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HOUSE BILL 1725

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State of Washington

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By Representatives Prentice, Winsley, Heavey, Basich, Jones, R. King, Cole, Ogden, Hargrove, Fraser, Day, Cantwell, Braddock, Sprenkle, Dellwo, Wineberry, Spanel and Roland.

Read first time February 7, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to human reproductive rights regarding hazardous  
2 substances in the workplace; amending RCW 49.70.010, 49.70.130,  
3 49.17.240, and 49.60.030; adding a new section to chapter 18.73 RCW;  
4 adding a new section to chapter 49.44 RCW; and adding a new section to  
5 chapter 49.70 RCW.

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

7 **Sec. 1.** RCW 49.70.010 and 1984 c 289 s 2 are each amended to read  
8 as follows:

9 The legislature finds and declares that the proliferation of  
10 hazardous substances in the environment poses a growing threat to the  
11 public health, safety, and welfare; that the constantly increasing  
12 number and variety of hazardous substances, and the many routes of  
13 exposure to them make it difficult and expensive to monitor adequately  
14 and detect any adverse health effects attributable thereto; that  
15 individuals themselves are often able to detect and thus minimize

1 effects of exposure to hazardous substances if they are aware of the  
2 identity of the substances and the early symptoms of unsafe exposure;  
3 and that individuals have an inherent right to know the full range of  
4 the risks they face so that they can make reasoned decisions and take  
5 informed action concerning their employment and their living  
6 conditions.

7 The legislature further declares that the workplace environment may  
8 expose individuals to substances that may cause birth defects or  
9 constitute a hazard to an employee's reproductive system or to a fetus,  
10 and that employers should disclose information on workplace exposure to  
11 substances, chemical or physical, that may cause a birth defect or harm  
12 an individual's reproductive capacity. The legislature further  
13 declares that women are being subjected to discrimination in employment  
14 because of the increasingly widespread use in the workplace of  
15 materials that are feared to be potentially harmful to pregnant women  
16 and their unborn children, and in some cases women choose sterilization  
17 to avoid this discrimination. The legislature finds that the lack of  
18 public and professional education and of an organized and consistent  
19 approach to assessing pregnancy risks and providing information  
20 regarding pregnancy risks has led to heightened anxiety, improper  
21 decisions concerning continued exposure, and sometimes unnecessary  
22 pregnancy termination, pregnancy loss, premature birth, or birth  
23 defects.

24 The legislature further declares that local health, fire, police,  
25 safety, and other government officials require detailed information  
26 about the identity, characteristics, and quantities of hazardous  
27 substances used and stored in communities within their jurisdictions,  
28 in order to plan adequately for, and respond to, emergencies, enforce  
29 compliance with applicable laws and regulations concerning these  
30 substances, and to compile records of exposures to hazardous substances

1 over a period of time that will facilitate the diagnosis, treatment,  
2 and prevention of disease.

3 The legislature further declares that the extent of the toxic  
4 contamination of the air, water, and land in this state has caused a  
5 high degree of concern among its residents and that much of this  
6 concern is needlessly aggravated by the unfamiliarity of these  
7 substances to residents.

8 The legislature therefore determines that while these substances  
9 have contributed to the high quality of life we enjoy in our state, it  
10 is in the public interest to establish a comprehensive program for the  
11 disclosure of information about hazardous substances in the workplace  
12 and the community, and to provide a procedure whereby residents of this  
13 state may gain access to this information.

14 **Sec. 2.** RCW 49.70.130 and 1984 c 289 s 18 are each amended to read  
15 as follows:

16 (1) The council shall:

17 (a) Advise the department on the revision of the workplace  
18 hazardous substance lists;

19 (b) Advise the department on the revision of state exposure  
20 standards to include gases, vapors, dust, or other airborne particles,  
21 toxic materials, or harmful physical agents, that the department finds  
22 may cause birth defects or constitute a hazard to an employee's  
23 reproductive system or to a fetus when the employee is exposed to any  
24 such substance in the workplace. The council shall strive to ensure  
25 under the standards that employees will not suffer impairment of  
26 reproductive functional capacity, fetuses will not suffer from birth  
27 defects, and nursing mothers will not be exposed to toxins that can  
28 contaminate breast milk;

1        (c) Study the impact of this chapter on employers and make  
2 recommendations to the legislature. Special emphasis shall be given to  
3 the study of the impacts on agricultural and small business employers;

4        ~~((e))~~ (d) Prepare an updated fiscal note of the costs of this  
5 chapter to the department and to local governments, school districts,  
6 institutions of higher education and hospitals;

7        ~~((d))~~ (e) Report to the legislature its findings under ~~((b)~~  
8 ~~and))~~ (c) and (d) of this ~~((section))~~ subsection by January 1, 1985;

9        ~~((e))~~ (f) Advise the department on the implementation of this  
10 chapter; and

11        ~~((f))~~ (g) Review any matters submitted to it by the department.

12        (2) The council may:

13        (a) Review any aspect of the implementation of this chapter, and  
14 transmit its recommendations to the department; and

15        (b) Hold public meetings or hearings within the state on any matter  
16 or matters related to this chapter.

17        NEW SECTION. Sec. 3. A new section is added to chapter 49.70 RCW  
18 to read as follows:

19        Upon offering employment to a prospective employee, each employer  
20 shall inform the prospective employee of any chemicals, toxic  
21 substances, radioactive materials, or other substances, that the  
22 employer should have reasonable cause to believe will cause birth  
23 defects or constitute a hazard to an individual's reproductive system  
24 or to a fetus when the individual is exposed in the workplace to any  
25 such substance in the course of the job assignment. This information  
26 shall be made available to current employees who are exposed to such  
27 hazards.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 49.44 RCW  
2 to read as follows:

3        (1) No employer, including the state or any political subdivision  
4 thereof, may condition the employment, transfer, or promotion of any  
5 individual on the sterilization of that individual, nor shall  
6 reproductive status be a criterion of employment. Employers are  
7 prohibited from firing employees who are exposed to reproductive  
8 hazards and who will not submit to compulsory sterilization.

9        (2) No employer, employment agency, or agent of either may request  
10 or require information from an employee or person seeking employment  
11 relating to the individual's child-bearing age or plans, pregnancy, or  
12 function of the individual's reproductive system, unless such  
13 information is directly related to a bona fide occupational  
14 qualification or need, but an employer, through a physician, may  
15 request from an employee any such information that is directly related  
16 to workplace exposure to substances that may cause birth defects or  
17 constitute a hazard to an individual's reproductive system or to a  
18 fetus if the employer first informs the employee of the hazards  
19 involved in exposure to such substances.

20        **Sec. 5.**    RCW 49.17.240 and 1973 c 80 s 24 are each amended to read  
21 as follows:

22        (1) The director in the promulgation of rules under the authority  
23 of this chapter shall establish safety and health standards for  
24 conditions of employment of general and/or specific applicability for  
25 all industries, businesses, occupations, crafts, trades, and  
26 employments subject to the provisions of this chapter, or those that  
27 are a national or accepted federal standard. In adopting safety and  
28 health standards for conditions of employment, the director shall

1 solicit and give due regard to all recommendations by any employer,  
2 employee, or labor representative of employees.

3 (2) Any safety and health standard adopted by rule of the director  
4 shall, where appropriate, prescribe the use of labels or other forms of  
5 warning to insure that employees are apprised of all hazards to which  
6 they may be exposed, relevant symptoms, and appropriate emergency  
7 treatment, and proper conditions and precautions of safe use or  
8 exposure. Where appropriate, such rules shall so prescribe suitable  
9 protective equipment and control or technological procedures to be used  
10 in connection with such hazards and shall provide for monitoring or  
11 measuring employee exposure at such locations and intervals, and in  
12 such manner as may be reasonably necessary for the protection of  
13 employees. In addition, where appropriate, any such rule shall  
14 prescribe the type and frequency of medical examinations or other tests  
15 which shall be made available, by the employer or at his cost, to  
16 employees exposed to such hazards in order to most effectively  
17 determine whether the health of such employees is adversely affected by  
18 such exposure. In the event that such medical examinations are in the  
19 nature of research, as determined by the director, such examinations  
20 may be furnished at the expense of the department. The results of such  
21 examinations or tests shall be furnished only to the director, other  
22 appropriate agencies of government, and at the request of the employee  
23 to his physician.

24 (3) Whenever the director adopts by rule any safety and health  
25 standard he may at the same time provide by rule the effective date of  
26 such standard which shall not be less than thirty days, excepting  
27 emergency rules, but may be made effective at such time in excess of  
28 thirty days from the date of adoption as specified in any rule adopting  
29 a safety and health standard. Any rule not made effective thirty days  
30 after adoption, having a delayed effectiveness in excess of thirty

1 days, may only be made upon a finding made by the director that such  
2 delayed effectiveness of the rule is reasonably necessary to afford the  
3 affected employers a reasonable opportunity to make changes in methods,  
4 means, or practices to meet the requirements of the adopted rule.  
5 Temporary orders granting a variance may be utilized by the director in  
6 lieu of the delayed effectiveness in the adoption of any rule.

7 (4) The director shall adopt rules setting standards for the  
8 provision of temporary job modification for employees of either sex who  
9 are contemplating parenting and who may otherwise be exposed in the  
10 workplace to substances hazardous to the reproductive function of such  
11 employees, including job modification for nursing mothers so they are  
12 protected against toxins that can contaminate breast milk.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.73 RCW  
14 to read as follows:

15 The department shall establish, through the four state poison  
16 control network centers, a telephone information service to provide  
17 information on requests concerning potential effects on a fetus  
18 resulting from exposure during pregnancy to drugs, chemicals,  
19 infections, and environmental hazards.

20 **Sec. 7.** RCW 49.60.030 and 1984 c 32 s 2 are each amended to read  
21 as follows:

22 (1) The right to be free from discrimination because of race,  
23 creed, color, national origin, sex, reproductive status, or the  
24 presence of any sensory, mental, or physical handicap is recognized as  
25 and declared to be a civil right. This right shall include, but not be  
26 limited to:

27 (a) The right to obtain and hold employment without discrimination;

1 (b) The right to the full enjoyment of any of the accommodations,  
2 advantages, facilities, or privileges of any place of public resort,  
3 accommodation, assemblage, or amusement;

4 (c) The right to engage in real estate transactions without  
5 discrimination;

6 (d) The right to engage in credit transactions without  
7 discrimination;

8 (e) The right to engage in insurance transactions or transactions  
9 with health maintenance organizations without discrimination:  
10 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,  
11 48.44.220, or 48.46.370 does not constitute an unfair practice for the  
12 purposes of this subparagraph; and

13 (f) The right to engage in commerce free from any discriminatory  
14 boycotts or blacklists. Discriminatory boycotts or blacklists for  
15 purposes of this section shall be defined as the formation or execution  
16 of any express or implied agreement, understanding, policy or  
17 contractual arrangement for economic benefit between any persons which  
18 is not specifically authorized by the laws of the United States and  
19 which is required or imposed, either directly or indirectly, overtly or  
20 covertly, by a foreign government or foreign person in order to  
21 restrict, condition, prohibit, or interfere with or in order to exclude  
22 any person or persons from any business relationship on the basis of  
23 race, color, creed, religion, sex, national origin or lawful business  
24 relationship: PROVIDED HOWEVER, That nothing herein contained shall  
25 prohibit the use of boycotts as authorized by law pertaining to labor  
26 disputes and unfair labor practices.

27 (2) Any person deeming himself injured by any act in violation of  
28 this chapter shall have a civil action in a court of competent  
29 jurisdiction to enjoin further violations, to recover the actual  
30 damages sustained by him, or both, together with the cost of suit

1 including a reasonable attorney's fees or any other remedy authorized  
2 by this chapter or the United States Civil Rights Act of 1964; and

3 (3) Notwithstanding any other provisions of this chapter, any act  
4 prohibited by this chapter related to sex discrimination or  
5 discriminatory boycotts or blacklists which is committed in the course  
6 of trade or commerce in the state of Washington as defined in the  
7 Consumer Protection Act, chapter 19.86 RCW, shall be deemed an unfair  
8 practice within the meaning of RCW 19.86.020 and 19.86.030 and subject  
9 to all the provisions of chapter 19.86 RCW as now or hereafter amended.