

# OTLC

## The Oregon Trans Law Caucus

*a committee of OGALLA*

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**April 19, 2019**

Chair Prozanski  
Senate Judiciary Committee  
Oregon Legislative Assembly  
900 Court Street NE  
Salem, OR 97301

*Re: OTLC Support for HB 2589*

I write today as co-Chair of the Oregon Trans Law Caucus, a committee of OGALLA: the LGBT Bar Association of Oregon, to urge the committee to support HB 2589, a bill that removes offensive and outdated terminology from Oregon's employment law statutes. Founded in 2018, the OTLC is the first public specialty bar group focused exclusively on the needs of transgender law professionals. I also write today as a labor and employment attorney who works with these statutes on a daily basis. Finally, I write as a member of the community directly affected by these provisions. This bill will make positive changes in the law for the benefit of transgender Oregonians, and I encourage the committee to support it.

First, this bill addresses outdated and offensive language in statute, language from past eras with no place in our current statutory scheme. Specifically, this bill removes the terms "transsexualism" and "transvestism" from pertinent provisions of our disability anti-discrimination law, ORS 659A.103 *et seq.* At this point in time, this language is widely recognized as outdated and inaccurate. These terms harken back to prior eras where trans people were ubiquitously disrespected and denigrated. Modernizing this language will help to assure transgender Oregonians that they are in fact recognized and included under Oregon law.

The term "transvestism" is particularly hurtful. Included within a horror list of criminal sexual misconduct, this term evokes some of the worst and most harmful stereotypes about transgender people. It calls to mind old tropes of transgender people as sexual deviants, and possible sexual predators. As a transgender person myself, and as a soon-to-be parent, seeing

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trans-related terminology listed next to “pedophilia” is frankly sickening. Removing this term will not impair the efficacy of the relevant provisions – the remaining catchall will still apply to exclude qualifying disorders. This bill is about cleaning up these unfortunate references, and removing these offensive associations, without hindering the efficacy of our employment anti-discrimination laws.

In Oregon law, modern legislative enactments recognize “gender identity” as the most accurate descriptor for referring to transgender identity, and the appropriate terminology to use for provisions addressing transgender people. As we move forward, it is appropriate to clean up offensive, vestigial terms, to make the law current and consistent.

Oregon law includes broad protection for employees from discrimination on the basis of gender identity. ORS 174.100(7); ORS 659A.030(1)(a), (b). Our employment anti-discrimination laws protect transgender people under the same rubric as employment discrimination on the basis of race, sex, age, and national origin, among other bases. These laws apply equally to transgender people, recognizing their equal dignity.

This manner of protection is appropriate because a person’s gender identity is an inherent attribute, an aspect of identity and character. The word “transgender” itself is an adjective, not a noun: a transgender woman’s gender identity is female; a transgender man’s gender identity is male. That is, these are facets of personal identity, not tangible limitations. Many trans-exclusionary policies have been premised precisely upon the assertion that transgender people are somehow inherently incapable, defective, or otherwise “impaired” by virtue of being transgender. By affirming that gender identity is a matter of identity, not capability, this bill clarifies the appropriate recognition of gender identity under the law.

The outdated provisions addressed by this bill muddy this line between conditions, diagnoses, and care on the one hand, and inherent gender identity on the other. In fact, these topics are distinct, and these facets of individual experience are distinct. Transgender people may have various individual needs in terms of medical care or other treatment. They may or may not

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have varying diagnoses, and they may or may not have various conditions that could limit life activities. These are all distinct from gender identity, and this bill seeks to clarify that.

In addition to being offensively outdated, disability provisions addressed by this bill are also obsolete, and incompatible with current enactments in our anti-discrimination law. The “arising out of transsexualism” provision was in fact passed in 1997, not out of a concern with actual disability coverage, but to prevent transgender people from using disability law as a vehicle to obtain employment anti-discrimination protection for gender identity. Ten years later, the Oregon Equality Act directly superseded this purpose by affirmatively establishing direct anti-discrimination protection for gender identity in our primary protected-class anti-discrimination statute, ORS 659A.030.

With its core purpose superseded, this vestigial provision does little but sew confusion. Because it is seriously outdated in term and concept, it is hopelessly vague and confusing to apply in practice. Indeed, its primary effect now is to create confusion and doubt for transgender people as to whether our disability laws apply to bona fide limitations (they do), and to raise problems when employers seek to create clear and consistent policies to ensure their compliance with the law. Cleaning up these provisions will not only honor the dignity of transgender people, but it will also clear up a muddled and confusing relic from a different time.

This bill presents a wonderful opportunity for the Legislature to again affirm the equal dignity of transgender people. On behalf of the OTLC, our Co-Chair Percy Wise, Members Alex Hostetler and Demi Jacques, and dozens of other transgender law professionals across our state, I encourage the committee to support it.

Respectfully submitted,



Nora J. Broker, *Esq.*

Co-Chair, Oregon Trans Law Caucus