

HOUSE BILL REPORT

SSB 5110

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to adding penalties for certain prohibited practices in chapter 49.44 RCW.

Brief Description: Adding penalties for certain prohibited practices in chapter 49.44 RCW.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser and Kuderer).

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/15/23, 3/24/23 [DPA].

Brief Summary of Substitute Bill
(As Amended By Committee)

- Establishes a cause of action for enforcing any provision in chapter 49.44 of the Revised Code of Washington that is without a specified criminal or civil penalty, civil remedy, or other enforcement.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

Staff: Kelly Leonard (786-7147).

Background:

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

Chapter 49.44 of the Revised Code of Washington (RCW) prohibits several types of practices in labor relations and employment relationships. Most of these prohibitions include specific criminal or civil remedies. For example, engaging in blacklisting, bribery, or fraud would subject a violator to criminal prosecution, whereas requiring lie detector tests or intentionally misclassifying employees to avoid providing benefits would subject violators to a civil lawsuit for damages. Some provisions prohibiting certain terms in employment contracts, like a waiver of certain rights or unfair noncompete agreements, make those terms void and unenforceable.

Certain prohibited acts or practices in chapter 49.44 RCW do not contain express criminal or civil penalties or a cause of action. This includes:

- engaging in certain discriminatory practices against persons 40 years of age or older;
- requiring genetic screening as a condition of employment; and
- obtaining individually identifiable information regarding an employee's participation in an employee assistance program.

Courts have recognized that certain statutes contain implied causes of action in the absence of other remedies. In the case of discriminatory practices against persons 40 years of age or older, Washington courts interpret the statute to have an implied cause of action, and have held that it must be applied in conjunction with other laws against discrimination.

The Washington Criminal Code provides that, if an act is prohibited by a statute and the statute does not specify a penalty, the committing of such act is a misdemeanor. Misdemeanors are punishable by imprisonment for a maximum term up to 90 days, or by a fine up to \$1,000, or by both.

Summary of Amended Bill:

An employee, applicant, or prospective applicant may bring a civil action for any violation of a provision in chapter 49.44 RCW where a criminal or civil penalty, civil remedy, or other enforcement is not specified.

In a civil action brought under the bill, a court may award any prevailing employee, applicant, or prospective applicant injunctive or other equitable relief, actual damages, and a penalty of no less than \$500 and no more than \$1,000. The court must award any prevailing employee, applicant, or prospective applicant reasonable attorneys' fees and costs.

Amended Bill Compared to Substitute Bill:

The amended bill provides that the cause of action applies to any violation of a provision in chapter 49.44 RCW without a specific criminal or civil penalty, civil remedy, or other enforcement, rather than without any specific criminal or civil remedy.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Chapter 49.44 addresses a variety of prohibited practices in labor and employment law. Many of these prohibited practices have no penalty or remedy. For example, the restrictions against genetic screening and unauthorized disclosure of employee assistance program-related information are lacking any penalties for violations. It does not make sense to have a law without any enforcement. Employees should be able to enforce their rights under the law. This is a housekeeping bill, and it will make these laws more consistent and logical.

(Opposed) The bill would apply a private cause of action to an entire chapter in the code, effectively outsourcing discussions on enforcement mechanisms for future bills. This is not the right approach. Instead, the Legislature should examine the current chapter and consider whether to add enforcement mechanisms in each instance. The Legislature could add penalties to the two provisions lacking any enforcement. Taking a catchall approach is inappropriate. Further, the bill only allows prevailing employees and applicants to receive attorneys' fees. This means that employers will always lose even when they win. Any prevailing party should be able to request attorneys' fees.

Persons Testifying: (In support) Senator Karen Keiser, prime sponsor; Andrea Schmitt, Columbia Legal Services; and Joe Kendo, Washington State Labor Council American Federation of Labor and Congress of Industrial Organization.

(Opposed) James King, Independent Business Association; Bob Battles, Association of Washington Business; Kris Tefft, Washington Liability Reform Coalition; and Sophia Steele, Associated Builders and Contractors.

Persons Signed In To Testify But Not Testifying: None.