

## HB 2800 -1, -2 STAFF MEASURE SUMMARY

### House Committee On Business and Labor

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**Prepared By:** Erin Seiler, LPRO Analyst

**Meeting Dates:** 2/6, 3/29

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#### WHAT THE MEASURE DOES:

Clarifies meaning of “because of age” in employment discrimination law. Establishes that it is an unlawful employment practice for employer to seek age of applicant prior to completing initial interview or making conditional offer of employment and to include certain words or phrases in job application that suggest age preferences. Provides private right of action or ability to file complaint with the Bureau of Labor and Industries for such claims of unlawful employment practice. Permits employer to seek age of applicant under certain circumstances. Removes provision that includes apprentices within scope of unlawful employment discrimination statute.

#### ISSUES DISCUSSED:

- Federal court interpretation of Age Discrimination in Employment Act (ADEA)
- Characteristics associated with age
- Challenges to proving age discrimination when complaint or civil action is filed
- Ability of employer manage personal and business costs
- Differences between Oregon and Federal law regarding age
- Impact to pay equity and seniority systems

#### EFFECT OF AMENDMENT:

-1 Removes phrase “broadly construed” as applied to definition and characteristics of “because of age.” Does not prohibit employer from taking employment action based on salary, length of service, higher cost factors related to retirement or health care benefits, or retirement eligibility provided age is not factor. Does not prohibit action taken relative to seniority system provided that seniority system does not require or permit involuntary retirement of employee because of age.

-2 Replaces measure. For purposes of discrimination because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age or expunged juvenile record prohibited, changes protected age from 18 to 40.

#### BACKGROUND:

Currently, a person claiming employment discrimination because of age under 659A.030 may file a complaint with the Bureau of Labor and Industries or may file an action in court.

House Bill 2800 clarifies that, for the purpose of examining allegations of age discrimination, “because of age,” includes, but is not limited to, characteristics closely associated with, correlated with or used as a proxy for age and presumes age is a factor in the employer's adverse employment action, unless an employer can establish it was not. The measure identifies characteristics closely associated with age, to include but are not limited to: salary; length of service with an employer; higher cost factors relating to pension benefits, other retirement benefits or any insurance benefits; or retirement or pension eligibility and status.

In addition, the measure prohibits an employer from seeking the age of an applicant, including asking on an employment application, requiring an applicant to disclose their age, date of birth or when they attended or graduated from any educational institution, prior to completing an initial interview or making a conditional offer of employment. Further, an employer cannot include in a job advertisement words or phrases that would suggest

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age preferences, including, but not limited to, preferences for “college age” and “digital native” applicants, or any other words or phrases that indicate an age-biased preference. There are exceptions to the prohibition: when age is a bona fide occupational qualification; an applicant has to affirm that they meet age and education requirements related to bona fide occupational qualifications; or when information related to age is required to comply with any provisions of state or federal law.