



Feb. 19, 2025

TO: Members of the House Committee on Labor and Workforce Standards

FR: Derek Sangston, Oregon Retail Council

RE: [Subject]

Oregon Business & Industry (OBI) is a statewide association representing businesses from a wide variety of industries. Through the Oregon Retail Council, it is also the state affiliate for the National Retail Federation. The Oregon Retail Council represents the unique interests of retailers throughout the state on both legislative and regulatory issues. Retail trade is Oregon's largest private sector employer and drives the state's economy.

Thank you for the opportunity to testify in opposition to HB 3187. The Oregon Retail Council opposes HB 3187 because it would place unmanageable restrictions on employers' ability to make most employment decisions, conflict with existing employment laws, and further erode Oregon's business climate by enacting an extreme and untested policy.

Unworkable Restrictions on Business Decisions

HB 3187 would impose significant and unintended challenges for employers in the retail sector and beyond, particularly in the areas of hiring, promotion, and compensation decisions. Oregon's current age discrimination law already provides robust protections for workers aged 18 and over, ensuring that individuals are not discriminated against based on their age. However, HB 3187 would significantly broaden the scope of what constitutes age discrimination, creating a potential legal loophole that could encourage younger workers to file lawsuits as well. By broadly applying age discrimination protections to such a large and diverse age range, the bill risks opening the door for legal claims from individuals who may not traditionally be considered part of the "protected class" under current age discrimination law, creating unnecessary legal exposure for employers.

Moreover, HB 3187 would severely limit employers' ability to make employment decisions based on typically objective, widely accepted factors that are not necessarily tied to one's age. By so broadly defining what is a proxy for age for employers making hiring, promotion, or compensation decisions, HB 3187 would effectively eliminate many of the most used and appropriate criteria for determining a candidate's suitability for a role. This creates an unworkable situation for employers who rely on these objective factors to assess qualifications and performance. As a result, employers could be forced to make decisions in a vacuum, without considering key qualifications that are directly related to job performance, thereby undermining their ability to run their businesses effectively and fairly.

Conflict with Oregon's Equal Pay Act

While Oregon's Equal Pay Act, which passed in 2017, is seen as a significant step toward addressing pay equity in our state, HB 3187 would create direct conflicts with this policy. The Equal Pay Act requires employers to base compensation on factors like experience, education, and training, not arbitrary age-related distinctions. HB 3187's sweeping measures, which heavily regulate the use of age as a factor in employment decisions, would create a contradiction with the framework established by the Equal Pay Act. Employers would be left in a situation where they are unable to fairly assess the qualifications and value of an employee or candidate without running afoul of both laws.

These conflicting standards will place undue pressure on employers to choose between compliance with conflicting legal requirements, ultimately leading to confusion. The result could be less equitable outcomes for workers, particularly when employers feel pressured to avoid age-based decisions to the point where qualifications are disregarded.

The Most Extreme Policy on Age Discrimination in the U.S.

While we strongly support efforts to protect workers from age-based discrimination, HB 3187 proposes the most extreme and burdensome approach to addressing age discrimination we have seen anywhere in the United States. The bill's sweeping provisions would make it significantly harder for employers to make decisions based on legitimate business needs, forcing them into an environment where even the smallest decisions related to hiring, training, or promotions could be subject to scrutiny and costly litigation.

Other states that have attempted to provide heightened protections for age-based discrimination have done so in a more reasonable and manageable way. For instance,

Connecticut law provides it is an unfair practice, "[f]or an employer, by the employer or the employer's agent, to request or require a prospective employee's age, date of birth, dates of attendance at or date of graduation from an educational institution on an initial employment application, provided the provisions of this subdivision shall not apply to any employer requesting or requiring such information (A) based on a bona fide occupational qualification or need, or (B) when such information is required to comply with any provision of state or federal law;" Public Act No. 21-69

Washington law provides it is an unfair practice, "[f]or an employer or licensing agency, because an individual is forty years of age or older, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: PROVIDED, That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the executive director

of the Washington state human rights commission or the director of labor and industries through the division of industrial relations.” RCW 49.44.090

Each of those states have provisions that provide substantial protections for workers while preserving an employer’s ability to make day-to-day employment decisions without the constant threat of litigation from any worker aged 18 years and older. Unfortunately, HB 3187 goes much further and would significantly burden employers – small and large – throughout Oregon.

For the foregoing reasons, OBI respectfully requests this committee to oppose HB 3187. Thank you for your consideration.

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