

Civil Rights Work Group:
**STANDARDIZING LIST OF PROTECTED CLASSES
IN CIVIL RIGHTS LAWS**

SB 239

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I. Introductory Summary

For the 2005 Legislative Session, the Oregon Law Commission's Civil Rights Work Group proposes a clean-up bill which modifies the list of protected classes throughout ORS Chapter 659A, and also makes word and style changes that follow Legislative Counsel drafting protocols.

II. History of the Project

In 2001, the Oregon legislature enacted legislation recommended by the Oregon Law Commission's Civil Rights Work Group to reorganize ORS Chapter 659 and amend other statutes outside Chapter 659 relating to unlawful employment practices and other unlawful discrimination practices. The intent of the reorganization completed with HB 2352 (2001) was to make the statutes easier to understand and use, with only minor substantive amendments.

During the process of working on the reorganization bill, the Civil Rights Work Group identified a list of more substantive problems that the Group hoped to address later. The Work Group did present two clean-up bills in the 2003 session, HB 2275 and HB 2276. However, those two bills only fixed unintended consequences of the reorganization bill. HB 2275 (2003) restored "age" as a protected class in the public accommodation provisions and HB 2276 (2003) restored the remedies for certain injured worker rights.

The Law Commission authorized the Civil Rights Work Group to continue again for the 2005 session, charged with the task of addressing the more substantive problems identified earlier. This session the Civil Rights Work Group presents five bills with each addressing an identified gap, ambiguity, or conflict in the present civil rights laws.

Sen. Vicki Walker served as the Chair of the Civil Rights Work Group¹ in 2005. The Work Group needed to meet only once, having received bill drafts and materials in advance of the meeting. The Group met on January 26 and then finalized their recommendations to the Commission via email. The meeting took place at Willamette University in Salem and was open to the public. Several discussions among Work Group members took place before and after the meeting via electronic correspondence.

¹The Work Group included the following members:

Jeffrey Chicoine	Newcomb, Sabine, Schwartz, and Landsverk LLP
Barbara Diamond	Smith, Diamond & Olney
Corbett Gordon	Fisher & Phillips LLP
Bob Joondeph	Oregon Law Center
David Nebel	OSB
Marcia Ohlemiller	BOLI
Louis Savage	DCBS

Interested Participants:

Patricia Altenhofen	Cascade Employers
Leslie Bottomly	Ater Wynne LLP
Barbara Brainard	Stoel Rives LLP
Clay Creps	Bullivant, Houser, Bailey PC
Patricia Haim	Amburgey & Rubin PC
Sandra Hansberger	Lewis & Clark Clinic
Victor Kisch	Tonkon Torp LLP
Stacey Mark	Ater Wynne LLP
Andrea Meyer	ACLU
Karen O’Kasey	Hoffman, Hart & Wagner LLP
Kathy Peck	Williams, Zografos & Peck PC
Edward Reeves	Stoel Rives LLP
Dennis Steinman	Kell, Alterman & Runstein LLP
Diana Stuart	Goldberg, Mechanic, Stuart & Gibson LLP
Nathan Sykes	Schwabe, Williamson & Wyatt PC
Annette Talbott	BOLI
Jerry Watson	Oregon Law Commission

Doug McKean, Deputy Legislative Counsel, provided drafting and research assistance.

III. Statement of the Problem Area

Presently, one or more of the protected classes are left out of various provisions of Chapter 659A, or are listed in an inconsistent order. Various statutes in Chapter 659A do not follow present drafting protocols established by Legislative Counsel.

IV. Objective of the Proposal

This bill will standardize the list of protected classes in Oregon's civil rights statutes except where it appears the legislature purposely left a category out. An inconsistent list, and to a lesser extent, an inconsistent order, of protected classes creates an unintended implication that the omitted class is not protected by the statute. Standardizing the list clarifies potential ambiguities that exist in the face of inconsistency. In addition, form and style changes have been proposed throughout the bill as some of the sections within are old and are in need of polishing.

In sum, most of the amendments simply reorder the list of protected classes so that the order is consistent throughout Chapter 659A. In some of the amendments, however, the Work Group added one or more protected classes that are missing as the result of oversight. In others, a protected class was added because the Work Group felt its inclusion is consistent with the purposes and provisions of Chapter 659A.

V. The Proposal

See SB 239 (2005).

A. General Principles

As mentioned, the general principle behind this bill is to provide consistency to Oregon's civil rights statutes.

B. Section-by-Section Highlights

Section 1 amends ORS 654.062, and deletes the list of protected classes in (5)(b) because it is unnecessary to the meaning of the section.

Section 2 amends ORS 659A.003, (which explains the public policy underlying Chapter 659A) by adding disability to the list of protected classes and reordering the listed protected classes. The order of the protected classes used for the lists begins with the order used in Title VII of the Civil Rights Act of 1964. The five classes protected by the federal Act—race, color, religion, sex and national origin are first in the list. Beyond those five, the other protected classes are put in this order: marital status, age and disability. Since the disability statutes are separate from the other statutes that concern employment, public accommodation, and housing discrimination, the lists of protected classes often end with age. This works well for drafting because often the reference to age is followed by “if the individual is 18 years of age or older.”

Sections 3 through 10 amend various provisions within Chapter 659A, and primarily involve form and style changes that lend to the Chapter's consistency and follow drafting protocols from Legislative Counsel. These sections also reorder the list of protected classes for consistency. In addition, in a few of the places throughout the bill, the phrase "bona fide occupational requirement," and "bona fide job qualification" were changed to "bona fide occupational qualification." The phrase "bona fide occupational qualification," is well known in its abbreviated form as BFOQ in state and federal civil rights law. The Bureau of Labor and Industries uses BFOQ in its rules.

Section 11 expands the rulemaking authority delegated to the Commissioner for the Bureau of Labor and Industries (BOLI) by granting him/her the authority to make rules regarding the protected class of those with a disability. Adding disability is consistent with the purposes and other provisions of the chapter; the omission appears to also have been an oversight. The section also adds the protected class of marital status into the subsections of ORS 659A.805 where it was not included in the lists. Those omissions appear to have been oversights. Finally, the protected classes of familial status and source of income are included in ORS 659A.805 as appropriate. ORS 659A.420 *et seq.* presently defines unlawful discrimination in real property transactions and includes these additional classes of familial status and source of income. See ORS 659A.421(1). Adding these classes provides consistency in the ORS.

Section 12 adds marital status, age and disability to the lists of discrimination problems that BOLI may empower advisory agencies and councils to study. The omission of these protected classes appears to have been an oversight.

Section 13 simply reorders the list of protected classes for consistency and makes style and word edits that comply with Legislative Counsel drafting protocols.

VI. Conclusion

The proposed bill amends ORS 654.062, 659A.003, 659A.006, 659A.012, 659A.030, 659A.403, 659A.406, 659A.409, 659A.421, 659A.424, 659A.805, 659A.815 and 659A.885. The bill will make Chapter 659A consistent by recognizing a standardized list of protected classes in Oregon's civil rights statutes.

VII. Amendment Note

Amendments were made in the House to resolve conflicts with another Law Commission bill, SB 237. Both bills amend ORS 654.062 and thus technical conflict amendments were proposed by Legislative Counsel.