

HOUSE BILL REPORT

HB 2264

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to lowering the legal limits of the size of an employer for violations of the freedom from discrimination statute.

Brief Description: Lowering employer size for employer discrimination statute.

Sponsor(s): Representatives Inslee, Wineberry, Prentice, Locke, Cantwell, Winsley, Franklin, Rust, G. Cole, Belcher, Leonard, Ogden, Dellwo, Appelwick, Morris and Anderson.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 4, 1992, DP.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass.* Signed by 10 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

Minority Report: *Do not pass.* Signed by 1 member: Representative Fuhrman, Ranking Minority Member.

Staff: Jim Kelley (786-7166) and Andrea McNamara (786-5793).

Background: The Washington State Human Rights Commission was established in 1971 and given general jurisdiction and power to eliminate and prevent discrimination in employment and other settings. The freedom from discrimination statute additionally grants a civil cause of action to any person deeming himself or herself injured due to discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

The freedom from discrimination statute includes the rights to obtain and hold employment, to the full enjoyment of public premises, and to engage in real estate, credit, insurance and commercial transactions free from discrimination. Unfair practices in the employment setting

include using any of the impermissible considerations in making employment decisions such as refusing to hire, discharging, compensating or conditioning employment, or advertising any employment position with a discriminatory limitation or specification.

An "employer" is defined as any person who employs eight or more persons, and the definition of "employee" excludes the parent, spouse, or child of an employer. Employers with fewer than eight employees are exempt from the jurisdiction of the Human Rights Commission. In a recent lawsuit, a court interpreting these provisions applied this small business exemption to a private cause of action as well. The court declined to allow a person working for an employer with less than eight employees to pursue a civil suit for violation of the freedom from discrimination statute and also declined to count the employer's family members when calculating the number of employees for purposes of such civil actions.

Summary of Bill: The freedom from discrimination statute applies to employers who employ one or more persons.

Fiscal Note: Available.

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

Testimony For: Sexual harassment is a widespread problem affecting employers of all sizes. A national poll indicates that 53 percent of women have been harassed or know someone who has. It is also a serious problem that results in psychological harm to the victim, decreased productivity in the workplace, and costly worker turnover. Under current law though, employees who suffer sexual harassment in workplaces with fewer than eight employees find their lawsuits being dismissed by the Washington courts. People with disabilities have a number of obstacles to overcome, and job discrimination is a significant one. Disabled citizens need a fair chance to work wherever they are able to. There is a need to cover all employers and to protect all workers from sexual harassment and other forms of job discrimination.

Testimony Against: Employers support strong enforcement of the existing statute. More guidance from the Legislature is needed to define employers' responsibilities for avoiding discrimination, especially with regard to the requirement of "reasonable accommodations" for persons with physical/sensory handicaps. Policies required to avoid charges of discrimination are cumbersome. Administrative solutions, such as the Human Rights Commission, ought to be

encouraged as a first step rather than civil law suits. Disgruntled employees may use the statute frivolously, resulting in unwarranted costs being borne by businesses in defense. All incentives currently force employers to settle even frivolous law suits because the cost of defending the suit is prohibitive.

Witnesses: Representative Jay Inslee, Prime Sponsor; Norleen Kaponen, National Organization of Women (in favor); Deborah Senn, Northwest Women's Law Center (in favor); Kathy Friedt, Human Rights Commission; Janice Skinner, citizen (in favor); Jerry Sheehan, American Civil Liberties Union (in favor); Clif Finch, Association of Washington Business; and Gary Smith, Independent Business Association (opposed).