

Senate Bill 235

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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 **as introduced**.

Requires places of public accommodation to remove barriers and provide auxiliary aids and services when necessary to provide disabled persons access to goods, services and facilities offered by places of public accommodation. Provides exceptions.

A BILL FOR AN ACT

1
2 Relating to discrimination against disabled persons by places of public accommodation; creating new
3 provisions; and amending ORS 659A.103 and 659A.142.

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

5 **SECTION 1.** ORS 659A.142 is amended to read:

6 659A.142. (1) It is an unlawful employment practice for an employment agency to fail or refuse
7 to refer for employment, or otherwise discriminate against, *[any]* **an** individual because *[that]* **the**
8 individual is a disabled person, or to classify or refer for employment *[any]* **an** individual because
9 *[that]* **the** individual is a disabled person.

10 (2) It is an unlawful employment practice for a labor organization, because an individual is a
11 disabled person, to exclude or to expel from its membership *[such]* **the** individual or to discriminate
12 in any way against *[such]* **the** individual.

13 (3)(a) It is an unlawful practice for *[any]* **a** place of public accommodation¹, *resort or amusement*
14 *as defined in ORS 659A.400,* or *[any]* **a** person acting on behalf of *[such]* **the** place, to make any
15 distinction, discrimination or restriction because a customer or patron is a disabled person.

16 **(b) A place of public accommodation shall remove physical barriers to entering and using**
17 **existing facilities if the removal is readily achievable.**

18 **(c) A place of public accommodation shall provide auxiliary aids and services to a disabled**
19 **person when necessary to ensure equal access to offered goods, services, facilities, privileges,**
20 **advantages and accommodations unless providing the auxiliary aids and services would result**
21 **in significant difficulty or expense or in a fundamental alteration in the nature of the goods,**
22 **services, facilities, privileges, advantages or accommodations.**

23 **(d)(A) A place of public accommodation shall remove physical and administrative barriers**
24 **to accessing offered goods and services if the removal is readily achievable.**

25 **(B) If barrier removal is not readily achievable, the place of public accommodation shall**
26 **take alternative steps to make offered goods and services accessible, such as:**

27 **(i) Providing goods and services at the door, sidewalk or curb;**

28 **(ii) Providing home delivery;**

29 **(iii) Retrieving merchandise from inaccessible shelves or racks;**

30 **(iv) Relocating activities to accessible locations; 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.

1 (v) **Relaxing administrative policies.**

2 (C) **A place of public accommodation may not impose charges on a disabled person to**
 3 **recover the costs of barrier removal.**

4 (e) **Notwithstanding the other provisions of this subsection, a place of public accommo-**
 5 **dation may refuse to permit a disabled person to participate in or benefit from the offered**
 6 **goods, services, facilities, privileges, advantages or accommodations if the disabled person**
 7 **poses a direct threat to the health or safety of others. As used in this paragraph, “direct**
 8 **threat” means significant risk of substantial harm that cannot be eliminated or reduced be-**
 9 **low the level of significant risk of substantial harm by a modification of policies, practices**
 10 **or procedures or by the provision of auxiliary aids and services.**

11 (f) **A violation of this subsection is an unlawful practice.**

12 (g) **As used in this subsection:**

13 (A) **“Auxiliary aids and services” includes:**

14 (i) **Qualified interpreters or other effective methods of making aurally delivered materials**
 15 **available to individuals with hearing impairments;**

16 (ii) **Qualified readers, taped texts or other effective methods of making visually delivered**
 17 **materials available to individuals with visual impairments;**

18 (iii) **Acquisition or modification of equipment or devices; and**

19 (iv) **Other similar services and actions.**

20 (B) **“Place of public accommodation” has the meaning given that term in ORS 659A.400.**

21 (C) **“Readily achievable” means easily accomplishable and able to be carried out without**
 22 **much difficulty or expense. In determining whether an action is readily achievable, the fac-**
 23 **tors to be considered include:**

24 (i) **The nature and cost of the action needed under this subsection;**

25 (ii) **The overall financial resources of the facility involved in the action;**

26 (iii) **The number of persons employed at the facility;**

27 (iv) **The effect on expenses and resources, or the impact otherwise of the action upon the**
 28 **operation of the facility;**

29 (v) **The overall financial resources of the place of public accommodation;**

30 (vi) **The number of persons employed at the place of public accommodation;**

31 (vii) **The number, type and location of facilities of the place of public accommodation;**

32 (viii) **The type of operation of the place of public accommodation, including the composi-**
 33 **tion, structure and functions of the place’s workforce; and**

34 (ix) **The geographic separateness and the administrative or fiscal relationship of the fa-**
 35 **cility or facilities in question to the place of public accommodation.**

36 (4)(a) **It is an unlawful practice for state government to exclude an individual from participation**
 37 **in or deny an individual the benefits of the services, programs or activities of state government or**
 38 **to make any distinction, discrimination or restriction because the individual is a disabled person.**

39 (b) **Paragraph (a) of this subsection is intended to ensure equal access to available services,**
 40 **programs and activities of state government.**

41 (c) **Paragraph (a) of this subsection is not intended to:**

42 (A) **Create an independent entitlement to any service, program or activity of state government;**

43 **or**

44 (B) **Require state government to take any action that state government can demonstrate would**
 45 **result in a fundamental alteration in the nature of a service, program or activity of state govern-**

1 ment or would result in undue financial or administrative burdens on state government.

2 (5) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence
 3 of an individual's inability to acquire, rent or maintain property.

4 **SECTION 2.** ORS 659A.103 is amended to read:

5 659A.103. (1) It is declared to be the public policy of Oregon to guarantee disabled persons the
 6 fullest possible participation in the social and economic life of the state, to engage in remunerative
 7 employment, to use and enjoy places of public accommodation, [*resort or amusement,*] to participate
 8 in and receive the benefits of the services, programs and activities of state government and to se-
 9 cure housing accommodations of their choice, without discrimination.

10 (2) The right to otherwise lawful employment without discrimination because of disability where
 11 the reasonable demands of the position do not require such a distinction, and the right to use and
 12 enjoy places of public accommodation, [*resort or amusement,*] to participate in and receive the ben-
 13 efits of the services, programs and activities of state government and to purchase or rent property
 14 without discrimination because of disability, are hereby recognized and declared to be the rights of
 15 all the people of this state. It is hereby declared to be the policy of the State of Oregon to protect
 16 these rights and ORS 659A.100 to 659A.145 shall be construed to effectuate such policy.

17 **SECTION 3.** The amendments to ORS 659A.142 by section 1 of this 2005 Act apply only
 18 to conduct occurring on or after the effective date of this 2005 Act.

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