
SENATE BILL 5440

State of Washington 53rd Legislature 1993 Regular Session

By Senators Prentice, Talmadge, Franklin and Skratek

Read first time 01/28/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to reproductive health and status; amending RCW
2 49.17.050, 49.60.180, 49.60.190, 49.60.200, 70.58.320, 70.58.322,
3 70.58.324, 70.58.330, 70.58.338, and 70.58.350; reenacting and amending
4 RCW 49.60.040; adding a new section to chapter 18.76 RCW; adding a new
5 section to chapter 49.12 RCW; creating a new section; and prescribing
6 penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that some substances
9 used in the workplace can cause birth defects or constitute a hazard to
10 an employee's reproductive system. Employee exposure to such
11 substances should be limited and employers should disclose to their
12 employees any risks that even limited exposure may pose to their
13 reproductive capacity. The legislature further finds that
14 discrimination in the workplace because of reproductive status is an
15 increasing concern. Information about workplace reproductive hazards
16 is needed to assist in individual, corporate, and government decision
17 making.

1 **Sec. 2.** RCW 49.17.050 and 1973 c 80 s 5 are each amended to read
2 as follows:

3 In the adoption of rules (~~and regulations~~) under the authority of
4 this chapter, the director shall:

5 (1) Provide for the preparation, adoption, amendment, or repeal of
6 rules (~~and regulations~~) of safety and health standards governing the
7 conditions of employment of general and special application in all work
8 places;

9 (2) Provide for the adoption of occupational health and safety
10 standards which are at least as effective as those adopted or
11 recognized by the United States secretary of labor under the authority
12 of the Occupational Safety and Health Act of 1970 (Public Law 91-596;
13 84 Stat. 1590);

14 (3) Provide a method of encouraging employers and employees in
15 their efforts to reduce the number of safety and health hazards at
16 their work places and to stimulate employers and employees to institute
17 new and to perfect existing programs for providing safe and healthful
18 working conditions;

19 (4) Provide for the promulgation of health and safety standards and
20 the control of conditions in all work places concerning gases, vapors,
21 dust, or other airborne particles, toxic materials, or harmful physical
22 agents which shall set a standard which most adequately assures, to the
23 extent feasible, on the basis of the best available evidence, that no
24 employee will suffer material impairment of health or functional
25 capacity, reproductive disorders, or adverse pregnancy outcomes even if
26 such employee has regular exposure to the hazard dealt with by such
27 standard for the period of his or her working life; any such standards
28 shall require where appropriate the use of protective devices or
29 equipment and for monitoring or measuring any such gases, vapors, dust,
30 or other airborne particles, toxic materials, or harmful physical
31 agents;

32 (5) Provide for appropriate reporting procedures by employers with
33 respect to such information relating to conditions of employment which
34 will assist in achieving the objectives of this chapter;

35 (6) Provide for the frequency, method, and manner of the making of
36 inspections of work places without advance notice; (~~and,~~)

37 (7) Provide for the publication and dissemination to employers,
38 employees, and labor organizations and the posting where appropriate by

1 employers of informational, education, or training materials calculated
2 to aid and assist in achieving the objectives of this chapter;

3 (8) Provide for the establishment of new and the perfection and
4 expansion of existing programs for occupational safety and health
5 education for employers and employees, and, in addition institute
6 methods and procedures for the establishment of a program for voluntary
7 compliance solely through the use of advice and consultation with
8 employers and employees with recommendations including recommendations
9 of methods to abate violations relating to the requirements of this
10 chapter and all applicable safety and health standards and rules ((~~and~~
11 ~~regulations promulgated~~)) adopted pursuant to the authority of this
12 chapter;

13 (9) Provide for the adoption of safety and health standards
14 requiring the use of safeguards in trenches and excavations and around
15 openings of hoistways, hatchways, elevators, stairways, and similar
16 openings; and

17 (10) Provide for the promulgation of health and safety standards
18 requiring the use of safeguards for all vats, pans, trimmers, cut off,
19 gang edger, and other saws, planers, presses, formers, cogs, gearing,
20 belting, shafting, coupling, set screws, live rollers, conveyors,
21 mangles in laundries, and machinery of similar description, which can
22 be effectively guarded with due regard to the ordinary use of such
23 machinery and appliances and the danger to employees therefrom, and
24 with which the employees of any such work place may come in contact
25 while in the performance of their duties and prescribe methods,
26 practices, or processes to be followed by employers which will enhance
27 the health and safety of employees in the performance of their duties
28 when in proximity to machinery or appliances mentioned in this
29 subsection.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 18.76 RCW
31 to read as follows:

32 The state poison control network centers shall include information
33 about the reproductive hazards of the substances for which the center
34 provides information.

35 **Sec. 4.** RCW 49.60.040 and 1985 c 203 s 2 and 1985 c 185 s 2 are
36 each reenacted and amended to read as follows:

37 As used in this chapter:

1 "Person" includes one or more individuals, partnerships,
2 associations, organizations, corporations, cooperatives, legal
3 representatives, trustees and receivers, or any group of persons; it
4 includes any owner, lessee, proprietor, manager, agent, or employee,
5 whether one or more natural persons; and further includes any political
6 or civil subdivisions of the state and any agency or instrumentality of
7 the state or of any political or civil subdivision thereof;

8 "Commission" means the Washington state human rights commission;

9 "Employer" includes any person acting in the interest of an
10 employer, directly or indirectly, who employs eight or more persons,
11 and does not include any religious or sectarian organization not
12 organized for private profit;

13 "Employee" does not include any individual employed by his or her
14 parents, spouse, or child, or in the domestic service of any person;

15 "Labor organization" includes any organization which exists for the
16 purpose, in whole or in part, of dealing with employers concerning
17 grievances or terms or conditions of employment, or for other mutual
18 aid or protection in connection with employment;

19 "Employment agency" includes any person undertaking with or without
20 compensation to recruit, procure, refer, or place employees for an
21 employer;

22 "National origin" includes "ancestry";

23 "Full enjoyment of" includes the right to purchase any service,
24 commodity, or article of personal property offered or sold on, or by,
25 any establishment to the public, and the admission of any person to
26 accommodations, advantages, facilities, or privileges of any place of
27 public resort, accommodation, assemblage, or amusement, without acts
28 directly or indirectly causing persons of any particular race, creed,
29 color, sex, or with any sensory, mental, or physical handicap, or a
30 blind or deaf person using a trained dog guide, to be treated as not
31 welcome, accepted, desired, or solicited;

32 "Any place of public resort, accommodation, assemblage, or
33 amusement" includes, but is not limited to, any place, licensed or
34 unlicensed, kept for gain, hire, or reward, or where charges are made
35 for admission, service, occupancy, or use of any property or
36 facilities, whether conducted for the entertainment, housing, or
37 lodging of transient guests, or for the benefit, use, or accommodation
38 of those seeking health, recreation, or rest, or for the burial or
39 other disposition of human remains, or for the sale of goods,

1 merchandise, services, or personal property, or for the rendering of
2 personal services, or for public conveyance or transportation on land,
3 water, or in the air, including the stations and terminals thereof and
4 the garaging of vehicles, or where food or beverages of any kind are
5 sold for consumption on the premises, or where public amusement,
6 entertainment, sports, or recreation of any kind is offered with or
7 without charge, or where medical service or care is made available, or
8 where the public gathers, congregates, or assembles for amusement,
9 recreation, or public purposes, or public halls, public elevators, and
10 public washrooms of buildings and structures occupied by two or more
11 tenants, or by the owner and one or more tenants, or any public library
12 or educational institution, or schools of special instruction, or
13 nursery schools, or day care centers or children's camps: PROVIDED,
14 That nothing contained in this definition shall be construed to include
15 or apply to any institute, bona fide club, or place of accommodation,
16 which is by its nature distinctly private, including fraternal
17 organizations, though where public use is permitted that use shall be
18 covered by this chapter; nor shall anything contained in this
19 definition apply to any educational facility, columbarium, crematory,
20 mausoleum, or cemetery operated or maintained by a bona fide religious
21 or sectarian institution;

22 "Real property" includes buildings, structures, real estate, lands,
23 tenements, leaseholds, interests in real estate cooperatives,
24 condominiums, and hereditaments, corporeal and incorporeal, or any
25 interest therein;

26 "Real estate transaction" includes the sale, exchange, purchase,
27 rental, or lease of real property;

28 "Reproductive status" means the capacity or desire to reproduce;

29 "Sex" means gender((-)); and

30 "Credit transaction" includes any open or closed end credit
31 transaction, whether in the nature of a loan, retail installment
32 transaction, credit card issue or charge, or otherwise, and whether for
33 personal or for business purposes, in which a service, finance, or
34 interest charge is imposed, or which provides for repayment in
35 scheduled payments, when such credit is extended in the regular course
36 of any trade or commerce, including but not limited to transactions by
37 banks, savings and loan associations or other financial lending
38 institutions of whatever nature, stock brokers, or by a merchant or
39 mercantile establishment which as part of its ordinary business permits

1 or provides that payment for purchases of property or service therefrom
2 may be deferred.

3 **Sec. 5.** RCW 49.60.180 and 1985 c 185 s 16 are each amended to read
4 as follows:

5 It is an unfair practice for any employer:

6 (1) To refuse to hire any person because of age, sex, reproductive
7 status, marital status, race, creed, color, national origin, or the
8 presence of any sensory, mental, or physical handicap, unless based
9 upon a bona fide occupational qualification(~~(:—PROVIDED,)~~). That the
10 prohibition against discrimination because of such handicap shall not
11 apply if the particular disability prevents the proper performance of
12 the particular worker involved.

13 (2) To discharge or bar any person from employment because of age,
14 sex, reproductive status, marital status, race, creed, color, national
15 origin, or the presence of any sensory, mental, or physical handicap.

16 (3) To discriminate against any person in compensation or in other
17 terms or conditions of employment because of age, sex, reproductive
18 status, marital status, race, creed, color, national origin, or the
19 presence of any sensory, mental, or physical handicap(~~(:—PROVIDED,~~
20 ~~That)~~). It shall not be an unfair practice for an employer to
21 segregate washrooms or locker facilities on the basis of sex, or to
22 base other terms and conditions of employment on the sex of employees
23 where the commission by (~~regulation or~~) ruling in a particular
24 instance has found the employment practice to be appropriate for the
25 practical realization of equality of opportunity between the sexes.

26 (4) To print, or circulate, or cause to be printed or circulated
27 any statement, advertisement, or publication, or to use any form of
28 application for employment, or to make any inquiry in connection with
29 prospective employment, which expresses any limitation, specification,
30 or discrimination as to age, sex, reproductive status, marital status,
31 race, creed, color, national origin, or the presence of any sensory,
32 mental, or physical handicap, or any intent to make any such
33 limitation, specification, or discrimination, unless based upon a bona
34 fide occupational qualification(~~(:—PROVIDED,)~~). Nothing contained
35 herein shall prohibit advertising in a foreign language.

36 **Sec. 6.** RCW 49.60.190 and 1985 c 185 s 17 are each amended to read
37 as follows:

1 It is an unfair practice for any labor union or labor organization:

2 (1) To deny membership and full membership rights and privileges to
3 any person because of age, sex, marital status, race, creed, color,
4 national origin, or the presence of any sensory, mental, or physical
5 handicap.

6 (2) To expel from membership any person because of age, sex,
7 reproductive status, marital status, race, creed, color, national
8 origin, or the presence of any sensory, mental, or physical handicap.

9 (3) To discriminate against any member, employer, employee, or
10 other person to whom a duty of representation is owed because of age,
11 sex, reproductive status, marital status, race, creed, color, national
12 origin, or the presence of any sensory, mental, or physical handicap.

13 **Sec. 7.** RCW 49.60.200 and 1973 1st ex.s. c 214 s 9 are each
14 amended to read as follows:

15 It is an unfair practice for any employment agency to fail or
16 refuse to classify properly or refer for employment, or otherwise to
17 discriminate against, an individual because of age, sex, reproductive
18 status, marital status, race, creed, color, national origin, or the
19 presence of any sensory, mental, or physical handicap, or to print or
20 circulate, or cause to be printed or circulated any statement,
21 advertisement, or publication, or to use any form of application for
22 employment, or to make any inquiry in connection with prospective
23 employment, which expresses any limitation, specification or
24 discrimination as to age, sex, reproductive status, marital status,
25 race, creed, color, or national origin, or the presence of any sensory,
26 mental, or physical handicap, or any intent to make any such
27 limitation, specification, or discrimination, unless based upon a bona
28 fide occupational qualification(~~(:—PROVIDED,~~)). Nothing contained
29 herein shall prohibit advertising in a foreign language.

30 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.12 RCW
31 to read as follows:

32 (1) It is unlawful for an employer to refuse to transfer a pregnant
33 employee to another position if the transfer: (a) Is requested by the
34 employee; (b) is reasonably necessary to avoid exposure to any
35 substance which could cause an adverse pregnancy outcome; and (c) can
36 be reasonably accommodated by the employer. The transfer shall be for
37 the duration of the pregnancy and without loss of pay, seniority, or

1 any other employment-related benefits. The employer may request a
2 medical opinion to verify that the transfer is reasonably necessary.

3 (2) When an employer requests a medical opinion, the employee shall
4 provide a written opinion from the employee's treating physician that
5 the transfer is reasonably necessary to avoid exposure to a substance
6 which could cause an adverse pregnancy outcome. The employer may
7 reject the medical opinion from the treating physician, but shall offer
8 the employee the opportunity to immediately obtain an independent
9 opinion from another physician at the employer's cost. The employer
10 and employee shall jointly select the physician. If the employer and
11 the employee cannot agree, the director shall select the physician.
12 The independent opinion shall be determinative as to whether the
13 transfer is reasonably necessary.

14 (3) A notice of the provisions of this section shall be provided by
15 the department with other notices to be posted in every establishment
16 in which employees are employed.

17 (4) If the director finds that an employer has violated this
18 section, the employer shall be assessed a civil penalty of not more
19 than one thousand dollars. The employer shall pay the amount assessed
20 within thirty days of receipt of the assessment or notify the director
21 of his or her intent to appeal the assessment under subsection (5) of
22 this section.

23 (5) An employer may appeal a finding and assessment made under
24 subsection (4) of this section to the director by filing notice of the
25 appeal with the director within the thirty-day period immediately
26 following the finding and assessment. Upon receipt of an appeal, a
27 hearing shall be held under chapter 34.05 RCW. The director shall
28 issue a final order after the hearing. A final order is subject to
29 appeal under chapter 34.05 RCW. An order not appealed within the time
30 period specified in chapter 34.05 RCW is final and binding.

31 **Sec. 9.** RCW 70.58.320 and 1991 c 3 s 345 are each amended to read
32 as follows:

33 Whenever the attending physician discovers that a person has a
34 reproductive disorder or has experienced a miscarriage or stillbirth or
35 newborn child has a sentinel defect, and whenever a physician discovers
36 upon treating a child under the age of fourteen ((years)) that ((such))
37 the child has a partial or complete disability or a condition which may
38 lead to partial or complete disability, ((such fact)) the physician

1 shall ~~((be reported))~~ report to the local registrar and ~~((to the))~~, in
2 the case of a child, parents~~((r))~~ or legal guardians of the child~~((r~~
3 ~~upon))~~ on a form ~~((to be))~~ provided by the secretary of health. No
4 report ~~((shall be))~~ is required if the disabling condition has been
5 previously reported or the condition is not ~~((one))~~ required to be
6 reported by the secretary. Sentinel defects shall be reported at the
7 same time as birth certificates are required to be filed. Each
8 physician shall ~~((make a))~~ report ~~((as to))~~ disabling conditions within
9 thirty days after discovery ~~((thereof))~~. If a child with sentinel
10 birth defects is born outside ~~((the))~~ a hospital, the person filling
11 out the birth certificate shall ~~((make a))~~ report to the department.

12 The form~~((s to be))~~ provided by the secretary ~~((for this purpose))~~
13 under this section shall require ~~((such))~~ information ~~((as))~~ the
14 secretary deems necessary to carry out the purposes of RCW 70.58.300
15 through 70.58.350, including specific information about the places
16 where the person, or, in the case of a child, parents have been
17 employed and their physical and chemical exposures at those places.

18 **Sec. 10.** RCW 70.58.322 and 1984 c 156 s 2 are each amended to read
19 as follows:

20 Sentinel birth defect ~~((shall))~~ means a birth defect ~~((whose))~~ the
21 occurrence of which signals the possible presence of workplace hazards,
22 environmental hazards, genetic disease, poor quality health care, or
23 some other factor determined by the users of the data to be present
24 when a certain birth defect occurs.

25 Sentinel birth defects include, but are not limited to:

- 26 (1) Anencephaly;
- 27 (2) Spina bifida;
- 28 (3) Hydrocephaly;
- 29 (4) Cleft palate;
- 30 (5) Total cleft palate;
- 31 (6) Esophageal atresia and stenosis;
- 32 (7) Rectal and anal atresia;
- 33 (8) Hypospadias;
- 34 (9) Reduction and deformity of the upper limb;
- 35 (10) Reduction and deformity of the lower limb;
- 36 (11) Congenital dislocation of the hip; and
- 37 (12) Down's syndrome.

1 **Sec. 11.** RCW 70.58.324 and 1984 c 156 s 3 are each amended to read
2 as follows:

3 (1) The department shall not disclose the identity of a person,
4 business, or sentinel birth defect child from reports required under
5 RCW 70.58.320 unless:

6 (a) There is a demonstrated public health need for the individual
7 identity;

8 (b) The department obtains written consent of the person, business,
9 parent, or guardian of the child; and

10 (c) The department assures that the identity of the person,
11 business, or child shall not be released without the written consent of
12 the person, business, parent, or guardian, as applicable.

13 (2) If there is a demonstrated need for the individual identity of
14 children without sentinel birth defects to conduct a case-control
15 investigation, subsection (1) (a), (b), and (c) of this section (~~shall~~
16 ~~apply~~) applies.

17 **Sec. 12.** RCW 70.58.330 and 1984 c 156 s 4 are each amended to read
18 as follows:

19 Except compilations of statistical data furnished by the
20 department, the information furnished in the reports required by RCW
21 70.58.320 (~~shall be~~) are secret and shall not be revealed except upon
22 order of the superior court or by the process established by RCW
23 70.58.324. A person, business, parent, or legal guardian of a child
24 who is the subject of a report required by RCW 70.58.320 shall have
25 access to (~~such~~) the report (~~or reports~~).

26 **Sec. 13.** RCW 70.58.338 and 1984 c 156 s 7 are each amended to read
27 as follows:

28 The department, in cooperation with the department of labor and
29 industries, shall develop procedures to monitor the data on
30 reproductive disorders, miscarriages, stillbirths, or sentinel birth
31 defect trends which may be caused by workplace or environmental
32 hazards.

33 **Sec. 14.** RCW 70.58.350 and 1959 c 177 s 6 are each amended to read
34 as follows:

1 The state board of health (~~(is authorized to make such)~~) may adopt
2 rules (~~(and regulations as are)~~) necessary to carry out the purposes of
3 RCW 70.58.300 through 70.58.350.

--- END ---