be made before the court excuses the juror. The objection must be made  
4 outside of the presence of the jurors. The party making the objection has the  
5 burden of establishing a prima facie case that the adverse party challenged  
6 the juror on the basis of race, ethnicity, [or] sex, **religion, sexual orien-  
7 tation or gender identity.**

8 “D(4)(c) If the court finds that the party making the objection has estab-  
9 lished a prima facie case that the adverse party challenged a prospective  
10 juror on the basis of race, ethnicity, [or] sex, **religion, sexual orientation  
11 or gender identity**, the burden shifts to the adverse party to show that the  
12 peremptory challenge was not exercised on the basis of race, ethnicity, [or]  
13 sex, **religion, sexual orientation or gender identity, and that the  
14 peremptory challenge was exercised on another objectively reasonable  
15 basis. The adverse party may examine the challenged juror further in  
16 support of the challenge.** If the adverse party fails to meet the burden of  
17 justification as to the questioned challenge, the presumption that the chal-  
18 lenge does not violate paragraph (a) of this subsection is rebutted.

19 “D(4)(d) If the court finds that the adverse party challenged a prospective  
20 juror on the basis of race, ethnicity, [or] sex, **religion, sexual orientation  
21 or gender identity, and not on another objectively reasonable basis**, the  
22 court shall disallow the peremptory challenge.

23 “**SECTION 2. The amendments to ORCP 57 D by section 1 of this  
24 2022 Act become operative on January 1, 2024, and apply to trials  
25 commenced on or after January 1, 2024.**

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27 “**JUSTIFIED USE OF PHYSICAL FORCE**

28

29 “**SECTION 3.** ORS 161.209 is amended to read:

30 “161.209. (1) Except as provided in ORS 161.215 and 161.219, a person is

1 justified in using physical force upon another person for self-defense or to  
2 defend a third person from what the person reasonably believes to be the use  
3 or imminent use of unlawful physical force, and the person may use a degree  
4 of force [*which*] **that** the person reasonably believes to be necessary for the  
5 purpose.

6 **“(2) A reasonable belief for purposes of this section may not be**  
7 **based, in whole or in part, on another person’s race, color, religion,**  
8 **sex, sexual orientation, gender identity, national origin or marital**  
9 **status.**

10 **“SECTION 4.** ORS 161.225 is amended to read:

11 “161.225. (1) A person in lawful possession or control of premises is jus-  
12 tified in using physical force upon another person when and to the extent  
13 that the person reasonably believes it necessary to prevent or terminate what  
14 the person reasonably believes to be the commission or attempted commis-  
15 sion of a criminal trespass by the other person in or upon the premises.

16 “(2) A person may use deadly physical force under the circumstances set  
17 forth in subsection (1) of this section only:

18 “(a) In defense of a person as provided in ORS 161.219; or

19 “(b) When the person reasonably believes it necessary to prevent the  
20 commission of arson or a felony by force and violence by the trespasser.

21 **“(3) A reasonable belief for purposes of this section may not be**  
22 **based, in whole or in part, on another person’s race, color, religion,**  
23 **sex, sexual orientation, gender identity, national origin or marital**  
24 **status.**

25 “[~~(3)~~] (4) As used in subsection (1) and subsection (2)(a) of this section,  
26 ‘premises’ includes any building as defined in ORS 164.205 and any real  
27 property. As used in subsection (2)(b) of this section, ‘premises’ includes any  
28 building.

29 **“SECTION 5.** ORS 161.229 is amended to read:

30 “161.229. (1) A person is justified in using physical force, other than

1 deadly physical force, upon another person when and to the extent that the  
2 person reasonably believes it to be necessary to prevent or terminate the  
3 commission or attempted commission by the other person of theft or criminal  
4 mischief of property.

5 **“(2) A reasonable belief for purposes of this section may not be**  
6 **based, in whole or in part, on another person’s race, color, religion,**  
7 **sex, sexual orientation, gender identity, national origin or marital**  
8 **status.**

9 **“SECTION 6. (1) When the issue of the use of physical force justi-**  
10 **fied under ORS 161.209 is submitted to be determined by a jury in the**  
11 **trial court, the court shall instruct the jury in accordance with ORS**  
12 **161.209 (2).**

13 **“(2) When the issue of the use of physical force justified under ORS**  
14 **161.225 is submitted to be determined by a jury in the trial court, the**  
15 **court shall instruct the jury in accordance with ORS 161.225 (3).**

16 **“(3) When the issue of the use of physical force justified under ORS**  
17 **161.229 is submitted to be determined by a jury in the trial court, the**  
18 **court shall instruct the jury in accordance with ORS 161.229 (2).**

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20

**“CAPTIONS**

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22 **“SECTION 7. The unit captions used in this 2022 Act are provided**  
23 **only for the convenience of the reader and do not become part of the**  
24 **statutory law of this state or express any legislative intent in the**  
25 **enactment of this 2022 Act.”.**

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