

Milestones in Oregon LGBTQ Law



By George T. Nicola
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This article is meant to give a brief description of some major laws, court decisions, and other governmental actions that could have in some way positively affected the lives of gay, lesbian, bisexual, transgender, and queer (LGBTQ) Oregonians.

I have no way of knowing how these actions are interpreted or to what extent they are still in effect. For instance, I do not know what effect the statewide laws have had on the similar local ordinances that had passed previously.

I am not trained in law, and this document is not intended to be a source of legal advice or analysis. If you have a question about legal rights, please contact a legal professional. If you believe you are the victim of discrimination based on your sexual orientation or your gender identity, please contact the Oregon Bureau of Labor's Civil Rights Division through http://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx.

If you discover any inaccuracies in this article, or if you suggest any additions, please contact GLAPN at info@glapn.org and we will review your input.

Milestones in Oregon LGBTQ Law

1972: Oregon criminal code revision



Stevie Remington, Executive
Director of the ACLU of Oregon
from 1970 to 1992

Oregon had long maintained a law that effectively criminalized most private and consensual homosexual conduct among adults. With help from the American Civil Liberties (ACLU) of Oregon, the law was changed considerably through a criminal code revision which took effect in 1972. The bill was signed into law by Governor Tom McCall, a Republican.

Under the new statute, generally no sexual conduct is illegal as long as it is noncommercial, private, and among consenting adults. However, the statute provided a misdemeanor category for soliciting “deviate” sex in public: “A person commits the crime of accosting for deviate purposes if while in a public place he invites or requests another person to engage in deviate sexual intercourse.” This provision was declared unconstitutional in 1981.



Governor Tom McCall

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1973: *Burton v. Cascade School District Union High School No. 5*



Peggy Burton

Peggy Burton was a school teacher in a small town near Salem. In 1971, she was fired from her job on the basis of “immorality”, after she was asked if she was a homosexual and she replied in the affirmative. She challenged the case with the help of the American Civil Liberties (ACLU) of Oregon and ACLU associated attorney Charlie Hinkle.

Here is the outcome of the case as explained by Hinkle:

The federal District Court in Portland ruled that the dismissal was "wrongful" and it awarded her \$10,000 in damages, plus a modest amount of attorney fees to the ACLU. However, the court refused to reinstate her to her old position, on the ground that reinstatement "would not work" in the small community of Turner, Oregon. Burton appealed to the Ninth Circuit Court of Appeals, which upheld that decision by a 2 to 1 vote.

This was an early and very important legal precedent against anti-gay employment bias.

Milestones in Oregon LGBTQ Law

1974: City of Portland resolution banning discrimination in city employment



Portland City
Commissioner
Connie McCready

Today's large Oregon LGBTQ movement began with a few small local gay political organizations in the early 1970s. Activists soon realized that protection from job bias was a major concern.

At that time, the City of Portland had no general civil rights ordinance to which we could append sexual orientation protection. But starting in 1972, gay activists tried to get the city to take a stand against anti-gay bias in city employment.

In December of 1974, according to *The Oregonian* newspaper, the City Council “adopted the city’s first resolution banning job discrimination on the basis of sexual orientation for city employees.” The resolution was sponsored by City Commissioner Connie McCready. The vote was 3-2, so we won by only one vote. There was very vocal opposition, yet I can find no recorded attempt to overturn it through a ballot measure.

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1988: Oregon state executive order banning sexual orientation discrimination in state employment



Harriet Merrick

In 1987, Oregon Governor Neil Goldschmidt issued an executive order which banned discrimination based on sexual orientation in the executive department of state government. *The Oregonian* described the order as “dealing with sexual orientation and the state government workplace.” The newspaper elaborated that “This included both personnel actions and the delivery of services to the public. The order didn't apply to state employees not under Goldschmidt’s control, such as judicial workers.”

Unfortunately, the order was overturned by an initiative called Ballot Measure 8. Measure 8, sponsored by a group called the Oregon Citizens Alliance (OCA), also prohibited any state official in the future from requiring non-discrimination against state employees based on sexual orientation.

Harriet P. Merrick, a lesbian employee of the University of Oregon, took the new law to court in cooperation with the American Civil Liberties Union of Oregon. In *Merrick v. Oregon*, 1992, the Oregon Court of Appeals ruled Measure 8 unconstitutional because its effect was “to restrain the right of free expression.”

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1989: Oregon hate crime law that includes sexual orientation



In 1989, the State of Oregon enacted a hate crime law that includes sexual orientation. Later, the law was amended so that sexual orientation includes gender identity.

1991: City of Portland ordinance banning discrimination based on sexual orientation in employment, housing, and public accommodations



Portland City
Commissioner
Mike Lindberg

In 1977, the City of Eugene passed an ordinance that banned discrimination based on sexual orientation in employment, housing, and accommodations. Unfortunately, the law was repealed by voters in Eugene Ballot Measure 51 the following year.

The City of Portland was the next jurisdiction to consider a similar law. In 1991, Portland passed an ordinance that *The Oregonian* reported banned “discrimination -- based on sexual orientation or source of income -- in housing, employment and public accommodations.” The ordinance was sponsored by City Commissioner Mike Lindberg. Helping Lindberg was his openly gay assistant, the late Keeston Lowery.



Keeston
Lowery

Portland’s passage of this type of law was 19 years after the first such ordinance in the country, adopted by the City of Ann Arbor, Michigan in 1972.

In *Sims v. Besaw’s Café*, January 2000, the Oregon Court of Appeals ruled that the City of Portland had a right to pass such an ordinance and that private parties must abide by it.

In the year 2000, gender identity was added to this ordinance.

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1992: Multnomah County health benefits for domestic partners of county employees



Multnomah County was the first public employer in Oregon to extend health benefits to domestic partners of county employees. The benefits became effective on July 1, 1993.

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1992: The Defeat of Oregon Ballot Measure 9



Lesbian activist Kathleen Saadat campaigned tirelessly against Ballot Measure 9.

After their initial Measure 8 success, the OCA went on to sponsor Ballot Measure 9 in 1992. The measure was titled “Government Cannot Facilitate, Must Discourage Homosexuality, Other Behaviors.”

Measure 9 would have amended the Oregon constitution to ban civil rights protection based on sexual orientation. It mandated that schools “shall assist in setting a standard for Oregon's youth that recognizes homosexuality, pedophilia, sadism and masochism as abnormal, wrong, unnatural, and perverse and that these behaviors are to be discouraged and avoided.” A section of the measure stating the government could not “promote, encourage, or facilitate homosexuality” could have had many negative results, such as banning gay positive books from public libraries.

Opposition to the measure was bipartisan and included people of many faiths, identities, and ethnicities. Gay men and lesbians came out to people they knew. Straight people increasingly realized that we are their friends, their family, their neighbors, their coworkers. Oregonians began to understand that when gay people as a group are being threatened, someone they love is probably being threatened. Voters defeated Measure 9 by an impressive 12.9% margin.

Official 2000 General Election Voters' Pamphlet—Statewide Measures	
Measure No. 9	
<p>Proposed by initiative petition to be voted on at the General Election, November 7, 2000.</p> <p>BALLOT TITLE</p> <p>9 PROHIBITS PUBLIC SCHOOL INSTRUCTION ENCOURAGING, PROMOTING, SANCTIONING HOMOSEXUAL, BISEXUAL BEHAVIORS</p> <p>RESULT OF "YES" VOTE: "Yes" vote prohibits public school instruction encouraging, promoting, or sanctioning homosexual/bisexual behaviors; provides penalties.</p> <p>RESULT OF "NO" VOTE: "No" vote rejects proposal to prohibit public school instruction encouraging, promoting, sanctioning homosexual/bisexual behaviors.</p> <p>SUMMARY: Amends statute. Prohibits public schools from teaching on behaviors relating to homosexuality and bisexuality in a manner that encourages, promotes or sanctions such behaviors. Provides sanctions for noncompliance by any public elementary or secondary school or by any community college, including loss of all or part of state funding.</p> <p>ESTIMATE OF FINANCIAL IMPACT: There is no financial effect on state or local government expenditures or revenues.</p>	<p>EXPLANATORY STATEMENT</p> <p>Ballot Measure 9 amends state statutes relating to public school instruction regarding homosexuality and bisexuality.</p> <p>The measure prohibits public schools from providing instruction on behaviors relating to homosexuality and bisexuality in a manner that encourages, promotes or sanctions such behaviors. For purposes of this measure, "public schools" include public elementary schools, public secondary schools, community colleges, state colleges and state universities, and all state and local institutions that provide education for patients or inmates.</p> <p>The measure also provides sanctions for noncompliance by any public elementary school, public secondary school or community college. For public elementary and secondary schools, noncompliance, including guidelines for determining noncompliance, will be determined by the Superintendent of Public Instruction. For community colleges, noncompliance, including guidelines for determining noncompliance, will be determined by the Commissioner of Community College Services. Sanctions may include the withholding of all or part of state funding. The sanctions are based on rules to be adopted by the State Board of Education.</p> <p>Committee Members: Phillip Z. Ramsdell Barry Williams Roger Gray Laura Roche Jack Roberts</p> <p>Appointed by: Chief Petitioners Chief Petitioners Secretary of State Members of the Committee</p> <p><i>(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)</i></p>
<p>TEXT OF MEASURE</p> <p>BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:</p> <p>Section 1. ORS 336.067 is amended to read (new section):</p> <p>(6) Sexual Orientation as it relates to homosexuality and bisexuality, is a divisive subject matter not necessary to the education of students in public schools. Notwithstanding any other law or rule, the instruction of behaviors relating to homosexuality and bisexuality shall not be presented in a public school in a manner which encourages, promotes or sanctions such behaviors.</p> <p>Section 2. ORS 659.150 is amended to read (new section):</p> <p>(1) Any public elementary or secondary school determined by the Superintendent of Public Instruction or any community college determined by the Commissioner for Community College Services to be in noncompliance with provisions of ORS 336.067 (6) or ORS 659.150 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Education.</p>	

Voters' Pamphlet entry explaining Measure 9

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1993: House Bill 3500 voiding of local anti-gay measures



Pioneering gay attorney Charlie Hinkle worked to defeat many of the anti-gay ballot measures.

Both before and after the statewide Measure 9, the Oregon Citizens Alliance also took local action. Initiatives similar to Measure 9 were placed on the ballots of about 29 Oregon cities and counties. However, it is difficult to arrive at exact details because there is no one primary online source to research local elections. The vast majority of measures passed, some by huge margins.

These local initiative all appear to be similar to each other. Like the statewide measure, they forbade civil rights protection based on sexual orientation and prohibited public money from being spent to “promote” homosexuality. However, they apparently differed from the statewide initiative in that the local measures did not always require an anti-gay curriculum in the schools.

In 1993, the Oregon Legislature invalidated these local measures with House Bill 3500, which prohibits local measures that “single out citizens or groups of citizens on account of sexual orientation.” The law was upheld by the Oregon Supreme Court in 1995.

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1998: *Tanner v. OHSU*



Christine
Tanner

Christine Tanner was an employee of Oregon Health and Science University (OHSU). She wanted her employer to provide for her female partner the same health care benefits they provided for an employee's spouse. OHSU would not comply. Tanner took the issue to court with the help of the ACLU of Oregon, and won a major victory.

In *Tanner v. OHSU*, the Oregon Court of Appeals became the first court in the nation to decide that government is constitutionally required to recognize domestic partnerships. The Court held the Oregon Bill of Rights requires public agencies--such as OHSU or local governments and school districts--to provide benefits to the domestic partners of their gay employees if they provide benefits to the spouses of married employees.

The Court of Appeals ruling also stated that then current Oregon law prohibited any employer--whether public or private--from discriminating in the workplace on the basis of sexual orientation. But for some technical reasons, the issue remained murky. So it could only be fully addressed by statewide legislation that would clearly ban such bias.

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1998: Benton County ordinance banning discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations



A section of Benton County code dated August 1, 1998, indicates that the county has banned discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations.

This is not the first Oregon law to ban sexual orientation discrimination, but it appears to be the first law in Oregon to ban discrimination based on gender identity.

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2007: Oregon Statewide LGBTQ civil rights and domestic partner laws



In the spring of 2007, the Oregon Legislature passed, and Democratic Governor Ted Kulongoski signed, two important statutes.

The first law, the Oregon Equality Act, banned discrimination based on both sexual orientation and gender identity in employment, housing, public accommodations, and some other areas. The law was effective January 1, 2008. It was passed 34 years after a similar law was first introduced in the Oregon Legislature in 1973. Its passage was also 25 years after the first statewide law banning sexual orientation discrimination was passed by the state by Wisconsin in 1982.

The second state statute was the Oregon Family Fairness Act. This created for same sex couples a domestic partner registration system that provided most of the benefits and obligations of marriage.

The statutes both passed after an intense lobbying campaign by Basic Rights Oregon (BRO).

Oregon governor Ted Kulongoski signed into law a bill banning discrimination based on sexual orientation and gender identity.

He also signed a domestic partner bill giving same sex couples many of the same rights of straight married couples. Behind the governor from left to right are major legislators who got the bill passed: Representative Tina Kotek, later to become the nation's first openly lesbian leader of a state legislative chamber; Senator Kate Brown, later voted Secretary of State, the highest ranking LGBTQ person in any state government; and Representative Jeff Merkley, later voted U.S. Senator.

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2012: Oregon prohibition of health care provider discrimination based on gender identity



As a Basic Rights Oregon (BRO) employee, transgender activist Sasha Buchert worked to remove healthcare providers' exclusions for transgender Oregonians.

In late 2012, the State of Oregon announced it would prohibit health care providers from discriminating against a policy holder based on their actual or perceived gender identity and expression.

This means that health insurance plans sold in Oregon can no longer deny care to transgender policy holders which is provided to non-transgender (or “cisgender”) policy holders.

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2013: Oregon law allowing easier change of gender on birth certificates



BRO Transgender
Justice Program
Manager Tash Shatz

In early 2013, Governor John Kitzhaber signed House Bill 2093, making Oregon just one of a handful of states to remove the onerous surgery requirement imposed on transgender Oregonians seeking an accurate birth certificate. As a result, transgender Oregonians are now able to access a legal change of gender without costly, undesired, or unobtainable surgeries.

Basic Rights Oregon's contract lobbyist played a lead role in lobbying the bill, while BRO Transgender Justice Program Manager Tash Shatz and TransActive Executive Director Jenn Burleton advocated for it.

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2013: Oregon Health Plan announcement that it will cover the cost of pubertal suppression treatment for transgender adolescents and teens



TransActive
Executive Director
Jenn Burleton

In early 2013, the Oregon Health Plan announced that beginning October 1, 2014, it will cover the cost of pubertal suppression treatment for transgender adolescents and teens. Oregon becomes one of only 2 states (California is the other) to provide this coverage, which will literally save the lives of many transgender youth who would otherwise be at risk of suicidal ideation and attempts because of the changes happening to their bodies. Pubertal suppression also greatly enhances the quality of life of transgender youth by giving them the option to develop physically in a way that more accurately represents their gender identity.

Prior to initiation of puberty suppression therapy, adolescents must fulfill eligibility and readiness criteria and must have a comprehensive mental health evaluation.

The lead in advocating for this was TransActive, a Portland-based organization serving the diverse needs of transgender and gender nonconforming (GNC) children, youth, their families and allies. BRO provided additional support. Explains TransActive Executive Director Jenn Burleton, “This is a big deal to Oregon families, as pubertal suppression for transgender youth is not covered at present by most insurers and the out-of-pocket monthly costs can be prohibitive.”

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2014: The freedom to marry comes to Oregon



From oregonlive.com, left to right *Geiger v. Kitzhaber* attorneys Lea Ann Easton and Lake James Perriguet; *Rummell v. Kitzhaber* attorneys Misha Isaak, Jennifer Middleton, and Tom Johnson; ACLU's David Fidanque; BRO's Jeana Frazzini.

In 2004, Oregonians approved Measure 36, amending the Oregon constitution to ban same-gender marriage. Basic Rights Oregon (BRO) responded by educating the public on the importance of marriage for those who want it. In February, 2013, BRO began planning for a statewide November 2014 voter initiative that would ensure marriage equality.

In October, 2013, attorneys Lake James Perriguet and Lea Ann Easton filed a *Geiger v. Kitzhaber* in U.S. District Court in Eugene asking a judge to overturn Oregon's ban. Two months later, attorneys for the ACLU of Oregon filed *Rummell v. Kitzhaber* in the same court with the same goal. BRO determined that marriage equality might be achieved more quickly through the federal courts, so Basic Rights Education Fund became a plaintiff in the second lawsuit. U.S. District Court Judge Michael McShane, who was assigned the cases, consolidated the two of them. Oregon Attorney General Ellen Rosenblum refused to defend the ban, instead filing a brief arguing why ban should be struck down.

On May 19, 2014. McShane ruled that Oregon's laws banning same-gender marriage "violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution." Same-gender weddings started the same day. The ballot measure that had been planned was then dropped because it was no longer necessary.

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2015: Oregon bans conversion therapy for youth



Governor Kate Brown, who signed the Youth Mental Health Protection Act into law in 2015, led the Portland Pride Parade that same year.

In early 2015, Oregon Governor Kate Brown signed into law the Youth Mental Health Protection Act. The law bans conversion therapy for youth under the age of 18 by licensed mental health providers. Conversion therapy includes a range of dangerous and discredited practices aimed at changing someone's sexual orientation or suppressing their gender identity or expression

Basic Rights Oregon lobbied for this important reform. It was signed into law by Governor Kate Brown, the first person in the country to become governor of any state while openly LGBTQ.

[\(http://www.basicrights.org/featured/hb-2307-signed-into-law-conversion-therapy-banned-for-youth-in-oregon/\)](http://www.basicrights.org/featured/hb-2307-signed-into-law-conversion-therapy-banned-for-youth-in-oregon/)