

# HOUSE BILL REPORT

## ESHB 2661

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### As Passed Legislature

**Title:** An act relating to the jurisdiction of the Washington human rights commission.

**Brief Description:** Expanding the jurisdiction of the human rights commission.

**Sponsors:** By House Committee on State Government Operations & Accountability (originally sponsored by Representatives Murray, Hankins, Pettigrew, Jarrett, McDermott, Grant, Lovick, Haigh, Moeller, Shabro, Santos, Kessler, Upthegrove, Tom, Hunter, Hasegawa, Walsh, Fromhold, Springer, Appleton, McCoy, Chase, Hudgins, Kenney, Lantz, Hunt, Darneille, Quall, Takko, Sommers, Williams, Sells, Green, Schual-Berke, Simpson, Clibborn, Conway, Linville, Cody, Kagi, B. Sullivan, McIntire, Dickerson, Miloscia, Roberts and Ormsby; by request of Governor Gregoire).

### Brief History:

#### Committee Activity:

State Government Operations & Accountability: 1/17/06, 1/18/06 [DPS].

#### Floor Activity:

Passed House: 1/20/06, 60-37.

Senate Amended.

Passed Senate: 1/27/06, 25-23.

House Concurred.

Passed House: 1/27/06, 61-37.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Expands the jurisdiction of the Human Rights Commission to include sexual orientation as a basis for prohibiting discrimination.
- Adds definitions for sexual orientation and gender expression or identity to Washington's Law Against Discrimination.
- Exempts from Washington's Law Against Discrimination those real estate transactions that include the sharing, rental, or sublease of a dwelling unit when the dwelling unit is to be occupied by the owner or sublessor.

- States that the inclusion of sexual orientation among the bases for which discrimination is prohibited in employment matters shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.
- States that inclusion of sexual orientation in the Law Against Discrimination shall not be construed to modify or supersede state law relating to marriage.
- States that the Law Against Discrimination shall not be construed to endorse any specific belief, practice, behavior, or orientation.

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**HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Haigh, Chair; Green, Vice Chair; Hunt, McDermott and Miloscia.

**Minority Report:** Do not pass. Signed by Representatives Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Schindler and Sump.

**Staff:** Kathryn Leathers (786-7114).

**Background:**

Washington's Law Against Discrimination establishes that it is a civil right to be free from discrimination based on race, color, creed, national origin, sex, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. This right applies to employment; places of public resort, accommodation, or amusement; commerce; and real estate, credit, and insurance transactions.

To effectuate the right to be free from discrimination, the law defines certain practices as being unfair. For example, it is deemed to be an unfair practice to fire or to refuse to hire a person based on sex, race, creed, color, national origin, marital status, the presence of any sensory or physical disability, or the use of a trained dog guide or service animal.

There are some exceptions to the Law Against Discrimination. For example, in the employment context, employers with fewer than eight employees and non-profit religious or sectarian organizations are exempt from these laws.

The Washington State Human Rights Commission (WSHRC) is responsible, in part, for administering and enforcing the Law Against Discrimination. The WSHRC receives and investigates complaints made by persons alleging unfair practices in violation of this law. If the WSHRC finds that there is reasonable cause to believe that discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If this process

fails, the WSHRC must refer the matter to an administrative law judge who may, after a hearing on the matter, issue an order providing relief to the complainant.

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**Summary of Engrossed Substitute Bill:**

The Law Against Discrimination is expanded to prohibit discrimination based on a person's sexual orientation. "Sexual orientation" is defined as heterosexuality, homosexuality, bisexuality, and gender expression or identity. "Gender expression or identity" is defined as having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

Real estate transactions that include the sharing, rental, or sublease of a dwelling unit when the dwelling unit is to be occupied by the owner or sublessor are exempted from the Washington Law Against Discrimination (WLAD).

The WLAD is clarified to establish that the inclusion of sexual orientation among the bases for which discrimination is prohibited in employment matters shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

The WLAD is further clarified to establish that the inclusion of sexual orientation among the bases for which discrimination is prohibited shall not be construed to modify or supersede state law relating to marriage.

The WLAD is further clarified to establish that the inclusion of sexual orientation among the bases for which discrimination is prohibited shall not be construed to modify or supersede state law relating to marriage, and that the WLAD shall not be construed to endorse any specific belief, practice, behavior, or orientation.

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**Appropriation:** None.

**Fiscal Note:** Requested January 19, 2006.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (In support) This bill will ensure that our citizens who happen to be gay are treated fairly. The need for this legislation is supported by the statistics in the jurisdictions that collect them. In the City of Spokane, about 10 percent of the discrimination complaints filed are based on sexual orientation; in the City of Seattle, it averages about 5 percent. This bill is not about quotas or affirmative action. It does not affect small businesses. It does not affect religious organizations and it is not about marriage. It is about citizens of this state who work hard and pay their taxes, some of whom are serving in Iraq today. They ask simply to be treated fairly. Major businesses in this state support this legislation because they realize it

creates an atmosphere of tolerance and respect that attracts both new businesses and great employees. Recent polls show that 60 percent or more of the citizens of this state support equal treatment for gay and lesbian citizens in employment and housing. This bill also has bipartisan support. Christians disagree amongst themselves about this issue; as do Jews and Muslims. The goal is not to dictate one set of beliefs on all of our citizens, but to create an atmosphere of equality and fairness.

The experience in this state is that our Law Against Discrimination works fairly well. Employers like the Human Rights Commission (Commission) process because it is less litigious. About half of the complaints filed are dismissed. The language related to defining gender identity or expression was added at the request of Washington businesses in order to protect themselves.

This issue should not be put to the people by way of referendum because the rights of minorities should not be decided by majorities. If we do, we will have battles over race and religion. In 1964 and 1965, Congress made courageous decisions with regards to the Civil Rights Act and the Voting Rights Act. If those questions had been put to the people at that time, it is clear what the end result would have been.

As regards exempting insurance transactions from this bill when bona fide statistical differences can be linked to increased risk, if we start going down that road, we must take into consideration the risks for other groups of people. The lowest rate of sexually transmitted diseases is not in heterosexual men or homosexual men. The group with the lowest risk of sexually transmitted diseases are lesbian women. Do we give lesbians an insurance break because of their lowered risk? A recent Joint Committee on Health Disparities Report shows that minorities and women have greater risk of heart disease. Do we increase insurance rates for minorities and women because of their increased risk?

Lawyers have said that the laws in this state on employment and housing are not related to marriage. This bill will have no effect on the marriage laws of this state. This bill will have no effect on churches and their hiring practices or their church services. The current statute allows churches to discriminate against anyone. Churches may discriminate against black people, people with disabilities, older people, and homosexuals, should that be their approach to religion. They are exempt, and they always have been exempt.

Our work environment is just one place where people spend their day. This bill is broader. It also applies to credit, housing, and insurance, in order to allow people to fully participate in their communities. Most tenants simply want fairness in their housing, and want to know that what they are being considered for is their rent worthiness. There are a number of traits not relevant to rent worthiness, like race and sexual orientation.

It is time that we move on from this issue. The Christian church has a long and difficult relationship with sex. The church has sought through the ages to teach and nurture sexual expressions that are life-giving; and, in that process, it has sometimes been rigid, moralistic, and even misguided. Many traditional teachings have been harsh and have contributed to the marginalization of sexual minorities through the ages. Today, the church is torn regarding the

morality of same-sex marriage, but the United Methodist Church is not confused about civil rights for sexual minorities. People are not all the same and deserve to live in security without fear of violence. Certain basic civil rights and liberties are due all persons. Many ask why "they" get special protection. The answer is that, today, sexual minorities are treated differently than other citizens - they are not afforded basic rights; their relationships are not honored or afforded the same legal recognition; they bear the brunt of discrimination and are preyed upon. This discrimination does not always take the form of graphic physical violence. Sometimes the discrimination is exclusion from a hospital room, from health coverage, jobs and housing. Sexual minorities experience special exclusion, special suspicion, special condemnation, special discrimination, special persecution. They are specially targeted. This is a matter of simple justice.

In recently honoring Martin Luther King, Jr., we were reminded of the interrelatedness that we all have in our communities. Dr. King said, "Injustice anywhere is a threat to justice everywhere." This is a matter of dignity, tolerance, and respect. It is time. Our Constitution reminds us that we are all created equal.

There are children who discover they are gay but don't want to be gay, and they wonder why God made them this way. The parents of those children also struggle with this information. As parents, we are responsible for creating a safe and loving home, where children can learn self respect, self value, respect for others, and to hope for fulfillment of their dreams. Parents have dreams for their children, too. With such news, a family's world can be turned upside down, and parents must reshape their dreams. But a parent should never have to relinquish trust in a safe community, an affirming workplace, a welcoming neighborhood, or the very safety of a child's well being. For those who see sexual minorities as a threat, look again - see the constellation of parents, grandparents, brothers, sisters and friends who stand behind them. When you discriminate against sexual minorities, you also discriminate against their families. Parents know that their gay children are as much gifts from God as any child. This Legislature must act with courage and determination to be part of a new era of justice.

This bill supports the individual rights of every citizen of this state. This is not a "special law" for non-heterosexuals. The law currently applies to other groups like race, gender, religion, so there are many other groups that are granted this "special law." Only bigotry and political power struggle hold this bill back.

Persons with disabilities know what it is like to suffer from public perception. Sometimes legislation needs to bridge the gap between cultural perceptions and opportunity. This legislation is long overdue. It is not about some vision of morality, just equality. There have been no frivolous lawsuits in states where this already exists. Lives and careers wait for this fairness.

The Human Rights Commission sees this bill as a natural extension of civil and human rights. It would contribute to the economic vibrancy of our state, and the Commission does not see any problems with enforcing the law.

(Neutral) There are inconsistencies and ambiguities in the bill and in the Law Against Discrimination. There are three different types of behaviors being treated the same under the law, and they should not be treated the same. The definition of sexual orientation needs to be completely rewritten. The bill puts protection of employment with such organizations as the Boy Scouts of America at risk. There is a need to protect the sexual minority community, but the law needs to be rewritten

**Testimony Against:** This is not good law. The committee should consider what has happened around the world when the homosexual agenda has been advanced. The homosexual agenda is detrimental. The cost of defending against discrimination complaints, even when they are dismissed, is expensive. Some homosexuals are private about their sexuality and do not disclose it to their employers until after they are hired.

This law discriminates against people of faith. It is internally inconsistent. How can the state legally require a person of faith to go against his or her beliefs in contracting and in employment? If the Legislature does not believe in legislating morality, it should not legislate against morality. Sometimes bills are passed because it sounds good and because it makes the members look good, but sometimes bills have long term negative social implications, like this one. God created man in his image, male and female. One of God's rules is that a man shall not lie with another male. It is an abomination. People have turned away from God and they don't see his power in the creation. This proposed bill is intending to make what the unchangeable law of God calls dishonorable, degrading, indecent, harmful behavior, resulting in insanity, a civil right. This is ridiculous. Do not try to legalize what God has clearly prohibited.

There is an unnaturalness to this bill. It's trying to put a square, special agenda peg into a round hole. What about the consequences, to businessmen, to religious people? There are loopholes in the bill. There will be issues, including church issues. For the protection of the public welfare and health, this bill should not be passed. The public does not want to subsidize this unhealthy practice. The most healthy lifestyle is to remain a virgin until married, and then have a heterosexual, monogamous relationship until "death do you part."

Adding sexual orientation to the language that includes other groups like race, color, and creed has implications so far into the future, and is detrimental to society and life as we know it today. This bill would result in increasing the acceptance of this behavior as normal; it will increase confusion in the minds of children; it will increase problems with the family unit, which is one father and one mother; it will increase problems in the work place and in public life. The definition of gender expression or identity is also confusing and not well defined. Sexual orientation is not an immutable characteristic. Studies show that people have and do change. This bill will limit free speech rights of people of faith, and it is a stepping stone for advocating same-sex marriage. Courts would be hard-pressed not to claim current Defense of Marriage Act (DOMA) law is unconstitutional if this bill passes.

There is a sense of inevitability that permeates this room about this bill passing. Proponents suggest they occupy the moral high ground; ironically, this is a case of the majority (the powerful) imposing its morality on a minority. This is not like the Civil Rights Act because

this is behavior based. It covers those who have a passing interest in someone of the same sex. The gender expression or identity definition is a goldmine for plaintiffs lawyers. No high state or federal court has ever extended this type of protection to the homosexual community because they understand that this is not an immutable trait, as is race. Every federal circuit court has declined to rule that sexual orientation is a protected class. We are faced with the majority imposing their view of religion and morality on a minority.

Prior to the late 1960s, homosexuality was illegal and considered an illness. Psychologists decided to review their policy on homosexuals, and some decided that homosexuals can lead a normal life. Although the American Psychological Association (APA) decided to approve this lifestyle, this is not based on reality. The APA can't be trusted to set moral norms. The intensity of the gay rights movement has caused teenagers to prematurely question their sexual identity. Experimentation can lead to AIDS and other life changing venereal diseases. If homosexual activity brings pleasure, teenagers who experiment may conclude they are gay. Do we want to encourage this? There are respectable, congenial homosexuals who are indistinguishable from the rest of us, but there are others who dress and act in the most provocative way and then complain they are discriminated against. Arming them with the threat of a lawsuit only discourages them from confronting their real reasons for their failure. We all suffer when neglected children, the result of all this, become drug addicted and turn to criminal activity.

This bill is a solution in search of a problem. Several major employers have testified that they seek out homosexuals with talent, and several cities like Olympia say they haven't had problems either before or after their ordinance. This bill may create confusion. The application of gender expression or identity is confusing. Adding sexual orientation will lead to only one certainty: discrimination against individuals and institutions that disapprove of sex outside of marriage. The Boy Scouts of America and other charitable organizations have already suffered harassment, persecution, and damaging lawsuits in states where sexual orientation laws have been enacted. Efforts to pass this bill have been ongoing for nearly three decades with nothing more than hearsay evidence of discrimination in housing, employment, education, and public accommodations. That alone should give this committee cause to consider whether such legislation is necessary.

This bill creates concern for my children and future generations. We already have legislation that protects the rights of all sexes and creeds. Gays are already covered under current laws because they are either male or female; if a person thinks they are gay, that is a belief and should be covered under creed. Sexual orientation is a choice - there is no scientific basis that it is hereditary. This bill will cause confusion.

Despite a deep sympathy for people who are homosexual, this is not a hereditary characteristic. But, then, religion isn't either. Preachers are discriminated against. When laws are made that give people special privileges because of the way they think, it is not necessarily the right thing to do. There is a process called reprobation, and that process is the process of gradually changing right to wrong. This bill is a move in that direction. We are trying to make that which has been historically for all time a problem in society now acceptable - if you insist on this bill, you should amend it to put it to the people for a vote.

Have you so soon forgotten Spokane and the vote of the people? It has been reported that thousands of voters may move into the democratic column because of this - don't count on it. Some sponsors of this bill are admitted homosexuals, which is a great conflict of interest. If democrats continue to support this issue, they may win the battle but they will lose the war. Minorities will switch parties over this issue. I know ex-gays, but I don't know any ex-blacks or ex-Mexicans - don't confuse the two issues.

This is more than an issue of fundamental fairness, it is a matter of morality. This bill will undermine freedom of speech, and will drain precious human and financial resources to support enforcement of this law. This bill will impose a tyranny by the minority homosexuals over the majority. Sodomy was a criminal offense in common law. This bill generalizes an aberrant behavior as a norm. It will foster ambiguity, which will be exploited. There will be sanctions against people who can be perceived as denying someone a right. A person will be considered guilty until proven innocent, and it is difficult to prove a negative.

Many lawmakers have made the decision to deal with homosexuals as if God does not exist. There are deadly consequences associated with homosexuality. Lawmakers in Washington can't differentiate between true discrimination and discernment. Discrimination laws are just and rightful, and were established to protect God-given characteristics such as race, which is inborn, immutable, and innocuous. There is substantial clinical evidence that shows that homosexuality is none of the above. Hundreds of thousands of former homosexuals validate that. Equality is important, but that doesn't mean a special class based solely on avoidable and changeable behavior should be created. Loving one's neighbor is important, but that means not condoning and granting special rights and gala recognitions for detrimental personal and social behavior. Homosexuals are the only class of people who enjoy designer laws based solely on behavior. No one but homosexuals enjoy those laws. Why are we elevating and creating a special class for behavior? It's hard to believe that a person would be charged with a crime now for wanting to distant himself, his family, his business, from behavior that he deems is harmful and risky. Lawmakers are saying that homosexuality is so valuable, so important to society, that it is worthy of special recognitions that nobody else gets or is granted.

The United Methodist Church does not speak for the vast majority of Christians in this community or the state. The scriptures are God's word. How about kindness and respect for what God has said? Are people bigots for reading the scriptures? Sexual immorality has not benefitted my Christian community, neighborhood, state, or country. There is also reverse discrimination. The Christian community is afraid. We still need to love people because God loves us.

The foundations of this nation are based on the principles of God's words. This bill takes another hit at this foundation with a wrecking ball. God has been taken out of our schools, out of our government, out of our lives. This aberrant lifestyle is trying to be pushed on us as a norm. Where do we get our plumb line for moral values? The twin towers and Katrina are the Lord's judgment; if we walk away from God's plumb line, he is going to call judgment on us. Our children are growing up in a time of great moral confusion, and this bill does not help.

God discriminates against sexual immorality and calls homosexuality an abomination. Don't give sexual minorities false hope. Jesus is the answer.

The bill establishes that homosexuality is a healthy lifestyle. The single greatest victory of the gay platform is that they shifted focus from behavior to identity, making opponents look like they are attacking civil rights. Legislators are voted into office to be proactive, not just reactive. Legislators should follow the wisdom of the officials over the last 30 years who have rejected making sexual minorities a special class.

**Persons Testifying:** (In support) Representative Murray, prime sponsor; Mark Rupp, Office of the Governor; Reverend Elaine Stanovsky, United Methodist Church; James Kelley, Urban League; Dan Coyne, Hewlett Packard; Marilyn Cass, Catholic Parents; Bill McQuaid; Pat Tassoni, Tenants Union; Larry Watkinson; Marc Brenman, Washington State Human Rights Commission; and Marsha Botzer, National Gay and Lesbian Task Force.

(Neutral) Paul J. Shlichta, Olympic Research Institute.

(Opposed) Robert M. Higley, Faith and Freedom Network; Rose Gundersen; Judy Kerttula; Kevin Lea; Rolf Amundson; Steve O'Ban, Ellis, Li & McKinstry; Mary Ingalls; Rick Forcier, Christian Coalition of Washington; Christine Gilge; Louis F. Finney; Judith Finney; Carol Cassady; Albert Pong; Vince Wagner, Defender of the Faith Ministries; Scott Manley, Westwood Baptist Church; Michael Latimer; Alex W. Mattila; Sandy Bolt; Randy Leskovar, Allies for Children; and Ray Garza.

**Persons Signed In To Testify But Not Testifying:** None.