

SENATE BILL REPORT

SB 6433

As of February 4, 2014

Title: An act relating to prohibiting discrimination by an individual or entity on the basis of creed.

Brief Description: Prohibiting discrimination by an individual or entity on the basis of creed.

Sponsors: Senators Padden, Kline and Darneille.

Brief History:

Committee Activity: Law & Justice: 1/31/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: The Washington State Law Against Discrimination (WLAD) prohibits discrimination on the basis of certain categories, including race, color, creed, national origin, marital status, sexual orientation, sex, age, military status, and physical disabilities. WLAD creates a civil right to be free from discrimination in areas of employment, public accommodations, real estate transactions, and credit and insurance transactions, and for commerce free of discriminatory boycotts. Established in 1949, the Washington State Human Rights Commission (HRC) may investigate complaints of discrimination or unfair practices. HRC provides an extra judicial process to resolve disputes through conciliation or compromise. Appropriate remedies in the conciliation process may include back pay, reinstatement, rent refunds, or training to eliminate the unfair practice. A complainant may also pursue private litigation in a court of law.

In the court case of *Short v. Battle Ground School District*, an employee ordered by the superintendent to lie refused, stating it would violate her religious beliefs. The employee eventually resigned and sued the District for religious discrimination and failure to reasonably accommodate her religious beliefs under WLAD. The Court of Appeals held that unlike federal law, the state Supreme Court, state Legislature, and HRC have not formally recognized a religious discrimination claim under WLAD. The court noted that neither the state Legislature nor HRC defined the term "creed" in WLAD or by agency regulation. In the absence of legislative intent or agency action, the Court of Appeals refused to implicitly recognize a religious discrimination claim under WLAD.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Under WLAD, creed has the same meaning as provided in Article I, section 11 of the state Constitution for religious freedom. Discrimination against employees on the basis of creed is prohibited, including not making reasonable accommodations for the known creed or religious practice of an individual. An accommodation is not required if it would impose an undue hardship. An undue hardship may be shown if an accommodation would impose more than de minimis costs.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Prior to the *Short* court opinion many believed that the law protected employees from religious discrimination. A different case for religious discrimination in the workplace is now pending before the Washington Supreme Court. This bill is necessary and the Legislature should not wait for the Washington Supreme Court. The Legislature should determine the required level of accommodation. Passing this bill will not create a flood of lawsuits since most everyone thought that religious discrimination was prohibited anyway.

CON: If this bill goes forward it should include a de minimis standard and not a significant burden standard. The definition of creed references Article I, section 11 of the state Constitution and that may be problematic since the case law interpreting the Constitution is not limited to the employment context.

OTHER: The substitute is appreciated. The Human Rights Commission stopped investigating religious discrimination after the *Short* court opinion. We used to investigate about two to three religious employment discrimination complaints per month but now refer those complaints to the Equal Employment Opportunity Commission. Protecting from religious discrimination is a reasonable right. The language of the substitute is reasonable but the phrase "individual or entity" should be "employer." A reasonable accommodation should be required unless the employer shows the accommodation would impose a de minimis cost or burden.

Persons Testifying: PRO: Larry Shannon, WA Assn. for Justice

CON: Patrick Connor, National Federation of Independent Business; Shankar Narayan, American Civil Liberties Union of WA.

OTHER: Laura Lindstrand, Human Rights Commission; Jesse Wing, WA Employment Lawyers Assn.