

Requested by Representative WILDE

**PROPOSED AMENDMENTS TO
HOUSE BILL 4073**

1 On page 1 of the printed bill, line 2, after “amending” delete the rest of
2 the line and insert “ORCP 57 D.”.

3 Delete lines 4 through 27 and delete pages 2 through 4 and insert:

4 **“SECTION 1. ORCP 57 D is amended to read:**

5 **“D Challenges.**

6 **“D(1) Challenges for cause; grounds. Challenges for cause may be taken
7 on any one or more of the following grounds:**

8 **“D(1)(a) The want of any qualification prescribed by ORS 10.030 for a
9 person eligible to act as a juror.**

10 **“D(1)(b) The existence of a mental or physical defect which satisfies the
11 court that the challenged person is incapable of performing the duties of a
12 juror in the particular action without prejudice to the substantial rights of
13 the challenging party.**

14 **“D(1)(c) Consanguinity or affinity within the fourth degree to any party.**

15 **“D(1)(d) Standing in the relation of guardian and ward, physician and
16 patient, master and servant, landlord and tenant, or debtor and creditor to
17 the adverse party; or being a member of the family of, or a partner in busi-
18 ness with, or in the employment for wages of, or being an attorney for or a
19 client of the adverse party; or being surety in the action called for trial, or
20 otherwise, for the adverse party.**

21 **“D(1)(e) Having served as a juror on a previous trial in the same action,**

1 or in another action between the same parties for the same cause of action,
2 upon substantially the same facts or transaction.

3 “D(1)(f) Interest on the part of the juror in the outcome of the action, or
4 the principal question involved therein.

5 “D(1)(g) Actual bias on the part of a juror. Actual bias is the existence
6 of a state of mind on the part of a juror that satisfies the court, in the ex-
7 ercise of sound discretion, that the juror cannot try the issue impartially and
8 without prejudice to the substantial rights of the party challenging the juror.
9 Actual bias may be in reference to: the action; either party to the action; the
10 sex of the party, the party’s attorney, a victim, or a witness; or a racial or
11 ethnic group of which the party, the party’s attorney, a victim, or a witness
12 is a member, or is perceived to be a member. A challenge for actual bias may
13 be taken for the cause mentioned in this paragraph, but on the trial of such
14 challenge, although it should appear that the juror challenged has formed
15 or expressed an opinion upon the merits of the cause from what the juror
16 may have heard or read, such opinion shall not of itself be sufficient to
17 sustain the challenge, but the court must be satisfied, from all of the cir-
18 cumstances, that the juror cannot disregard such opinion and try the issue
19 impartially.

20 “D(2) Peremptory challenges; number. A peremptory challenge is an ob-
21 jection to a juror for which no reason need be given, but upon which the
22 court shall exclude such juror. Either party is entitled to no more than three
23 peremptory challenges if the jury consists of more than six jurors, and no
24 more than two peremptory challenges if the jury consists of six jurors. Where
25 there are multiple parties plaintiff or defendant in the case, or where cases
26 have been consolidated for trial, the parties plaintiff or defendant must join
27 in the challenge and are limited to the number of peremptory challenges
28 specified in this subsection except the court, in its discretion and in the in-
29 terest of justice, may allow any of the parties, single or multiple, additional
30 peremptory challenges and permit them to be exercised separately or jointly.

1 “D(3) Conduct of peremptory challenges. After the full number of jurors
2 has been passed for cause, peremptory challenges shall be conducted by
3 written ballot or outside of the presence of the jury as follows: the plaintiff
4 may challenge one and then the defendant may challenge one, and so alter-
5 nating until the peremptory challenges shall be exhausted. After each chal-
6 lenge, the panel shall be filled and the additional juror passed for cause
7 before another peremptory challenge shall be exercised, and neither party is
8 required to exercise a peremptory challenge unless the full number of jurors
9 is in the jury box at the time. The refusal to challenge by either party in
10 the order of alternation shall not defeat the adverse party of such adverse
11 party’s full number of challenges, and such refusal by a party to exercise a
12 challenge in proper turn shall conclude that party as to the jurors once ac-
13 cepted by that party and, if that party’s right of peremptory challenge is not
14 exhausted, that party’s further challenges shall be confined, in that party’s
15 proper turn, to such additional jurors as may be called. The court may, for
16 good cause shown, permit a challenge to be taken as to any juror before the
17 jury is completed and sworn, notwithstanding that the juror challenged may
18 have been previously accepted, but nothing in this subsection shall be con-
19 strued to increase the number of peremptory challenges allowed.

20 “D(4) Challenge of peremptory challenge exercised on [basis of race,
21 ethnicity, or sex] **certain bases.**

22 “D(4)(a) A party may not exercise a peremptory challenge on the basis
23 of race, ethnicity, [or] sex, **religion, sexual orientation or gender**
24 **identity.** Courts shall presume that a peremptory challenge does not violate
25 this paragraph, but the presumption may be rebutted in the manner provided
26 by this section.

27 “D(4)(b) If a party believes that the adverse party is exercising a
28 peremptory challenge on a basis prohibited under paragraph (a) of this sub-
29 section, the party may object to the exercise of the challenge. The objection
30 must be made before the court excuses the juror. The objection must be made

1 outside of the presence of the jurors. The party making the objection has the
2 burden of establishing a prima facie case that the adverse party challenged
3 the juror on the basis of race, ethnicity, [or] sex, **religion, sexual orien-**
4 **tation or gender identity.**

5 “D(4)(c) If the court finds that the party making the objection has estab-
6 lished a prima facie case that the adverse party challenged a prospective
7 juror on the basis of race, ethnicity, [or] sex, **religion, sexual orientation**
8 **or gender identity**, the burden shifts to the adverse party to show that the
9 peremptory challenge was not exercised on the basis of race, ethnicity, [or]
10 sex, **religion, sexual orientation or gender identity, and that the**
11 **peremptory challenge was exercised on another objectively reasonable**
12 **basis. The adverse party may examine the challenged juror further in**
13 **support of the challenge.** If the adverse party fails to meet the burden of
14 justification as to the questioned challenge, the presumption that the chal-
15 lenge does not violate paragraph (a) of this subsection is rebutted.

16 “D(4)(d) If the court finds that the adverse party challenged a prospective
17 juror on the basis of race, ethnicity, [or] sex, **religion, sexual orientation**
18 **or gender identity, and not on another objectively reasonable basis**, the
19 court shall disallow the peremptory challenge.

20 “**SECTION 2. The amendments to ORCP 57 D by section 1 of this**
21 **2022 Act become operative on January 1, 2024, and apply to trials**
22 **commenced on or after January 1, 2024.”.**

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