



CITY OF
PORTLAND, OREGON
OFFICE OF PUBLIC UTILITIES

Mike Lindberg, Commissioner
1220 S.W. Fifth Ave.
Portland, Oregon 97204
(503) 823-4145

July 22, 1993

Jeff Golden
Chief of Staff
Senate President Bill Bradbury
State Capitol, Room S-203
Salem, Oregon 97810
FAX 1-503-378-6604

Dear Jeff,

I am writing as a follow-up to our telephone discussion earlier today. You had requested a description of the concerns about the potential problems associated with HB 3500. I will attempt in this letter to briefly articulate these concerns.

1. HB 3500 is poorly drafted. Debate exists as to the intent of the bill among both supporters and opponents of expanded civil rights protections based on an individual's sexual orientation. An analysis of the discussions on the House floor further complicates future interpretations of the intent of the House in passing this bill. Much of these discussions centered around "leveling the playing field", which has historically been an argument for expanding civil rights protections. It seems somewhat ironic that we are now witnessing the use of this argument to place current local government's civil rights ordinances in jeopardy. Stewardship alone makes the argument for redraft of this bill.
2. I am unaware of instances historically where the promoters of civil rights protections actually supported the potential loss of these same civil rights protections in an attempt to control the actions of groups opposed to civil rights.

To understand this argument, one can only reflect on history. Can you imagine someone seriously considering placing the rights of Catholic citizens in jeopardy in order to control the actions of the Ku Klux Klan in Oregon in the 1930's?

Substitution of other protected categories into the current wording of HB 3500 clarifies my concern. An amended HB 3500 in which the substitution occurred would read as follows:

A Political subdivision of the state may not enact or enforce any charter provision, ordinance, resolution or policy granting special rights or treatment to any citizen or group of citizens on account of **race, sex, religion, age, or disability**, or enact or enforce any charter provision ordinance, resolution or policy that singles out citizens or groups of citizens on account of their **race, sex, religion, age, or disability**.

It does not take much imagination to consider ramifications of substitution of other protected categories into an already poorly drafted piece of legislation.

3. Passage of HB 3500 has been termed necessary by some supporters in order to "get something positive for gays and lesbians out of this session". I am aware of the years of frustration associated with attempts since 1973 to codify these basic civil rights protections. I am no stranger to the intensity of public passions associated with this issue.

Nor am I a stranger to the importance of patience in the timing equation on these issues. As the chief sponsor of Portland's civil rights ordinance, I felt it was important to delay consideration of the ordinance until we had five enthusiastic supporters on the City Council.

There is no question in my mind that the supporters of HB 3500 are sincere in their belief that "something is better than nothing". But I disagree with their assessment that the bill should be reported out as written in order to guarantee passage of "something", even if the passage of the bill could potentially have a negative impact on existing civil rights law.

The struggle for civil rights protections in Oregon based on an individual's sexual orientation has been enthusiastically and patiently approached for 20 years. Our successes have been measured, but we have never taken a step backwards. Even when the voters sought to remove the limited protections of former Governor Neil Goldschmidt's executive order, we patiently moved the action into the courts and continued the march forward.

The Oregon Senate has played a major role in that momentum, embracing these civil rights protections in votes in 1983, 1991, and again in 1993. It will be a long struggle, but we will eventually win. Though we are all weary with the struggle, our fatigue should not be used as an argument for passage of legislation of dubious impact.

4. Some individuals have argued that the gay and lesbian community is supportive of this bill, and used this as an argument for passage. But in talking with members of the community I have discovered much disagreement and confusion related to the bill. When the potential for loss of civil rights in Portland, Corvallis, and Ashland is added to the information, previous confusion moves to outright opposition.

In conclusion I support the efforts of Portland City Attorney Jeff Rogers in offering minimal language amendments which clarify the bill's intent. However, my preference would be either complete rewrite of the bill, or continued application of patience with the hope of a more productive 1995 legislative session and court decision such as the one issued in Colorado this past week.

Please accept my apologies for the lack of formality in this letter, but time constraints did not allow for a formal approach this morning.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike", with a stylized flourish extending from the end.

Mike Lindberg
Commissioner of Public Utilities
City of Portland

cc: Council
City Attorney
IGA



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

AA KL
Jeffrey L. Rogers, City Attorney
1220 S.W. 5th Avenue
Portland, Oregon 97204
(503) 823-4047

July 13, 1993

- C O N F I D E N T I A L -

INTEROFFICE MEMORANDUM

TO: Mayor Vera Katz
Commissioner Earl Blumenauer
Commissioner Charlie Hales
Commissioner Gretchen Kafoury
✓ Commissioner Mike Lindberg
City Auditor Barbara Clark

FROM: Jeffrey L. Rogers *JLR*
City Attorney

Marge Kafoury *MKJR*
Director, Government Relations

SUBJ: Legislation Concerning Sexual Orientation

RECEIVED

JUL 13 1993

COMMISSIONER LINDBERG'S OFFICE

As you know, the Oregon House has passed HB 3500, A-Engrossed, and it is now before the Senate. Most of the bill's supporters intend it to render unenforceable the OCA charter amendments recently passed in several cities and counties in Oregon. It is hoped that the bill will also prevent future similar OCA measures in other communities.

The bill contains ambiguous language. These ambiguities have raised several concerns, including the possibility that the bill might, ironically, be used to challenge the sexual orientation provisions in the civil rights ordinances of Portland, Corvallis, and Ashland. The City Attorney's office believes that our ordinance could withstand such a challenge. However, it would be better to avoid litigation if possible. The ambiguous language would make the outcome less certain than we would like.

To that end, we have been exploring the possibility of amending HB 3500 to ensure it would not invalidate our civil rights ordinance. We have proposed language changes which are being considered by the legislative leadership.

However, it may not be possible to amend HB 3500. We believe that if amendment is not possible, it is better to enact HB 3500 as it stands than to have no bill. Although

Mayor Vera Katz
July 13, 1993
Page 2

- C O N F I D E N T I A L -

that would create some risk to our ordinance, we believe the risk is manageable and acceptable in light of the good impacts that HB 3500 could have in other communities throughout the state which are under siege by the OCA.

Thus, our present intention is to continue working quietly to amend HB 3500, but if amendment is impossible we recommend that Portland not stand in the way of passage of the bill, even in its present less than ideal form. Please let us know promptly if you want us to take a different approach, or if you would like more information or discussion before deciding. Thank you.

JLR:ts
civright\misc.jlr\hb3500-1

(1) A political subdivision or the state may not enact or enforce any charter provision, ordinance, resolution or policy granting special [rights,] privileges [or treatment] to any citizen or group of citizens on account of any particular sexual orientation, or enact or enforce any charter provision, ordinance, resolution or policy that singles out citizens or groups of citizens on account of any particular sexual orientation.

NOTES

Language to be deleted is [bracketed]; language to be added is double underlined.

7/13

Keeston —

FYI. Pete and I come up with this attempt to amend only a few words, but still increase the defensibility of our ordinance. The words "any particular" are the key ones. Everyone (Shulley, Spinger, Brodway, Kerans, Kerry Barnett, Jeff Bolden, Charlie Kemble) liked the idea and are going to try to soften Del Parks. But no one is optimistic. Jeff



CITY OF
PORTLAND, OREGON
OFFICE OF PUBLIC UTILITIES

Mike Lindberg, Commissioner
1220 S.W. Fifth Ave.
Portland, Oregon 97204
(503) 823-4145

July 12, 1993

The Honorable Dick Springer
Senate Majority Leader
Oregon State Senate
State Capitol, Room S 306
Salem, Oregon 97310

Re: HB 3500

Dear Senator Springer:

By way of this letter, I would like to emphasize my concern about the potential impact of HB 3500.

My concerns are reflected accurately in a memorandum to Marge Kafoury, the lobbyist for the City of Portland, from our City Attorney's Office, and I have attached that memorandum for reference.

My major concern with the bill is its potential impact on enforcement of Portland's Civil Rights Ordinance. Even the most optimistic reading of HB 3500 seems to indicate that the City would be involved in potential litigation for two years defending its right to protect its own citizens from discrimination.

The City has received assurances in every conversation with legislators that the intent of passage of HB 3500 was not to limit local civil rights enforcement, and the City has recommended amended language that would clarify this in the bill.

I urge you to support the changes recommended by the City Attorney's office prior to reporting out HB 3500.

Sincerely,

MIKE LINDBERG
Commissioner
Office of Public Utilities

MDL:klc

cc: City Attorney
State Rep. Gail Shibley
City Council
Office of Intergovernmental Affairs

~~UNOFFICIAL~~

PROPOSED AMENDMENTS TO HB 3500

1 Delete lines 4 through 18 and insert:

2
3 SECTION 1. (1) A political subdivision of the state may not enact or enforce any charter
4 provision, ordinance, resolution or policy granting special rights, privileges or treatment to
5 any citizen or group of citizens on account of sexual orientation, or enact or enforce any
6 charter provision, ordinance, resolution or policy that singles out citizens or groups of citizens
7 on account of sexual orientation.

8 (2) Any person who believes that a political subdivision has enacted or is enforcing a charter
9 provision, ordinance, resolution or policy in violation of this section may bring an action in
10 circuit court to have the charter provision, ordinance or policy declared invalid, for injunctive
11 relief and for such other relief as the court may consider appropriate. The court shall award
12 reasonable attorney fees and costs to a plaintiff who prevails in an action under this
13 subsection.

14 SECTION 2. The Act is effective upon passage.



CITY OF
PORTLAND, OREGON

OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
1220 S.W. 5th Avenue
Portland, Oregon 97204
(503) 823-4047

July 1, 1993

INTEROFFICE MEMORANDUM

To: Marge Kafoury
Office of Government Relations

From: Madelyn Wessel, Deputy City Attorney *mw*
Pete Kasting, Senior Deputy City Attorney *PK*

Re: PROPOSED AMENDMENTS TO HOUSE BILL 3500

You have asked for our comments on the current amendments to House Bill 3500. We believe the current language presents a number of significant concerns. Generally, these concerns are as follows: (1) the current language may not achieve the results intended, instead spawning endless (and expensive) litigation over the meaning of specific words; (2) benign programs providing social services that might correlate with sexual orientation might fall within the scope of the prohibition; (3) anti-gay ordinances may not necessarily be invalidated by the amendment, while anti-discrimination ordinances like Portland's and Corvallis's may face preemption attacks.

The operative section of this amendment currently reads as follows:

SECTION 1. (1) A political subdivision of the state may not enact or enforce any charter provision, ordinance, resolution or policy granting special rights, privileges or treatment to any citizen or group of citizens on account of sexual orientation, or enact or enforce any charter provision, ordinance, resolution or policy that singles out any citizen or group of citizens on account of sexual orientation.

(2) Any person who believes that a political subdivision has enacted or is enforcing a charter provision, ordinance, resolution or policy in violation of this section may bring an action in circuit court to have the charter provision, ordinance, resolution or policy declared invalid, for injunctive relief and for such other relief as the court may consider appropriate. The court shall award reasonable attorney fees and costs to a plaintiff who prevails in an action under this subsection.

1. Problems with Ambiguity

Many of the words and phrases do not have a clear cut legal application. For example, a "policy granting special rights, privileges or treatment" or a "policy that singles out any citizen or group of citizens," are far from clear, legally speaking. The only sure thing we can say about such wording is that it will spawn extensive litigation.

2. Undermining of Benign Programs

Subsection (1) prohibits a governmental action "that singles out" people "on account of sexual orientation." It is not clear what either of these phrases mean.

Are people singled out on account of sexual orientation if a governmental program is intended to provide services only to people of a particular sexual orientation? What if the program does not have an express intent to focus on people of a particular sexual orientation, but has that practical effect? For example, would this prohibit a governmental AIDS prevention program that specifically designs educational materials for gay youth? Would it affect programs designed to assist young married people in family and parenting skills, since people in such programs will be predominantly, if not exclusively, heterosexual?

A possible solution to this problem, and the one of ambiguity that affects the legislation generally, would be to more carefully describe those government actions which are to be prohibited. I.e., "authorizing or mandating the use of numerical goals or quotas, or other similar affirmative action measures" would be a much better way of describing the "special treatment" that would be prohibited under the first clause of Section 1 (1).

3. Uncertain Preemptive Effect

As noted above, particularly with the elimination of the earlier language that included the phrase "for discrimination" after the words "singles out," the intended effect of the second part of Section 1 (1) becomes uncertain indeed. It is possible this language would not be interpreted to fully invalidate "anti-gay" ordinances. Similarly, its effect on anti-discrimination ordinances like Portland's and Corvallis's, which identify sexual orientation as a category upon which discrimination is prohibited (along with race, age, religion and other categories), is unclear.

A better way of achieving what we understand to be the legislative intent of this clause would be to specify that it is

Marge Kafoury
July 1, 1993
Page 3

the authorization of discrimination or the limitation of civil rights that is to be made invalid. Thus, after the words "resolution or policy," substitute the phrase "that authorizes discrimination or limits the civil rights of any citizen or group of citizens on account of sexual orientation."

We also urge consideration of an explicit "savings clause" such as the following:

Nothing herein shall be construed to limit the authority of any political subdivision of the state to enact or enforce a charter provision, ordinance, resolution or policy prohibiting discrimination on the basis of sexual orientation.

Such a clause would eliminate any potential confusion about whether ordinances like Portland's, which have previously been found to be within the home rule powers of the city and not preempted, are affected by the legislation.

See the attached sheet for proposed rewording of the amendments. This rewording was drafted to preserve the structure of the existing bill. (Starting entirely from scratch, there might well be simpler and clearer ways of addressing these issues.)

SECTION 1.

(1) A political subdivision of the state may not enact or enforce any charter provision, ordinance, resolution or policy authorizing or mandating the use of numerical goals or quotas, or other similar affirmative action measures, to any citizen or group of citizens on account of sexual orientation, or enact or enforce any charter provision, ordinance, resolution or policy that authorizes discrimination or limits the civil rights of any citizen or group of citizens on account of sexual orientation.

THEN: insert existing (2)

THEN: add new paragraph (3) reading: "Nothing herein shall be construed to limit the authority of any political subdivision of the state to enact or enforce a charter provision, ordinance, resolution or policy prohibiting discrimination on the basis of sexual orientation."

HB 3500-1
(LC 3288)
6/30/93-1 (DH/lg)

PROPOSED AMENDMENTS TO
HOUSE BILL 3500

1 In line 2 of the printed bill, after "rights" insert ": and declaring an
2 emergency".

3 Delete lines 4 through 18 and insert:

4 "SECTION 1. (1) A political subdivision of the state may not enact
5 or enforce any charter provision, ordinance, resolution or policy that
6 singles out any citizen or group of citizens on account of sexual ori-
7 entation as defined in ORS 166.155, except that a political subdivision
8 may enact a charter provision, ordinance, resolution or policy that
9 creates protections based on sexual orientation that exceed those pro-
10 vided by other law.

11 "(2) Any person who believes that a political subdivision has en-
12 acted or is enforcing a charter provision, ordinance, resolution or
13 policy in violation of this section may bring an action in circuit court
14 to have the charter provision, ordinance, resolution or policy declared
15 invalid, for injunctive relief and for such other relief as the court may
16 consider appropriate. The court shall award reasonable attorney fees
17 and costs to a plaintiff who prevails in an action under this subsection.

18 "SECTION 2. This Act being necessary for the immediate preser-
19 vation of the public peace, health and safety, an emergency is declared
20 to exist, and this Act takes effect upon its passage."
21

HB 3500-1
(LC 3288)
6/30/93 (DH/pc)

PROPOSED AMENDMENTS TO
HOUSE BILL 3500

1 In line 2 of the printed bill, after "rights" insert "; and declaring an
2 emergency".

3 Delete lines 4 through 18 and insert:

4 "SECTION 1. (1) A political subdivision of the state may not enact
5 or enforce any charter provision, ordinance, resolution or policy
6 granting special rights, privileges or treatment to any citizen or group
7 of citizens on account of sexual orientation, or enact or enforce any
8 charter provision, ordinance, resolution or policy that singles out for out ①
9 discrimination any citizen or group of citizens on account of sexual
10 orientation. as defined in 2

11 "(2) Any person who believes that a political subdivision has en-
12 acted or is enforcing a charter provision, ordinance, resolution or
13 policy in violation of this section may bring an action in circuit court
14 to have the charter provision, ordinance, resolution or policy declared
15 invalid, for injunctive relief and for such other relief as the court may
16 consider appropriate. The court shall award reasonable attorney fees
17 and costs to a plaintiff who prevails in an action under this subsection.

18 "SECTION 2. This Act being necessary for the immediate preser-
19 vation of the public peace, health and safety, an emergency is declared
20 to exist, and this Act takes effect upon its passage."

21

= Larry Kessler
= Rex Hemstrom

823 - 3089

Murphy

581-1673



CITY OF
PORTLAND, OREGON

OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
1220 S.W. 5th Avenue
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(503) 823-4047

221-8231
MICHAEL
221-8439

Marge: call me when you have had a chance to look at this.
I'll stay near my phone.

SECTION 1.

(1) A political subdivision of the state may not enact or enforce any charter provision, ordinance, resolution or policy authorizing or mandating the use of numerical goals or quotas, or other similar affirmative action measures, to any citizen or group of citizens on account of sexual orientation, or enact or enforce any charter provision, ordinance, resolution or policy that authorizes discrimination or limits the civil rights of any citizen or group of citizens on account of sexual orientation.

THEN: insert existing (2)

THEN: add new paragraph (3) reading: "Nothing herein shall be construed to limit the authority of any political subdivision of the state to enact or enforce a charter provision, ordinance, resolution or policy prohibiting discrimination on the basis of sexual orientation."

A-Engrossed House Bill 3500

Ordered by the House July 1
Including House Amendments dated July 1

Introduced and printed pursuant to House Rule 13.01

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.

[Prohibits cities and counties from enacting or enforcing local legislation that relates to personal conduct that is not criminal or subject to civil sanction. Allows local legislation that creates additional protections for personal conduct that is not criminal or subject to civil sanction.]

Prohibits political subdivision from enacting or enforcing ordinance or policy granting special rights or singling out any citizen or group on account of sexual orientation. Allows any person to bring action in circuit court to challenge political subdivision action.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to civil rights; and declaring an emergency.

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

SECTION 1. (1) A political subdivision of the state may not enact or enforce any charter provision, ordinance, resolution or policy granting special rights, privileges or treatment to any citizen or group of citizens on account of sexual orientation, or enact or enforce any charter provision, ordinance, resolution or policy that singles out citizens or groups of citizens on account of sexual orientation.

(2) Any person who believes that a political subdivision has enacted or is enforcing a charter provision, ordinance, resolution or policy in violation of this section may bring an action in circuit court to have the charter provision, ordinance, resolution or policy declared invalid, for injunctive relief and for such other relief as the court may consider appropriate. The court shall award reasonable attorney fees and costs to a plaintiff who prevails in an action under this subsection.

SECTION 2. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect upon its passage.

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.

STOEL RIVES BOLEY JONES & GREY

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(503) 294-9403

July 2, 1993

BY FAX: 378-6933

Representative George Eigmey
Oregon House of Representatives

Re: HB 3500

Dear Representative Eigmey:

A. Constitutionality of HB 3500. You have asked for my opinion as to the constitutionality of HB 3500, which would prevent local governments in Oregon from granting special rights on account of sexual orientation and from enforcing any law that "singles out" citizens on account of sexual orientation. In my opinion, HB 3500 is constitutional; indeed, I believe there is no doubt about it.

Local governments have no inherent sovereign authority. Any powers exercised by local governments must be delegated to them by a higher authority. Richards v. City of Portland, 121 Or 340, 349, 255 P 326 (1927); City of Corvallis v. Carlile, 10 Or 139 (1882).

In 1906, Article XI, section 2 was added to the Oregon Constitution in order to provide "home rule" for cities and towns. In the area of civil law, "home rule" cities have broad authority to pass laws. However, that authority at all times remains subject to the authority of the State itself, acting through the legislature (or through vote of the people, by way of the initiative). The leading case on home rule powers in the civil context is La Grande/Astoria v. PERB, 281 Or 137, 576 P2d 1204, on rehearing, 284 Or 173, 586 P2d 765 (1978). In that decision, the Supreme Court held:

"[W]hen a local enactment is found incompatible with a state law in an area of substantive policy, the state law will displace the local rule." 281 Or at 149.

STOEL RIVES BOLEY
JONES & GREY

Representative George Eigmey
July 2, 1993
Page 2

The Court cited many prior cases in support of that proposition, and it remains the authoritative statement of the law.

It is thus within the power of the legislature to preempt any substantive field of civil law. Hunting regulations, liquor regulation, licensing of insurance agents, and utility rates are some of the areas in which the Oregon Supreme Court has held that state law preempts any inconsistent local laws. The important point is that it is the State, not any local government, that at all times remains sovereign, and it is indisputably with the State's sovereign powers to legislate in the area addressed by HB 3500.

In short, HB 3500 is constitutional.

B. Effect on Portland's Ordinance. You have also asked my opinion as to whether or not HB 3500 would prevent the City of Portland from enforcing its ordinance that prohibits discrimination in housing and employment on the basis of sexual orientation. In my opinion, it would not. HB 3500 prevents a city from enforcing an ordinance that "singles out" citizens on account of sexual orientation, but an equal rights ordinance does not "single out" anyone: it requires that all persons be treated equally.

Portland's ordinance is an equal rights ordinance. It does not give preference to any person or group, and it does not "single out" any person or group. It says that neither the sexual orientation of a heterosexual person nor the sexual orientation of a homosexual person can be made the basis for an employment decision.

Portland's ordinance operates in precisely the same fashion with respect to race and religion. By prohibiting discrimination in housing and employment on the basis of race and religion, the ordinance does not "single out" white persons, black persons, Hispanics, or Asians, nor does it single out Presbyterians, Jews, Catholics, or non-believers. It requires landlords and employers to treat all persons without regard to their race or religion. In the same way, it requires landlords and employers to treat all persons the same, regardless of their sexual orientation.

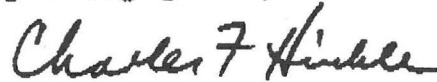
In short, HB 3500 does not prevent Portland from enforcing its ordinance prohibiting discrimination in housing and employment on the basis of sexual orientation.

STOEL RIVES BOLEY
JONES & GREY

Representative George Eigmey
July 2, 1993
Page 3

It seems to me that adoption of HB 3500 would make a great contribution toward lowering the bitterness and intensity of the debate on this issue, and I strongly support its passage.

Very truly yours,



Charles F. Hinkle

CFH:jlb

KELLY E. FORD
ATTORNEY AT LAW
12275 Southwest Second Street
Beaverton, Oregon 97005

Telephone (503) 646-0566

Facsimile (503) 644-9574

MEMORANDUM

Date: July 1, 1993
From: Kelly Ford
To: Bill Casey and any interested legislators
Subject: HB 3500

Bill, you asked my impressions as an attorney with employment law and constitutional law experience, of the impact of HB 3500.

First and foremost, it is impossible for any one person to predict the overall impact of a bill that is only a day old, simply because the bill lacks the exposure to public comment necessary to raise the range of problems and issues inherent in the language that the political process is excellent at producing over time. That comment period is critical to the quality of legislation, since no one person or small group has a corner on foreseeability of impact. For that reason alone, it seems unwise to give serious consideration to the bill this late in the session.

As to the results I can foresee, they fall into categories of (1) the predictable impact on OCA-type local initiatives, (2) the impact on other local legislation dealing with regulation of sexual perversions such as pedophilia, that could be construed as being within the scope of HB 3500, and (3) the possible impact on enforcement of the "gay rights" ordinances now in force in Corvallis and Portland.

One easily predictable impact would be the immediate refusal by local officials in the eight OCA initiative communities to enforce the ordinances, coupled with "friendly" litigation by local citizens for permanent injunctions restraining the officials from ever enforcing them. It would appear to me that HB 3500 would almost certainly be interpreted to require that result.

As to other existing local legislation that might also be unintentionally impacted, it is likely that there are local ordinances dealing with topics related to other sexual orientations than the usual three, which would be impliedly repealed by this bill. Note that SB 34 defined "sexual orientation" as being limited to heterosexuality, homosexuality, and bisexuality. That was done, no doubt, to assure conservatives that the intent of the bill was to refrain from granting any credibility or protection whatsoever to the "man-boy love association" types. HB 3500 contains no such limiting definition. That leaves the door open to any "sexual orientation" group such as pedophiles to attack any local ordinance dealing with sex with minors, ordinances forbidding or regulating the sale of

Traditional Values Coalition of Oregon



P O L I T I C A L A C T I O N C O M M I T T E E

Important points concerning HB 3500

To all Honorable State Representatives,

I am providing you a legal opinion that was sent to me by Attorney Kelly Ford, of the Rutherford Institute. I just want to highlight a point out of his letter that should be considered by all legislators contemplating their vote on HB 3500.

Primarily, this bill, should it become law, may be construed as a green light for all "Domestic Partner's" policies. For example, if this bill were law, consider the following scenario...a homosexual teacher at one of our local schools decides that he and his lover should be entitled to health and welfare benefits in the same way as his heterosexual counterpart. It seems that he would have an excellent argument to attain those benefits if HB 3500 were law, given that it explicitly states that no "political subdivision" can "enact or enforce" any "policy" or "treatment" "that singles out citizens or groups of citizens on account of sexual orientation." Clearly, current policies that single out "legally married" couples for the criteria of extending health and welfare benefits, could be deemed unlawful in light of HB 3500.

There are other problems of ambiguity with this bill but the one highlighted here is the most glaring. Please consider carefully how you vote on this bill as it has the potential to create a far worse political fire storm that did SB 34. In fairness to all Oregonians, this bill should be defeated and if there was any merit for it, reconsidered during the 1995 legislative session in an environment that would include full public participation and input.

Thank you very much for taking the time to consider the points outlined here. I wish you and your family a very pleasant fourth of July weekend.

Sincerely,

A handwritten signature in cursive script that reads "Bill Casey".

Bill Casey, Chairman
TVC of Oregon



CITY OF
PORTLAND, OREGON
OFFICE OF PUBLIC AFFAIRS

Mike Lindberg, Commissioner
1220 S.W. Fifth Ave.
Portland, OR 97204
(503) 823-4145

February 24, 1993

Commissioner Mary Wendy Roberts
Bureau of Labor and Industries
Suite 1045
800 N.E. Oregon, #32
Portland, Oregon 97232

Dear Commissioner Roberts:

Thank you for your letter regarding testimony on Senate Bill 34, which would extend the parameters of current statewide civil rights protections to cover the category of sexual orientation.

I have the hearing scheduled for March 8 on my calendar and have requested my staff to prepare testimony. If you are organizing the testimony, please add my name to the anticipated list. I will, most likely, offer testimony about the passage of the local ordinance in the City of Portland. If the League of Oregon Cities has acted to support Senate Bill 34 prior to the hearing, I will also speak as President of the League.

Again, thank you for your letter. I look forward to seeing you on Monday, March 8, 1993, in the City Council Chambers.

Sincerely,


MIKE LINDBERG
Commissioner
Office of Public Affairs

MDL:kl

MARY WENDY ROBERTS
COMMISSIONER



SUITE 1045
800 NE OREGON, # 32
PORTLAND, OREGON 97232
3865 WOLVERINE AVE. NE; E-1
SALEM, OREGON 97310

BUREAU OF LABOR AND INDUSTRIES

RECEIVED

FEB 19 1993

COMMISSIONER LINDBERG'S OFFICE

February 17, 1993

Commissioner Mike Lindberg
City of Portland
1220 SW Fifth Avenue
Room 414
Portland, Oregon 97204

Dear Commissioner Lindberg:

As you may know, I have submitted a bill to the 1993 Oregon Legislature which would prohibit discrimination on the basis of sexual orientation. Neither state or federal law currently provides this protection, and it is much needed. Although the City Council has already put this protection in place for the citizens of Portland, the prospect of numerous local initiatives pursued by the OCA threaten the civil rights of all other Oregonians.

I invite you to join me in working toward passage of Senate bill 34. ~~The momentum of events, national and local, is with us and the prospect for success has never been better.~~ I know that you can make an immediate and important difference.

The first hearing for SB 34 is scheduled at 4:00 p.m. on Monday, March 8, 1993, in the Portland City Council Chambers. I hope you will be able to attend the hearing and testify in support of this legislation. I am enclosing a copy of the bill and other materials for your information.

Senate Bill 34 is my personal priority for the 1993 legislative session, and I hope it will become yours. Together, we can and will secure passage of this critical civil rights legislation.

Sincerely,

Mary Wendy Roberts

MWR/jm

Enclosures
ctyoff
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A-Engrossed Senate Bill 34

Ordered by the Senate April 20
Including Senate Amendments dated April 20

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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.

Prohibits discrimination in employment, public accommodations, and real property transactions on basis of sexual orientation. Defines "sexual orientation." Prescribes exceptions.

A BILL FOR AN ACT

Relating to discrimination; creating new provisions; and amending ORS 20.107, 30.670, 30.680, 30.685, 93.270, 179.750, 192.630, 307.580, 326.051, 345.240, 348.250, 430.550, 654.062, 659.010, 659.020, 659.022, 659.030, 659.033, 659.037, 659.045, 659.100, 659.103, 659.115 and 659.150.

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

SECTION 1. ORS 659.010 is amended to read:

659.010. As used in ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545, unless the context requires otherwise:

(1) "Bureau" means the Bureau of Labor and Industries.

(2) "Cease and desist order" means an order signed by the commissioner, taking into account the subject matter of the complaint and the need to supervise compliance with the terms of any specific order issued to eliminate the effects of any unlawful practice found, addressed to a respondent requiring the respondent to:

(a) Perform an act or series of acts designated therein and reasonably calculated to carry out the purposes of ORS 30.670 to 30.685, 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545, eliminate the effects of an unlawful practice found, and protect the rights of the complainant and other persons similarly situated;

(b) Take such action and submit such designated reports to the commissioner on the manner of compliance with other terms and conditions specified in the commissioner's order as may be required to assure compliance therewith; or

(c) Refrain from any action designated in the order which would jeopardize the rights of the complainant or other person similarly situated or frustrate the purpose of ORS 30.670 to 30.685, 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(4) "Conciliation agreement" means a written agreement settling and disposing of a complaint under ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 signed by a respondent and an authorized official of the Bureau of Labor and Industries.

(5) "Employee" does not include any individual employed by the individual's parents, spouse or

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.

child or in the domestic service of any person.

(6) "Employer" means any person, including state agencies, political subdivisions and municipalities, who in this state, directly or through an agent, engages or utilizes the personal service of one or more employees reserving the right to control the means by which such service is or will be performed.

(7) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(8) "Entity" includes employers, labor organizations, employment agencies, places of public accommodation as defined in ORS 30.675 or vocational, professional or trade schools.

(9)(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.

(10) "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.

(11) "National origin" includes ancestry.

(12) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(13) "Respondent" includes any person or entity against whom a complaint or charge of unlawful practices is filed with the commissioner or whose name has been added to such complaint or charge pursuant to ORS 659.050 (1).

(14) "**Sexual orientation**" means attraction to or selection of a sexual partner according to gender. "**Sexual orientation**" includes having a history of that attraction or selection or being identified with that attraction or selection. "**Sexual orientation**" is limited to heterosexuality, homosexuality and bisexuality.

[(14)] (15) "Unlawful employment practice" includes only those unlawful employment practices specified in ORS 399.235, 654.062 (5), 659.030, 659.035, 659.227, 659.270, 659.295, 659.330, 659.340, 659.358 (1) to (4), 659.360, 659.410, 659.415, 659.420, 659.425 and 659.570.

[(15)] (16) "Unlawful practice" means any unlawful employment practice or any distinction, discrimination or restriction on account of race, religion, color, sex, **sexual orientation**, marital status or national origin made by any place of public accommodation as defined in ORS 30.675, by any person acting on behalf of any such place or by any person aiding or abetting any such place or person in violation of ORS 30.685, or any violation of ORS 345.240, 659.033, 659.037, 659.430 or rules adopted pursuant to ORS 659.103 (1), but does not include a refusal to furnish goods or services when the refusal is based on just cause.

SECTION 2. ORS 659.020 is amended to read:

659.020. (1) It is declared to be the public policy of Oregon that practices of discrimination against any of its inhabitants because of race, religion, color, sex, **sexual orientation**, marital status, national origin, age or disability are a matter of state concern and that such discrimination threatens not only the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

(2) The opportunity to obtain employment without discrimination because of race, religion, color, sex, **sexual orientation**, marital status, national origin, age or disability hereby is recognized as and declared to be a civil right. However, this section shall not be construed to prevent a bona fide church or sectarian religious institution, including but not limited to a school, hospital or church camp, from preferring an employee or applicant for employment *[of one religious sect or persuasion over another when:]*

[(a) That religious sect or persuasion to which the employee or applicant belongs is the same as that of such church or institution;] **who belongs to the same religious sect as that of the church or institution or from discriminating on the basis of sexual practices which violate the bona fide religious tenets or the teachings of the church or institution when:**

[(b)] (a) In the opinion of such bona fide church or sectarian religious institution, such a preference **or discrimination** will best serve the purposes of such church or institution; and

[(c)] (b) The employment involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity which has no necessary relationship to the church or institution, or to its primary purposes.

SECTION 3. ORS 659.022 is amended to read:

659.022. The purpose of ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 is to encourage the fullest utilization of available manpower by removing arbitrary standards of race, religion, color, sex, **sexual orientation**, marital status, national origin or age as a barrier to employment of the inhabitants of this state; to insure human dignity of all people within this state, and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of discrimination of any kind based on race, religion, color, sex, **sexual orientation**, marital status or national origin. To accomplish this purpose the Legislative Assembly intends by ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of discrimination because of race, religion, color, sex, marital status or national origin are based.

(2) An adequate remedy for persons aggrieved by certain acts of discrimination because of race, religion, color, sex, **sexual orientation**, marital status or national origin or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of discrimination through a procedure involving investigation, conference, conciliation and persuasion; to encourage the use in good faith of such machinery by all parties to a complaint of discrimination; and to discourage unilateral action which makes moot the outcome of final administrative or judicial determination on the merits of such a complaint.

SECTION 4. ORS 659.030 is amended to read:

659.030. (1) For the purposes of ORS 659.010 to 659.110, 659.227, 659.330, 659.340, 659.400 to 659.460 and 659.505 to 659.545, it is an unlawful employment practice:

(a) For an employer, because of an individual's race, religion, color, sex, **sexual orientation**, national origin, marital status or age if the individual is 18 years of age or older or because of the race, religion, color, sex, **sexual orientation**, national origin, marital status or age of any other person with whom the individual associates, or because of a juvenile record, that has been expunged pursuant to ORS 419.800 to 419.839, of any individual, to refuse to hire or employ or to bar or discharge from employment such individual. However, discrimination is not an unlawful employment practice if such discrimination results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(b) For an employer, because of an individual's race, religion, color, sex, **sexual orientation**, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, religion, color, sex, **sexual orientation**, national origin, marital status or age of any other person with whom the individual associates, or because of a juvenile record, that has been expunged pursuant to ORS 419.800 to 419.835, of any individual, to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(c) For a labor organization, because of an individual's race, religion, color, sex, **sexual orientation**, national origin, marital status or age if the individual is 18 years of age or older or because of a juvenile record, that has been expunged pursuant to ORS 419.800 to 419.835, of any individual to exclude or to expel from its membership such individual or to discriminate in any way against any such 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 which expresses directly or indirectly any limitation, specification or discrimination as to an individual's race, religion, color, 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. But identifying employees according to race, religion, color, sex, **sexual orientation**, national origin, marital status, or age does not violate this section unless the commissioner, after hearing conducted pursuant to ORS 659.103, determines that such a designation expresses an intent to limit, specify or discriminate on the basis of race, religion, color, sex, **sexual orientation**, national origin, marital status or age.

(e) For an employment agency to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against any individual:

(A) On the basis of the individual's race, color, national origin, sex, **sexual orientation**, religion, marital status or age, if the individual is 18 years of age or older;

(B) Because of the race, color, national origin, sex, **sexual orientation**, religion, marital status or age of any other person with whom the individual associates; or

(C) Because of a juvenile record, that has been expunged pursuant to ORS 419.800 to 419.835.

[However, it shall not be an unlawful practice for an employment agency to classify or refer for employment any individual where such classification or referral results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.]

(f) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden by this section, ORS 30.670, 30.685, 659.033 and 659.400 to 659.460, or because the person has filed a complaint, testified or assisted in any proceeding under ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 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 ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 or to attempt to do so.

(h) For any employer, labor organization or employment agency to inquire into or investigate the sexual orientation of any employee or prospective employee.

(2) The provisions of this section apply to an apprentice under ORS chapter 660, but the se-

lection of an apprentice on the basis of the ability to complete the required apprenticeship training 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 chapter 660 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 shall not be 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) It is not an unlawful practice for an employment agency acting as described in subsection (1)(d) of this section to classify or refer for employment any individual where such classification or referral results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

SECTION 5. Nothing contained in ORS 659.010 to 659.110 and 659.400 to 659.435 shall be considered to authorize or permit the use of numerical goals or quotas, or other types of affirmative action programs, in the administration or enforcement of those provisions relating to discrimination on account of sexual orientation.

SECTION 6. ORS 659.033 is amended to read:

659.033. (1) No person shall, because of race, color, sex, **sexual orientation**, marital status, familial status, religion or national origin of any person:

(a) Refuse to sell, lease or rent any real property to a purchaser.

(b) Expel a purchaser from any real property.

(c) Make any distinction, discrimination or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property which indicates any preference, limitation, specification or discrimination based on race, color, sex, **sexual orientation**, marital status, religion or national origin.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this subsection [and] or subsection (3) [and] or (5) of this section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected by this section.

(2)(a) No person or other entity whose business includes engaging in residential real estate related transactions shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, sex, **sexual orientation**, marital status, familial status, religion or national origin.

(b) As used in this subsection, "residential real estate related transaction" means any of the following:

(A) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(ii) For securing residential real estate; or

(B) The selling, brokering or appraising of residential real property.

(3) No real estate licensee shall accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, sex, **sexual orientation**, marital status, familial status, religion or national origin.

(4) No person shall, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, **sexual orientation**, marital status, familial status, religion or national origin.

(5) No person engaged in the business of selling, renting or leasing real property shall inquire into the sexual orientation of a purchaser, renter or lessee, or prospective purchaser, renter or lessee.

[(5)] (6) Subsections (1) and (3) of this section do not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of subsections (1) and (3) of this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

[(6)] (7)(a) This section does not apply to familial status distinction, discrimination or restriction with respect to housing for older persons.

(b) As used in this subsection, "housing for older persons" means housing:

(A) Provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined by the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing qualifies as housing for older persons under this subparagraph if:

(i) Significant facilities and services are specifically designed to meet the physical or social needs of older persons or, if provision of such facilities and services is not practicable, such housing is necessary to provide important housing opportunities of older persons;

(ii) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and

(iii) Policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older are published and adhered to.

(c) Housing shall not fail to meet the requirements for housing for older persons if:

(A) Persons residing in such housing as of September 13, 1988, do not meet the requirements of subparagraph (B) or (C) of paragraph (b) of this subsection. However, new occupants of such housing shall meet the age requirements of subparagraph (B) or (C) of paragraph (b) of this subsection; or

(B) The housing includes unoccupied units. However, such units are reserved for occupancy by persons who meet the age requirements of subparagraph (B) or (C) of paragraph (b) of this subsection.

(d) Nothing in this section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(8) This section does not apply to sexual orientation distinction, discrimination or restriction with respect to:

(a) The rental, lease or sharing of part of a single family residence or apartment occupied by the owner, lessee or tenant, if that rental, lease or sharing is for purposes of residential

occupancy;

(b) Real property that is owned by a bona fide church or sectarian religious institution and used as a school, hospital or church camp; or

(c) Any other real property owned or used by a bona fide church or sectarian religious institution, unless the real property is owned for investment purposes or used for commercial or business activity that is unrelated to the religious purposes of the church or institution.

[(7)] (9) In the sale, lease or rental of real estate, no person shall disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

SECTION 7. ORS 659.037 is amended to read:

659.037. Except as provided by laws governing the consumption of alcoholic beverages by minors and the frequenting of minors in places of public accommodation where alcoholic beverages are served, and except for special rates or services offered to persons 55 years old and older, no person acting on behalf of any place of public accommodation as defined in ORS 30.675 shall publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind to the effect that any of the accommodations, advantages, facilities, services or privileges of such place of public accommodation will be refused, withheld from or denied to, or that any discrimination will be made against, any person on account of race, religion, sex, **sexual orientation**, marital status, color, national origin or age if the individual is 18 years of age and older.

SECTION 8. ORS 659.045 is amended to read:

659.045. (1) Any person claiming to be aggrieved by an alleged distinction, discrimination or restriction on account of race, religion, sex, **sexual orientation**, marital status, color, national origin or age if the individual is 18 years of age or older made by any place of public accommodation as defined in ORS 30.675 or by any person acting on behalf of such place or in violation of ORS 30.685 or any person claiming to be aggrieved by a violation of ORS 345.240 or any person claiming to be aggrieved by a violation of ORS 659.033 may, or the attorney of the person may, make, sign and file with the Commissioner of the Bureau of Labor and Industries a verified complaint in writing which shall state the name and address of the person, the place of accommodation or the vocational, professional or trade school alleged to have committed the act complained of and which complaint shall set forth the particulars thereof. The complainant may be required to set forth in the complaint such other information as the commissioner may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year after the alleged distinction, discrimination or restriction.

(2) The Attorney General or the Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint in a like manner as a complaint filed under subsection (1) of this section whenever the Attorney General or commissioner has reason to believe that any place of public accommodation or any person acting on behalf of such place or any person aiding or abetting such place or person has denied any person rights under ORS 30.670 or 30.685 or has violated ORS 659.037 or that a violation of ORS 345.240 has occurred or that any person has violated the provisions of ORS 659.033.

SECTION 9. ORS 659.100 is amended to read:

659.100. (1) The Bureau of Labor and Industries may eliminate and prevent discrimination in employment because of race, religion, color, sex, **sexual orientation**, national origin, marital status,

physical or mental disability or age if the individual is 18 years of age and over or by employers, employees, labor organizations, employment agencies or other persons and take other actions against discrimination because of race, religion, color, sex, **sexual orientation**, national origin, marital status, physical or mental disability or age if the individual is 18 years of age and over as provided in ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545. To eliminate the effects of discrimination the Bureau of Labor and Industries may promote voluntarily affirmative action by employers, labor organizations, governmental agencies, private organizations and individuals and may accept financial assistance and grants or funds for such purpose, **except as provided in section 5 of this 1993 Act.**

(2) The Bureau of Labor and Industries may eliminate and prevent violations of ORS 659.033 and may eliminate and prevent discrimination or restrictions because of race, religion, color, sex, **sexual orientation**, marital status, physical or mental disability, national origin or age of any individual 18 years of age and older by vocational, professional and trade schools licensed under any law of the State of Oregon, or by any place of public accommodation as defined in ORS 30.675 or by any person acting on behalf of such place or by any person aiding or abetting such place or person in violation of ORS 30.685. The Bureau of Labor and Industries hereby is given general jurisdiction and power for such purposes.

(3) The commissioner shall employ a deputy commissioner and such other personnel as may be necessary to carry into effect the powers and duties conferred upon the Bureau of Labor and Industries and the commissioner under ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 and may prescribe the duties and responsibilities of such employees. The Commissioner of the Bureau of Labor and Industries may delegate any of the powers under ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 to the deputy commissioner employed under this subsection.

(4) The commissioner or the designee of the commissioner may issue subpoenas to require the production of evidence necessary for the performance of any of the duties under ORS 659.010 to 659.115 and 659.400 to 659.460.

(5) No person delegated any powers or duties under this section and ORS 659.103 shall act as prosecutor and examiner in processing any violation under ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545.

SECTION 10. ORS 659.103 is amended to read:

659.103. (1) In accordance with any applicable provision of ORS 183.310 to 183.550, the commissioner may adopt reasonable rules:

(a) Establishing what acts and communications constitute a notice, sign or advertisement that public accommodation or real property will be refused, withheld from, or denied to any person or that discrimination will be made against the person because of race, religion, sex, **sexual orientation**, marital status, color or national origin.

(b) Establishing what inquiries in connection with employment and prospective employment express a limitation, specification or discrimination as to race, religion, color, sex, **sexual orientation**, national origin or age.

(c) Establishing what inquiries in connection with employment and prospective employment soliciting information as to race, religion, color, sex, **sexual orientation**, national origin or age are based on bona fide job qualifications.

(d) Establishing rules for internal operation and rules of practice and procedure before the commissioner under ORS 659.010 to 659.110 and 659.505 to 659.545.

(e) Establishing rules covering any other matter required to carry out the purpose of ORS

659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545.

(2) In adopting rules under this section the commissioner shall consider the following factors, among others:

(a) The relevance of information requested to job performance in connection with which it is requested.

(b) Available reasonable alternative ways of obtaining requested information without soliciting responses as to race, religion, color, sex, **sexual orientation**, marital status, national origin or age.

(c) Whether a statement or inquiry soliciting information as to race, religion, color, sex, **sexual orientation**, marital status, national origin or age communicates an idea independent of an intention to limit, specify or discriminate as to race, religion, color, sex, **sexual orientation**, marital status, national origin or age.

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind of transaction which it contemplates.

(e) The ease with which the independent idea relating to a legitimate objective of the kind of transaction contemplated could be communicated without connoting an intention to discriminate as to race, religion, color, sex, **sexual orientation**, marital status, national origin or age.

SECTION 11. ORS 659.115 is amended to read:

659.115. (1) The Commissioner of the Bureau of Labor and Industries shall create such advisory agencies and intergroup-relations councils, local, regional or statewide, as in the judgment of the commissioner will aid in effectuating the purposes of ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545. The commissioner may empower them:

(a) To study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, religion, color, sex, **sexual orientation as defined in ORS 659.010** or national origin.

(b) To foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the state.

(c) To make recommendations to the commissioner for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education.

(2) Such advisory agencies and councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary expenses in accordance with laws and regulations governing state officers.

(3) The commissioner may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance.

SECTION 12. ORS 20.107 is amended to read:

20.107. (1) In any civil judicial proceeding, including judicial review of an administrative proceeding, a complaining party who prevails in a final binding judgment on a claim of illegal discrimination in violation of state constitutional provision, statute or administrative rule shall be entitled to recover costs and disbursements, including attorney and expert witness fees reasonably and necessarily incurred in connection with the discrimination claim, at the trial court or agency level and on appeal.

(2) In making an award under this section, the court shall calculate attorney and expert witness fees on the basis of a reasonable hourly rate at the time the award is made, multiplied by the amount of time actually and reasonably spent in connection with the discrimination claim.

(3) In making an award under this section, if a proceeding involved more than two parties, the court shall determine which party or parties were responsible for the illegal discrimination and shall

1 order that the award be paid by the responsible party or parties in proportion to their responsibility.
 2 Nothing in this subsection precludes a court from making an award under this section against par-
 3 ties who were acting pursuant to a statute that is held by the court to be unconstitutional in whole
 4 or in part.

5 (4) When an award under this section is made against a state agency or an officer or employee
 6 of a state agency, the award shall be paid by the agency directly from funds available to it.

7 (5) Nothing in this section limits the authority of a court to award costs and disbursements,
 8 including attorney and expert witness fees, under any other provision of law.

9 (6) Any state agency, officer or employee is subject to subsection (3) of this section. However,
 10 a local government, local official or a private party may depend on a good faith reliance defense on
 11 a state statute found unconstitutional and is not liable for paying a prevailing party's attorney fees
 12 and costs.

13 (7) As used in this section, "unlawful discrimination" means discrimination based upon personal
 14 characteristics including, but not limited to, gender, **sexual orientation as defined in ORS 659.010**,
 15 national origin, age, marital status, race, religion or alienage.

16 **SECTION 13.** ORS 30.670 is amended to read:

17 30.670. All persons within the jurisdiction of this state shall be entitled to the full and equal
 18 accommodations, advantages, facilities and privileges of any place of public accommodation, without
 19 any distinction, discrimination or restriction on account of race, religion, sex, **sexual orientation**
 20 **as defined in ORS 659.010**, marital status, color or national origin.

21 **SECTION 14.** ORS 30.680 is amended to read:

22 30.680. All persons against whom any distinction, discrimination or restriction on account of
 23 race, religion, sex, **sexual orientation as defined in ORS 659.010**, marital status, color or national
 24 origin has been made by any place of public accommodation, as defined in ORS 30.675, by any person
 25 acting on behalf of such place or by any person aiding or abetting such place or person in violation
 26 of ORS 30.685 shall have a cause of action to recover compensatory and punitive damages from the
 27 operator or manager of such place or the employee or person acting on behalf of such place or the
 28 aider or abettor of such place or person. In the action the operator or manager of such place, the
 29 employee or person acting on behalf of such place or the aider or abettor of such place or person
 30 shall be jointly and severally liable. Any person recovering damages under this section shall be en-
 31 titled to reasonable attorney fees at trial and on appeal as determined by the court in addition to
 32 costs and necessary disbursements.

33 **SECTION 15.** ORS 30.685 is amended to read:

34 30.685. It is unlawful for any person to aid or abet any place of public accommodation, as de-
 35 fined in ORS 30.675 or any person acting on behalf of such place to make any distinction, discrimi-
 36 nation or restriction on account of race, religion, color, sex, **sexual orientation as defined in ORS**
 37 **659.010**, marital status or national origin.

38 **SECTION 16.** ORS 93.270 is amended to read:

39 93.270. (1) No person conveying or contracting to convey fee title to real property shall include
 40 in an instrument for such purpose a provision:

41 (a) Restricting the use of the real property by any person or group of persons by reason of color,
 42 race, religion, national origin, **sexual orientation as defined in ORS 659.010** or physical or mental
 43 handicap.

44 (b) Restricting the use of the real property by any home or facility that is licensed by or under
 45 the authority of the department under ORS 443.400 to 443.455 to provide residential care alone or

1 in conjunction with treatment or training or a combination thereof.

2 (2) Any such provision in an instrument executed in violation of subsection (1) of this section
 3 is void and unenforceable.

4 **SECTION 17.** ORS 179.750 is amended to read:

5 179.750. (1) No discrimination shall be made in the admission, accommodation, care, education
 6 or treatment of any person in a state institution because the person does or does not contribute to
 7 the cost of the care.

8 (2) No discrimination shall be made in the provision of or access to educational facilities and
 9 services and recreational facilities and services to any person in the state institutions enumerated
 10 in ORS 179.321 (2) or 420.005 (3) on the basis of race, religion, sex, **sexual orientation as defined**
 11 **in ORS 659.010**, marital status or national origin of the person. This subsection shall not require
 12 combined domiciliary facilities at the state institutions to which it applies.

13 **SECTION 18.** ORS 192.630 is amended to read:

14 192.630. (1) All meetings of the governing body of a public body shall be open to the public and
 15 all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610
 16 to 192.690.

17 (2) No quorum of a governing body shall meet in private for the purpose of deciding on or de-
 18 liberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

19 (3) A governing body shall not hold a meeting at any place where discrimination on the basis
 20 of race, creed, color, sex, age, **sexual orientation as defined in ORS 659.010**, national origin or
 21 disability is practiced. However, the fact that organizations with restricted membership hold
 22 meetings at the place shall not restrict its use by a public body if use of the place by a restricted
 23 membership organization is not the primary purpose of the place or its predominate use.

24 (4) Meetings of the governing body of a public body shall be held within the geographic bound-
 25 aries over which the public body has jurisdiction, or at the administrative headquarters of the public
 26 body or at the other nearest practical location. Training sessions may be held outside the jurisdic-
 27 tion so long as no deliberations toward a decision are involved. A joint meeting of two or more
 28 governing bodies shall be held within the geographic boundaries over which one of the participating
 29 public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations
 30 other than those described in this subsection in the event of an actual emergency necessitating im-
 31 mediate action. This subsection does not apply to the Oregon State Bar until December 31, 1980.

32 (5)(a) It shall be considered discrimination on the basis of disability for a governing body of a
 33 public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired
 34 person, to fail to make a good faith effort to have an interpreter for hearing impaired persons pro-
 35 vided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability
 36 shall be as provided in ORS 192.680.

37 (b) The person requesting the interpreter shall give the governing body at least 48 hours' notice
 38 of the request for an interpreter, shall provide the name of the requester, sign language preference
 39 and any other relevant information the governing body may request.

40 (c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have
 41 an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

42 (d) If certification of interpreters occurs under state or federal law, the Oregon Disabilities
 43 Commission or other state or local agency shall try to refer only certified interpreters to governing
 44 bodies for purposes of this subsection.

45 (e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the

Oregon Disabilities Commission or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services.

SECTION 19. ORS 307.580 is amended to read:

307.580. (1) If not otherwise exempt by law and upon compliance with ORS 307.162, all real and personal property or proportion thereof owned or being purchased by an industry apprenticeship or training trust is exempt from property taxation if:

(a) The trust is organized pursuant to a trust instrument solely for the purpose of aiding or assisting in the implementation or operation of one or more apprenticeship or training programs that conform to and are conducted under ORS chapter 660;

(b) The property or proportion thereof that is the subject of the exemption is actually and exclusively occupied and used in the implementation or operation of an apprenticeship or training program or programs that are established under, conform to and are conducted under ORS chapter 660; and

(c) The trust is considered an organization exempt from federal income taxes under the federal Internal Revenue Code or other laws of the United States relating to federal income taxes.

(2) If property described under subsection (1) of this section would be exempt from taxation except that it is held under lease or lease-purchase agreement by the trust rather than owned or being purchased by it, the property shall be exempt from taxation upon compliance with and subject to ORS 307.112.

(3) No exemption shall be allowed under subsection (1) or (2) of this section if the property is used in the implementation or operation of an apprenticeship or training program that discriminates with respect to its participants on the basis of age, race, religion, sex, **sexual orientation as defined in ORS 659.010** or national origin.

SECTION 20. ORS 345.240 is amended to read:

345.240. (1) No vocational, professional or trade school licensed under the provisions of any law of the State of Oregon shall refuse admission to or discriminate in admission against or discriminate in giving instruction to any person otherwise qualified, on the ground of such person's race, color, sex, **sexual orientation as defined in ORS 659.010**, marital status, religion, national origin, age or handicap.

(2) A certified copy of a finding by the Commissioner of the Bureau of Labor and Industries under ORS 659.060 that the school has violated subsection (1) of this section shall be adequate proof of the violation.

SECTION 21. ORS 348.250 is amended to read:

348.250. (1) Grants established under ORS 348.230 and 348.260 shall be awarded by the State Scholarship Commission in the manner provided in this section.

(2) Persons interested in obtaining a grant established under ORS 348.230 and 348.260 may apply to the commission for a grant.

(3) The commission shall screen or cause to be screened the applications and shall determine for each available grant the person best qualified to receive that grant. A qualified applicant is eligible to receive a grant established under ORS 348.230 and 348.260 if:

(a) The applicant's financial resources are such that in the opinion of the commission financial aid is warranted; and

(b) The applicant plans to be a student at the institution of higher education where the grant is to be used.

(4) The commission shall not discriminate for or against any applicant for a grant because of the

applicant's race, sex, **sexual orientation as defined in ORS 659.010**, national origin, marital status, age, handicap or religion.

(5) Nothing in ORS 348.210 to 348.260 and 348.505 to 348.590 shall be construed to require any institution to admit a grant recipient or to attempt to control or influence the policies of the institution.

(6) Whenever funds are not available to award grants to all qualified persons, the commission shall give priority to applicants who are or plan to be full-time students at the institution where the grant is to be used.

SECTION 22. ORS 430.550 is amended to read:

430.550. No person, otherwise eligible, shall be denied evaluation or treatment under ORS 430.450 to 430.555 on account of age, sex, **sexual orientation as defined in ORS 659.010**, race, nationality, religious preference or ability to pay.

SECTION 23. ORS 654.062 is amended to read:

654.062. (1) Every employee should notify the employer of any violation of law, regulation or standard pertaining to safety and health in the place of employment when the violation comes to the knowledge of the employee.

(2) However, any employee or representative of the employee may complain to the director or any authorized representatives of the director of any violation of law, regulation or standard pertaining to safety and health in the place of employment, whether or not the employee also notifies the employer.

(3) Upon receiving any employee complaint, the director shall make such inquiries, inspections and investigations as the director considers reasonable and appropriate. Where an employee has complained in writing of an alleged violation and no resulting citation is issued to the employer, the director shall furnish to the employee or representative of the employee, upon written request, a statement of reasons for the decision.

(4) The director shall establish procedures for keeping confidential the identity of any employee who requests such protection in writing. Where such a request has been made, neither a written complaint from an employee, or representative of the employee, nor a memorandum containing the identity of a complainant shall be construed as a public writing or record under ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990.

(5)(a) It is an unlawful employment practice for any person to bar or discharge from employment or otherwise discriminate against any employee or prospective employee because such employee has opposed any practice forbidden by ORS 654.001 to 654.295 and 654.750 to 654.780, made any complaint or instituted or caused to be instituted any proceeding under or related to ORS 654.001 to 654.295 and 654.750 to 654.780, or has testified or is about to testify in any such proceeding, or because of the exercise of such employee on behalf of the employee or others of any right afforded by ORS 654.001 to 654.295 and 654.750 to 654.780.

(b) Any employee or prospective employee who believes that the employee has been barred or discharged from employment or otherwise discriminated against in compensation, or in terms, conditions or privileges of employment, by any person in violation of this subsection may, within 30 days after the employee has reasonable cause to believe that such a violation has occurred, file a complaint with the Commissioner of the Bureau of Labor and Industries alleging such discrimination under the provisions of ORS 659.040. Upon receipt of such complaint the commissioner shall process the complaint and case under the procedures, policies and remedies established by ORS 659.010 to 659.110 and 659.505 to 659.545 and the policies established by ORS 654.001 to 654.295 and 654.750

to 654.780 in the same way and to the same extent that the complaint would be processed by the commissioner if the complaint involved allegations of unlawful employment practices based upon race, religion, color, national origin, sex, **sexual orientation** or age under ORS 659.030 (1)(f). The affected employee shall also have the right to bring a suit in any circuit court of the State of Oregon against any person alleged to have violated this subsection. The commissioner or the circuit court may order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay.

(c) Within 90 days after the receipt of a complaint filed under this subsection the commissioner shall notify the complainant of the commissioner's determination under paragraph (b) of this subsection.

SECTION 24. ORS 326.051 is amended to read:

326.051. Subject to ORS 417.300 and 417.305:

(1) In addition to such other duties as are prescribed by law and pursuant to the requirement of ORS 183.310 to 183.550, the State Board of Education shall:

(a) Establish state standards for public kindergartens and public elementary and secondary schools, considering first the goals of modern education and the requirements of a sound comprehensive curriculum with particular emphasis on establishment of the highest practical scholarship standards and, in secondary schools, establishment of programs and academic standards necessary to enable students to attend community colleges, institutions of higher education and vocational and technical programs and to enter employment both within and without the State of Oregon, and considering also the health, safety, and scholastic needs of the students, the population, climate, economy and geography of the school districts and any other factors necessary to the maintenance of a modern and efficient school system.

(b) Adopt rules for the general governance of public kindergartens and public elementary and secondary schools and public community colleges.

(c) Prescribe required or minimum courses of study.

(d) Adopt rules regarding school and interscholastic activities in accordance with standards established pursuant to ORS 326.058 (1).

(e) Adopt rules that provide that no public elementary or secondary school shall discriminate as to sex, **sexual orientation as defined in ORS 659.010**, race, marital status, religion or national origin in determining participation in interscholastic activities. Discrimination is as defined in ORS 659.150.

(2) The State Board of Education may:

(a) Consistent with the laws of this state, accept money or property not otherwise provided for under paragraph (b) of this subsection, which is donated for the use or benefit of the public kindergartens and public elementary and secondary schools and public community colleges and use such money or property for the purpose for which it was donated. Until it is used, the board shall deposit any money received under this paragraph in a special fund with the State Treasurer as provided in ORS 293.265 to 293.275.

(b) Apply for federal funds and accept and enter into any contracts or agreements in behalf of the state for the receipt of such funds from the Federal Government or its agencies for educational purposes, including but not limited to any funds available for the school lunch program, for career education purposes, for vocational educational purposes, for adult education, for manpower programs and any grants available to the state or its political subdivisions for general federal aid for public kindergartens and public elementary and secondary schools and public community colleges and their

auxiliary services, improvement of teacher preparation, teacher salaries, construction of school buildings, administration of the Department of Education and any other educational activities under the jurisdiction of the State Board of Education.

(c) Administer the state program provided for in Public Law 90-302 (82 Stat. 117).

SECTION 25. ORS 326.051, as amended by section 2, chapter 474, Oregon Laws 1987, and section 13, chapter 834, Oregon Laws 1989, is amended to read:

326.051. Subject to ORS 417.300 and 417.305:

(1) In addition to such other duties as are prescribed by law and pursuant to the requirement of ORS 183.310 to 183.550, the State Board of Education shall:

(a) Establish state standards for public kindergartens and public elementary and secondary schools, considering first the goals of modern education and the requirements of a sound comprehensive curriculum with particular emphasis on establishment of the highest practical scholarship standards and, in secondary schools, establishment of programs and academic standards necessary to enable students to attend community colleges, institutions of higher education and vocational and technical programs and to enter employment both within and without the State of Oregon, and considering also the health, safety, and scholastic needs of the students, the population, climate, economy and geography of the school districts and any other factors necessary to the maintenance of a modern and efficient school system.

(b) Adopt rules for the general governance of public kindergartens and public elementary and secondary schools and public community colleges.

(c) Prescribe required or minimum courses of study.

(d) Adopt rules regarding school and interscholastic activities in accordance with standards established pursuant to ORS 326.058 (1).

(e) Adopt rules that provide that no public elementary or secondary school shall discriminate as to sex, **sexual orientation as defined in ORS 659.010**, race, marital status, religion or national origin in determining participation in interscholastic activities. Discrimination is as defined in ORS 659.150.

(2) The State Board of Education may:

(a) Consistent with the laws of this state, accept money or property not otherwise provided for under paragraph (b) of this subsection, which is donated for the use or benefit of the public kindergartens and public elementary and secondary schools and public community colleges and use such money or property for the purpose for which it was donated. Until it is used, the board shall deposit any money received under this paragraph in a special fund with the State Treasurer as provided in ORS 293.265 to 293.275.

(b) Apply for federal funds and accept and enter into any contracts or agreements in behalf of the state for the receipt of such funds from the Federal Government or its agencies for educational purposes, including but not limited to any funds available for the school lunch program, for career education purposes, for vocational educational purposes, for adult education, for manpower programs and any grants available to the state or its political subdivisions for general federal aid for public kindergartens and public elementary and secondary schools and public community colleges and their auxiliary services, improvement of teacher preparation, teacher salaries, construction of school buildings, administration of the Department of Education and any other educational activities under the jurisdiction of the State Board of Education.

(c) Administer the state program provided for in Public Law 90-302 (82 Stat. 117).

(3) The State Board of Education shall provide a separate, identifiable place on its agenda six

1 times a year for community college issues. The state board may also consider matters affecting
2 community colleges at any regular or special meeting.

3 **SECTION 26.** Nothing in the amendments to ORS 326.051 by section 25 of this Act is in-
4 tended to affect the provisions of section 14, chapter 474, Oregon Laws 1987, as amended by
5 section 8, chapter 757, Oregon Laws 1991.

6 **SECTION 27.** ORS 659.150 is amended to read:

7 659.150. (1) As used in this section, "discrimination" means any act that unreasonably differen-
8 tiates treatment, intended or unintended, or any act that is fair in form but discriminatory in oper-
9 ation, either of which is based on age, disability, national origin, race, marital status, religion, [or]
10 sex or sexual orientation as defined in ORS 659.010.

11 (2) No person in Oregon shall be subjected to discrimination in any public elementary, secondary
12 or community college education program or service, school or interschool activity or in any higher
13 education program or service, school or interschool activity where the program, service, school or
14 activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

15 (3) The State Board of Education and the State Board of Higher Education shall establish rules
16 necessary to insure compliance with subsection (2) of this section in the manner required by ORS
17 183.310 to 183.550.

18

House Bill 2806

Introduced and printed pursuant to House Rule 13.01 (at the request of Oregon Public Employees Union)

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**.

Modifies definition of "family member" to include "domestic partner," for certain public employee benefits. Defines "domestic partner."

A BILL FOR AN ACT

Relating to collective bargaining agreements; amending ORS 243.230 and 243.232.

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

SECTION 1. ORS 243.230 is amended to read:

243.230. As used in ORS 243.230 to 243.300, unless the context requires otherwise:

(1) "Associate exclusive representative" means a labor organization, consisting of fewer than 10,000 members, which contracts with the board for coverage of its members under board-approved benefit plans.

(2) "Benefit plan" includes, but is not limited to, contracts for insurance or other benefit based on life; supplemental medical, supplemental dental, optical, accidental death or disability insurance; group medical, surgical, hospital or any other remedial care recognized by state law; and related services and supplies. "Benefit plan" includes comparable benefits for employees who rely on spiritual means of healing.

(3) "Board" means the Bargaining Unit Benefits Board.

(4) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Insurance and Finance, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation, or a board-approved guarantor of benefit plan coverage and compensation.

(5) "Domestic partner" means a person, regardless of gender, who is unrelated to an eligible employee by blood and who, at the time a claim is made:

(a) Cohabits and has cohabited with the eligible employee for at least 12 consecutive months; and

(b) Shares domestic responsibilities with the eligible employee and the partners are able to document mutual commitment to each other by, for instance, designating each other as beneficiaries of life insurance plans or wills, coowning significant property, entering into a legally sanctioned marriage contract, where lawful, and other such forms of mutual commitment as the board considers appropriate.

[(5)] (6) "Eligible employee" means an officer or employee of a state agency who is subject to the jurisdiction of a contract between the state and a qualified exclusive representative, or any retired state employee who, at the time of retirement for service or disability, was employed in a position within a bargaining unit represented by either a qualified exclusive representative or an associate exclusive representative, but not including individuals:

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) Who are engaged as independent contractors;
2 (b) Whose periods of employment in emergency work are on an intermittent or irregular basis,
3 or who are employed on less than a half-time basis;
4 (c) Who are appointed for fewer than 90 days;
5 (d) Who are provided sheltered employment or made-work by the state in an employment or in-
6 dustries program maintained for the benefit of such individuals; or
7 (e) Who are provided student health care services in conjunction with enrollment as students
8 at the state institutions of higher education.

9 [(6)] (7) "Family member" means an eligible employee's spouse **or domestic partner** and any
10 unmarried child or stepchild within age limits and other conditions imposed by the board with re-
11 gard to unmarried children or stepchildren.

12 [(7)] (8) "Payroll disbursing officer" means the officer or official authorized to disburse moneys
13 in payment of salaries and wages of employees of a state agency.

14 [(8)] (9) "Premium" means the monthly or other periodic charge for a benefit plan.

15 [(9)] (10) "Qualified exclusive representative" means a labor organization which, as a result of
16 certification by the Employment Relations Board or recognition by the employer, has the right to
17 be the collective bargaining agent of all employees in an appropriate bargaining unit, if the organ-
18 ization represents 10,000 or more eligible employees of state agencies.

19 [(10)] (11) "State agency" includes every state officer, board, commission, department or other
20 activity of state government.

21 **SECTION 2.** ORS 243.232 is amended to read:

22 243.232. A person employed by a state institution of higher education shall be considered an
23 eligible employee for participation in one of the benefit plans described in ORS 243.245 if the person
24 is in a bargaining unit that has a benefit plan as part of its collective bargaining agreement and if:

25 (1) Notwithstanding ORS 243.230 [(5)(e)] (6)(e), the person is a student enrolled in an institution
26 of higher education and is employed as a graduate teaching assistant, graduate research assistant
27 or a fellow at the institution and elects individually to be considered an eligible employee; or

28 (2) Notwithstanding ORS 243.230 [(5)(b)] (6)(b), the person is employed on a less than half-time
29 basis in an unclassified instructional or research support capacity and elects individually to be
30 considered an eligible employee.

31

A-Engrossed House Bill 2259

Ordered by the House February 5
Including House Amendments dated February 5

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Department of Justice for Oregon District Attorneys Association)

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.

Clarifies crime of intimidation in first degree.
[Declares emergency, effective on passage.]

A BILL FOR AN ACT

1 Relating to criminal law; amending ORS 166.165.

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

3 **SECTION 1.** ORS 166.165 is amended to read:

4 166.165. (1) Two or more persons acting together commit the crime of intimidation in the first
5 degree, if the persons:

6 (a)(A) Intentionally, knowingly, or recklessly cause physical injury to another because of [their]
7 **the actors'** perception of that person's race, color, religion, national origin or sexual orientation;
8 or
9

10 (B) With criminal negligence cause physical injury to another by means of a deadly weapon
11 because of [their] **the actors'** perception of that person's race, color, religion, national origin or
12 sexual orientation;

13 (b) Intentionally, because of **the actors' perception of that person's** race, color, religion, na-
14 tional origin or sexual orientation [of another], place that person in fear of imminent serious physical
15 injury; or

16 (c) Commit such acts as would constitute the crime of intimidation in the second degree, if
17 undertaken by one person acting alone.

18 (2) Intimidation in the first degree is a Class C felony.

19 (3) "Sexual orientation" has the meaning given that term in ORS 166.155.
20

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.

House Joint Memorial 4

Introduced and printed pursuant to House Rule 13.01

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**.

Memorializes Congress to abolish ban on military service based upon sexual orientation.

JOINT MEMORIAL

To the Senate and House of Representatives of the United States of America in Congress assembled:

We, your memorialists, the Sixty-seventh Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas citizens of the United States enjoy a greater amount of liberty and freedom than any nation the world has ever known; and

Whereas many citizens have chosen to serve the United States and its citizens by choosing to serve in the Armed Forces of the United States; and

Whereas many who have chosen to serve have sacrificed to defend the nation and its interests around the world; and

Whereas the willingness and ability to serve the United States is not based upon a person's race, color, creed, political belief or sexual orientation; and

Whereas the United States should not tolerate discrimination of its citizens by its government on the basis of race, color, creed, political belief or sexual orientation; and

Whereas membership in the Armed Forces of the United States should be open to all citizens who desire to serve their country; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) **The Congress of the United States is memorialized to repeal the ban on military service based upon sexual orientation.**

(2) **Copies of this memorial shall be sent to the Speaker of the House of Representatives and the President of the Senate and to each member of the Oregon Congressional Delegation.**

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.