



February 6, 2023

TO: Members of the House Committee on Business and Labor

FR: Derek Sangston, Oregon Business & Industry

RE: Testimony in Opposition to HB 2800

Chair Holvey, Vice-Chair Elmer, Vice-Chair Sosa, and members of the House Committee on Business and Labor. For the record, my name is Derek Sangston, Policy Director and Counsel for Oregon Business & Industry.

Oregon Business & Industry (OBI) is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. Our 1,600 member companies, more than 80% of which are small businesses, employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

Thank you for the opportunity to testify in opposition to HB 2800. With the aim of adding clarity to Oregon's law prohibiting age discrimination, HB 2800 would do the opposite. Not only would it prohibit employers from considering a fundamental thing like experience when making employment decisions, HB 2800 would create a presumption of wrong-doing, putting employers in the position of having to prove a negative. And by barring "liberally construed" phrases or requirements in job postings, it unnecessarily complicates the search and hiring process both for employers *and* for individuals seeking work.

HB 2800 complicates and confuses Oregon's longstanding age discrimination statute in ways that will upend current employment relations in Oregon, cause Oregon's employment law to further deviate from federal law and national norms, and bog down Oregon's already burdened court system. The ill-defined nature of things like "proxy for age" coupled with the requirement that courts "liberally construe" this bill is a recipe for confusion and unintended consequences.

Oregon law protects all employees aged 18 and older from age discrimination even when federal law only protects employees 40 and older. Since it broadens what is considered age discrimination but keeps in place that lower age threshold, HB 2800 likely would have the perverse effect of making current employment practices that are meant to protect older employees illegal.

Public and private employers alike rely on seniority systems to benefit older employees. For example, employers frequently conduct layoffs on a "reverse seniority" basis so that the *least* senior employees are let go first. It is additionally a standard provision in CBAs that employees with longer service receive higher pay and can even bump less senior employees for open positions. Using the provisions of HB 2800, any employee who is aged 18 and older may sue not just private employers, but public employers as well, based on those long-standing practices.

HB 2800 would also require employers to prove age was not a factor in an adverse employment decision. Switching the burden of proof from employees to employers is an extreme deviation from longstanding state and federal discrimination law. This switch requires employers to prove a negative, which is difficult if not impossible even when no wrong-doing took place. This is not seen anywhere else in discrimination law.

Age discrimination is already clearly defined in Oregon as any adverse employment decision taken against an employee aged 18 and older *due to that employee's age*. There is no need for greater clarification. And HB 2800 is certainly not that clarification. HB 2800 would complicate and confuse that definition and upset longstanding court precedent.

OBI respectfully asks for you to oppose HB 2800. Thank you for your time and consideration.

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