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CIVIL RIGHTS Unlawful Discrimination in Public Accommodations: “Age” as a Protected Class REPORT

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University College of Law,
which also provides executive,
administrative and research
support for the Commission.*

Civil Rights Work Group:
Unlawful Discrimination in Public Accommodations:
“Age” as a Protected Class
and
Reinstatement of Compensatory and Punitive Damages for
certain Unlawful Employment Practice Claims
Report

1. Introductory Summary

For the 2003 Legislative Session, the Oregon Law Commission’s Civil Rights Work Group proposes a clean-up bill with two objectives: 1) to clearly include “age” as a protected class in the public accommodations provisions, complete with the remedies other protected classes hold when an individual is aggrieved with an “unlawful practice” by a place of public accommodation; and 2) to reinstate the availability of compensatory and punitive damages in a civil rights action for violation of certain injured worker rights.

2. 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 civil rights and unlawful practices¹. The intent of the Law Commission’s legislation was to make the statutes easier to understand and use, with only minor substantive amendments. The Work Group’s focus was to fix the organizational problems of the civil rights statutes.

Following the legislature’s passage of the 2001 bill reorganizing Chapter 659, the Law Commission authorized the Civil Rights Work Group to continue and endorsed new law reform projects for the group to address, including projects to fix problems arising from the reorganization bill. Jeff Carter, Oregon Law Commissioner, continued to chair the Work Group. The Work Group² met twice to discuss law reform projects proposed by

¹ HB 2352 (2001).

²Members:

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Bob Joohdeph
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Work Group members. The Group met on August 8, 2001, shortly after the 2001 Legislative Session ended, and then met again on July 17, 2002, to finalize their recommendations for the 2003 Legislative Session. Both meetings took place at the Oregon State Bar offices and were open to the public. Several discussions among work group members, via electronic correspondence, took place following before and after each meeting. The Work Group has deferred addressing ambiguities in various statute of limitations and remedy provisions for the 2003 Legislative Session and instead presents a bill that focuses on two necessary clean-up provisions

3. Statement of the Problem Areas

A. Age

While "age" was listed as a protected class in two public accommodation provisions prior to the 2001 reorganization bill, the reorganization deleted one such reference to "age," leaving only a single limited reference to "age", *i.e.* ORS 659A.409. ORS 659A.409 only prohibits posting of signs, notices, or advertisements that state that discrimination will be made in a place of public accommodation. That provision specifically prohibits the publishing of a notice that limits access to a place of public accommodation based upon age, as well as race, religion, sex, marital status, color, and national origin.

Before the 2001 reorganization, "age" was not listed as a protected class under former ORS 30.670, the general provision providing a right of all persons to equal facilities in places of public accommodation. That omission appears to be an oversight and does not appear intentional; members of the Work Group (including both plaintiff and defense lawyers) believe the legislature intended to include "age" as a protected class. Indeed "age" was listed as a protected class for public accommodation under former ORS 659.045, the provision regarding complaints of discrimination in housing, in place of public accommodation, and in a career school.

With the reorganization, however, former ORS 659.045 was deleted and replaced with ORS 659A.820. Thus, the primary "age" reference was lost. The new ORS 659A.820 created a single complaint procedure for all "unlawful practices" and removed the specific references to protected classes. In short, the Work Group proposes expressly

Interested Participants:

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including “age” as a protected class under the public accommodation provisions. The proposal is limited in that, consistent with other provisions of the ORS, it does not prohibit the enforcement of law governing the consumption of alcoholic beverages by minors and the frequenting by minors of places of public accommodation where alcoholic beverages are served, or the offering of special rates or services to persons 55 years of age or older.

B. Compensatory and Punitive Damages for Certain Unlawful Employment Practice Claims (*i.e.* Injured Worker claims)

Violations of ORS 659A.043 (regarding reinstatement of injured workers to their old jobs) and ORS 659A.046 (regarding reinstatement of injured workers to available and suitable work) are “unlawful practices.” ORS 659A.885, a part of the 2001 revisions, provides that any person claiming to be aggrieved by listed “unlawful practices” may file a civil action and the court may award various listed remedies. While ORS 659A.885(3) lists many statutes, it does not list violations of ORS 659A.043 or 659A.046. Thus, currently, compensatory damages or \$200, whichever is greater, and punitive damages are not available. Prior to the reorganization, the applicable provision was ORS 659.121 (1999); that provision specifically provided for compensatory and punitive damages for such injured worker claims. The remedies were inadvertently left out with the reorganization and the Work Group proposes reinstating them with this bill.

4. Objective of the Proposal

The reorganization of Chapter 659 unintentionally omitted “age” as a protected class from one public accommodation provision. That omission created the unintended implication that “age” is not a protected class in public accommodations cases generally. The reorganization also unintentionally omitted compensatory and punitive damages for certain injured worker claims. The intent of the reorganization was not to reduce an individual’s cause of action or to limit available remedies. The proposal reinstates the status quo.

5. Proposal

See attached bill.

6. Conclusion

The proposed bill amends ORS 659A.403, 659A.406, 659A.409, 659A.805 and 659A.885. The bill would prohibit unlawful discrimination based on “age” by places of public accommodation. The proposal also permits compensatory and punitive damages in civil action for violation of certain injured worker rights. The bill is a clean-up bill to the 2001 Civil Rights reorganization bill.