

# HOUSE BILL REPORT

## EHB 2097

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### As Amended by the Senate

**Title:** An act relating to limiting disclosure of information about the religious affiliation of individuals.

**Brief Description:** Limiting disclosure of information about the religious affiliation of individuals.

**Sponsors:** Representatives Stanford, Fitzgibbon, Ortiz-Self, Senn, Pettigrew, Jenkins, Kagi, Lytton, Ormsby, Peterson, Pollet, Ryu, Farrell, Santos, Appleton and Macri.

**Brief History:**

**Committee Activity:**

Judiciary: 2/14/17, 2/16/17 [DP].

**Floor Activity:**

Passed House: 2/28/17, 98-0.

**Floor Activity:**

Passed House: 1/11/18, 98-0.

Senate Amended.

Passed Senate: 2/27/18, 48-0.

### Brief Summary of Engrossed Bill

- Limits the authority of government agencies to take a variety of actions with respect to certain information about religious affiliation.
- Exempts public records that contain personally identifying information about an individual's religious beliefs, practices, or affiliation from disclosure under the Public Records Act.
- Makes it an unfair practice for an employer to require the disclosure of certain information about religious affiliation and beliefs.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 13 members: Representatives Jenkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

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*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.*

**Staff:** Cece Clynch (786-7195).

**Background:**

Washington Law Against Discrimination.

The Washington Law Against Discrimination (WLAD) establishes that it is a civil right to be free from discrimination based on: race; creed; color; national origin; sex; honorably discharged veteran or military status; sexual orientation; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a disability. This right applies to: employment; places of public resort, accommodation, or amusement; real estate, credit, and insurance transactions; and more.

The WLAD defines certain practices as being unfair. For example, it is an unfair practice to fire or to refuse to hire a person based on his or her membership in a protected class.

There are some exceptions to the WLAD. For example, employers with fewer than eight employees and nonprofit religious or sectarian organizations are exempt from these laws.

*Washington State Human Rights Commission.* The Washington State Human Rights Commission (WSHRC) has a role in enforcing the WLAD. The WSHRC receives and investigates complaints made by persons alleging unfair practices in violation of the 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.

*Civil Lawsuits under the Washington Law Against Discrimination.* Any person who alleges that he or she has been injured by any unfair practice or act in violation of the WLAD may bring a civil lawsuit to enjoin further violations, recover actual damages, and recover reasonable attorneys' fees.

Public Records Act.

The Public Records Act requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally, and the exemptions narrowly, in order to effectuate a general policy favoring disclosure.

"Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

**Summary of Engrossed Bill:**

Washington Law Against Discrimination.

A new section is added to the Washington Law Against Discrimination making it an unfair practice for an employer to:

- require that an employee disclose his or her sincerely held religious affiliation or beliefs, unless the disclosure is for the purpose of providing a religious accommodation at the request of the employee; or
- require or authorize an employee to disclose information about the religious affiliation of another employee, unless the individual whose religious affiliation will be disclosed: (1) expressly consents to the disclosure; and (2) has knowledge of the purpose for the disclosure.

New Chapter in Title 42 RCW.

A new chapter is created limiting the ability of state or local government agencies, public employees, and law enforcement agencies to take certain actions with respect to personally identifiable information about an individual's religious beliefs, practices, or affiliation.

A state or local government agency or employee shall not:

- provide or disclose to federal government authorities personally identifiable information regarding the religious affiliation of any individual, except where an employee is a witness to a crime;
- use public funds, property, or personnel to assist in the creation, implementation, or enforcement of any government program compiling a list, registry, or database of personally identifiable information about individuals based on religious affiliation, for law enforcement or immigration purposes; or
- make personally identifiable information from agency databases available, including any databases maintained by private vendors contracting with the agency, to anyone or any entity for the purpose of investigation or enforcement under any government program compiling a list, registry, or database of individuals based on religious affiliation, national origin, or ethnicity for law enforcement or immigration purposes.

State and local law enforcement agencies shall not:

- collect information on the religious affiliation of any individual except: (1) as part of a targeted investigation of an individual based on reasonable suspicion that the individual has engaged in criminal activity, and when there is a clear nexus between the criminal activity and the specific information collected about religious affiliation; or (2) where necessary to provide religious accommodations; or
- use public funds, property, or personnel to investigate, enforce, or assist in the investigation or enforcement of any criminal, civil, or administrative violation, or warrant for a violation, of any requirement that individuals register with the federal government or any federal agency based on religion.

Any agreements in existence on the effective date of this section that make any state or local government agency information or database available in conflict with the terms of this chapter are terminated on that date to the extent of the conflict.

Public Records Act.

A new exemption is created in the Public Records Act for all records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment retains the entirety of the engrossed House bill, but revises the exception to the prohibition on law enforcement agencies' collection of information on the religious beliefs, practices, or affiliation of any individual to allow collection as part of a criminal (rather than targeted) investigation of an individual based on reasonable suspicion that the individual has engaged in criminal activity, and when there is a nexus (rather than clear nexus) between the criminal activity and the specific information collected.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) Many persons and religious organizations are concerned and have fears, fears that are way too prevalent now in religious communities, regarding their place and their security in this state and country in which they reside. This bill increases the protections and privacy regarding religious affiliation—a long treasured constitutional right and protection—particularly in terms of how our state agencies and employers collect, use, or release this information upon request.

(Opposed) None.

**Persons Testifying:** Paul Benz, Faith Action Network.

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