

REVISION OF THE CIVIL RIGHTS STATUTES

REPORT

From
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I. Introductory Summary

The Oregon Law Commission is pleased to present LC 371. LC 371 would reorganize Oregon's civil rights statutes to put them into more logical order, address unclear or inconsistent language relating to enforcement procedures, and make the statutes easier for the reader to understand and use. Most of the civil rights statutes are currently found in Oregon Revised Statutes (ORS) chapter 659 and relate to discrimination in housing, public accommodations, and employment on the basis of impermissible criteria such as race, religion, sex, marital status, color, national origin, age and disability. The reorganization would also include statutes outside chapter 659 over which the Bureau of Labor and Industries (BOLI) exercises jurisdiction.

LC 371 would create a new chapter in the ORS, chapter 659A, that would include all unlawful practices under BOLI jurisdiction. LC 371 would clarify the administrative process through which BOLI administers the civil rights laws. Current law does not detail this procedure in an orderly manner. By contrast, sections 1 through 15 of LC 371 would reorganize this statutory language to follow more closely the chronological order of the actual process. As a result, LC 371 would provide for the public, advocates, and administrators a much more useful and comprehensible authority.

The Commission has endeavored to fix the organizational problems of the current civil rights laws without changing the substance. Recognizing the sensitive nature of this area of the law, the Commission refrained from amending or clarifying provisions concerning remedies and statute of limitation periods for civil and administrative actions. Though some might feel that such amendments would further the goal of improving the civil rights statutes, the Commission left such changes to future legislatures so that the more basic reorganization matters can be achieved without substantial controversy.

II. History of the Project

Prior to the 1999 legislative session, BOLI planned to introduce a bill in the Oregon legislature to "patch up" the organizational problems in chapter 659. BOLI referred the concept to the Office of Legislative Counsel for drafting. Legislative Counsel advised a more comprehensive approach, and BOLI withdrew its proposal. After the 1999 legislative session, Legislative Counsel referred the concept of reorganizing chapter 659 to the Oregon Law Commission. On March 12, 1999, the Program Committee of the Commission voted to initiate a review of the idea.

The Commission formed a Civil Rights Workgroup, chaired by Jeff Carter, a Commission member and former Oregon State Bar President. Other members include David Heynderickx, Office of Legislative Counsel; Marcia Ohlemiller, BOLI's Legal Policy Advisor; Robert Joondeph, Oregon Advocacy Center; and Sandra Hansberger, Northwestern School of Law Legal Clinic. The workgroup has held seven meetings, beginning on November 8, 1999, to discuss and review initial drafts of the proposal. At each meeting workgroup members provided feedback regarding the draft to David Heynderickx, LC 371's draftsman, and the workgroup members discussed additional edits to incorporate into future drafts.

All meetings of the workgroup were open to the public; however, to ensure that notice of the chapter 659 reorganization went to Oregon State Bar members whose clients were most likely to be affected, the workgroup held its September 7, 2000, meeting at the Oregon State Bar headquarters after notice to the relevant Bar sections. Those in attendance included representatives from the Oregon Law Center, the Oregon State Bar's Labor and Employment Law Section, Civil Rights Section, and Disability Law Section, and members of private law firms. The workgroup has also received and discussed written public comments submitted to the Commission.

III. Statement of the Problem

Reorganization of Oregon's civil rights statutes is long overdue. Many of those whose work frequently involves use of the civil rights statutes are aware of the need for reorganization. Those users include the public, advocates for those alleging violations, advocates for those cited for violations, those adjudicating cases brought under chapter 659 in courts and administrative proceedings, and BOLI administrators. Indeed, the difficulties of comprehending parts of chapter 659 have even been commented upon by at least one court.¹ The Commission identified the most major organizational deficiencies at two levels: 1) in the large-scale organizational framework and 2) in the provisions setting forth the administrative enforcement mechanism.

Before detailing the exact nature of those problems, a few comments on the importance of organizing statutes are in order. The general arrangement of the provisions of a statute, their relationship to each other, and the logical order in which they are grouped and presented, are all matters that greatly affect clarity and usefulness of legislation. This is especially true if a legislature groups several sets of statutes together to form a statutory scheme, as Oregon has done with the civil rights laws. A well-organized set of statutes serves as a visual aid for those familiarizing themselves with the statutes, adds clarity to the

¹ See *Draper v. Astoria School District*, 995 F.Supp. 1122 (D Or 1998)

legislative intent motivating their enactment, and reduces uncertainty (and, consequently, litigation costs) for those who work with them. These goals are especially important in this circumstance given the importance of the civil rights protections. That importance is reflected in the policy statement in chapter 659: "It is declared to be the public policy of Oregon that practices of discrimination against any of its inhabitants * * * 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 foundations of a free democratic state."²

Oregon's current civil rights statutes do not meet this organizational standard in several respects. Although when enacted chapter 659 may have clearly set forth an orderly and sensible arrangement of statutory provisions, any such initial organization has been eroded over the years as new civil rights protections were added to chapter 659 and elsewhere in the ORS. These later protections were not always properly integrated into the existing statutes. Today, substantive provisions are scattered throughout the ORS and have been incorporated into the civil rights framework by reference to chapter 659. These cross references sometimes refer only to chapter 659, without delineating which enforcement mechanisms or remedies apply.

Similarly, the provisions setting forth the administrative enforcement authorities and procedures upon which BOLI relies are not presented in an orderly manner. Although the statute appears to proceed chronologically (beginning with the filing of a complaint, continuing with administrative processing of the complaint, and ending with the termination of the complaint), each provision incorporates other matters unrelated to the subject process. As a result, a reader may review each provision several times before discerning its meaning.

IV. Objectives of LC 371

Framework: In reorganizing the civil rights statutes, the Commission adopted the framework generally encouraged by the Oregon legislature³ and leading authorities on legislative drafting.⁴ Definitions for commonly used terms within the statutes open the chapter, followed by a statement of purpose and a statement of the scope of the statutes. The substantive provisions, including the general rules of conduct, exceptions to those rules, consequences for violations, and enforcement provisions usually follow these introductory provisions. The statute may conclude with a severability clause, the effective date, or similar provisions.

² ORS 659.020

³ See OREGON LEGISLATIVE COUNSEL COMMITTEE, BILL DRAFTING MANUAL 63-68 (1968)

⁴ REED DICKERSON, LEGISLATIVE DRAFTING 57 (1954)

How the Framework is Applied: LC 371 would create a new chapter in the ORS, chapter 659A, that would include all those statutes under BOLI jurisdiction. Section 1 of the new chapter would set forth the series of definitions that currently introduces chapter 659. Next would come the statement of purpose.

After that introduction the new chapter 659A would contain the substantive provisions regarding unlawful employment practices based on sex, race, etc.; unlawful discrimination against injured workers; unlawful employment practices relating to employee housing; family leave; whistleblowing; unlawful discrimination against disabled persons and miscellaneous unlawful employment discrimination. The substantive provisions conclude with the prohibitions against unlawful discrimination in places of public accommodation and in real property transactions.

Sections 2 through 15 of LC 371 would organize somewhat chronologically the provisions for filing and processing administrative complaints through BOLI. Sections 2 and 3 of the draft set forth requirements for filing a complaint with BOLI, effectively rewriting the language of current ORS 659.040. Jurisdictional limits on BOLI's authority to process complaints are clearly set forth in Section 4 of the draft, derived from current ORS 659.095 and 659.121(4),5(a). Sections 5 and 6 establish BOLI's authority to investigate, settle, or dismiss a complaint, pursuant to current ORS 659.050(1),(6) and 659.095(1),(2). Under Section 7, BOLI is charged with initiating a formal hearing should settlement efforts fail or the interest of justice require. Section 8 provides that the hearing is a contested case proceeding.

Sections 9, 10, and 11 provide civil penalties for certain complaints filed by the Commissioner of BOLI, give BOLI the authority to supervise settlement agreements, and prohibit retaliatory action against complainants. Section 15 deals with civil actions for unlawful discrimination.

V. The Proposal

Please see the attached LC draft.

VI. Conclusion

The Oregon Law Commission respectfully requests that the 71st Oregon legislature enact into law LC 371. The draft legislation represents the consensus of the Commission that this change will streamline Oregon's civil rights statutes and facilitate the administration of those statutes while avoiding to the greatest extent possible any change in their substance. The result is a more easily understood body of law for the use of the public, advocates, and administrators.