
HOUSE BILL 1255

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By Representatives Appelwick, Padden, Inslee, Locke, Riley, Miller, Forner, Heavey, Paris, Wang, R. Meyers, Jacobsen, Phillips, Orr, G. Fisher and Belcher; by request of Human Rights Commission.

Read first time January 23, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to discrimination; amending RCW 49.60.030,
2 49.60.120, 49.60.205, 49.60.223, 49.60.224, 49.60.230, 49.60.240,
3 49.60.250, 49.44.090, and 70.124.060; and reenacting and amending RCW
4 49.60.040 and 49.60.215.

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

6 **Sec. 1.** RCW 49.60.030 and 1984 c 32 s 2 are each amended to read
7 as follows:

8 (1) The right to be free from discrimination because of race,
9 creed, color, national origin, sex, or the presence of any sensory,
10 mental, or physical handicap is recognized as and declared to be a
11 civil right. This right shall include, but not be limited to:

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

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

1 (c) The right to engage in real estate transactions without
2 discrimination;

3 (d) The right to engage in credit transactions without
4 discrimination;

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

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

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

1 remedy authorized by this chapter or the United States Civil Rights Act
2 of 1964 as amended; and

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

11 **Sec. 2.** RCW 49.60.040 and 1985 c 203 s 2 and 1985 c 185 s 2 are
12 each reenacted and amended to read as follows:

13 As used in this chapter:

14 "Person" includes one or more individuals, partnerships,
15 associations, organizations, corporations, cooperatives, legal
16 representatives, trustees and receivers, or any group of persons; it
17 includes any owner, lessee, proprietor, manager, agent, or employee,
18 whether one or more natural persons; and further includes any political
19 or civil subdivisions of the state and any agency or instrumentality of
20 the state or of any political or civil subdivision thereof;

21 "Commission" means the Washington state human rights commission;

22 "Employer" includes any person acting in the interest of an
23 employer, directly or indirectly, who employs eight or more persons,
24 and does not include any religious or sectarian organization not
25 organized for private profit;

26 "Employee" does not include any individual employed by his or her
27 parents, spouse, or child, or in the domestic service of any person;

28 "Labor organization" includes any organization which exists for the
29 purpose, in whole or in part, of dealing with employers concerning

1 grievances or terms or conditions of employment, or for other mutual
2 aid or protection in connection with employment;

3 "Employment agency" includes any person undertaking with or without
4 compensation to recruit, procure, refer, or place employees for an
5 employer;

6 "Marital status" means the legal status of being married, single,
7 separated, divorced, or widowed;

8 "National origin" includes "ancestry";

9 "Full enjoyment of" includes the right to purchase any service,
10 commodity, or article of personal property offered or sold on, or by,
11 any establishment to the public, and the admission of any person to
12 accommodations, advantages, facilities, or privileges of any place of
13 public resort, accommodation, assemblage, or amusement, without acts
14 directly or indirectly causing persons of any particular race, creed,
15 color, sex, national origin, or with any sensory, mental, or physical
16 handicap, or the use of a trained dog guide by a blind ((or)), deaf, or
17 physically disabled person ((using a trained dog guide)), to be treated
18 as not welcome, accepted, desired, or solicited;

19 "Any place of public resort, accommodation, assemblage, or
20 amusement" includes, but is not limited to, any place, licensed or
21 unlicensed, kept for gain, hire, or reward, or where charges are made
22 for admission, service, occupancy, or use of any property or
23 facilities, whether conducted for the entertainment, housing, or
24 lodging of transient guests, or for the benefit, use, or accommodation
25 of those seeking health, recreation, or rest, or for the burial or
26 other disposition of human remains, or for the sale of goods,
27 merchandise, services, or personal property, or for the rendering of
28 personal services, or for public conveyance or transportation on land,
29 water, or in the air, including the stations and terminals thereof and
30 the garaging of vehicles, or where food or beverages of any kind are

1 sold for consumption on the premises, or where public amusement,
2 entertainment, sports, or recreation of any kind is offered with or
3 without charge, or where medical service or care is made available, or
4 where the public gathers, congregates, or assembles for amusement,
5 recreation, or public purposes, or public halls, public elevators, and
6 public washrooms of buildings and structures occupied by two or more
7 tenants, or by the owner and one or more tenants, or any public library
8 or educational institution, or schools of special instruction, or
9 nursery schools, or day care centers or children's camps: PROVIDED,
10 That nothing contained in this definition shall be construed to include
11 or apply to any institute, bona fide club, or place of accommodation,
12 which is by its nature distinctly private, including fraternal
13 organizations, though where public use is permitted that use shall be
14 covered by this chapter; nor shall anything contained in this
15 definition apply to any educational facility, columbarium, crematory,
16 mausoleum, or cemetery operated or maintained by a bona fide religious
17 or sectarian institution;

18 "Real property" includes buildings, structures, real estate, lands,
19 tenements, leaseholds, interests in real estate cooperatives,
20 condominiums, and hereditaments, corporeal and incorporeal, or any
21 interest therein;

22 "Real estate transaction" includes the sale, exchange, purchase,
23 rental, or lease of real property;

24 "Sex" means gender((-))*i*

25 "Credit transaction" includes any open or closed end credit
26 transaction, whether in the nature of a loan, retail installment
27 transaction, credit card issue or charge, or otherwise, and whether for
28 personal or for business purposes, in which a service, finance, or
29 interest charge is imposed, or which provides for repayment in
30 scheduled payments, when such credit is extended in the regular course

1 of any trade or commerce, including but not limited to transactions by
2 banks, savings and loan associations or other financial lending
3 institutions of whatever nature, stock brokers, or by a merchant or
4 mercantile establishment which as part of its ordinary business permits
5 or provides that payment for purchases of property or service therefrom
6 may be deferred.

7 **Sec. 3.** RCW 49.60.120 and 1985 c 185 s 10 are each amended to read
8 as follows:

9 The commission shall have the functions, powers and duties:

10 (1) To appoint an executive (~~secretary~~) director and chief
11 examiner, and such investigators, examiners, clerks, and other
12 employees and agents as it may deem necessary, fix their compensation
13 within the limitations provided by law, and prescribe their duties.

14 (2) To obtain upon request and utilize the services of all
15 governmental departments and agencies.

16 (3) To adopt, promulgate, amend, and rescind suitable rules and
17 regulations to carry out the provisions of this chapter, and the
18 policies and practices of the commission in connection therewith.

19 (4) To receive, investigate, and pass upon complaints alleging
20 unfair practices as defined in this chapter.

21 (5) To issue such publications and such results of investigations
22 and research as in its judgment will tend to promote good will and
23 minimize or eliminate discrimination because of sex, race, creed,
24 color, national origin, marital status, age, or the presence of any
25 sensory, mental, or physical handicap, or the use of a trained dog
26 guide by a blind, deaf, or physically disabled person.

27 (6) To make such technical studies as are appropriate to effectuate
28 the purposes and policies of this chapter and to publish and distribute
29 the reports of such studies.

1 (7) To cooperate and act jointly or by division of labor with the
2 United States or other states, with other Washington state agencies,
3 commissions, and other government entities, and with political
4 subdivisions of the state of Washington and their respective human
5 rights agencies to carry out the purposes of this chapter. However,
6 the powers which may be exercised by the commission under this
7 subsection permit investigations and complaint dispositions only if the
8 investigations are designed to reveal, or the complaint deals only
9 with, allegations which, if proven, would constitute unfair practices
10 under this chapter. The commission may perform such services for these
11 agencies and be reimbursed therefor.

12 (8) To foster good relations between minority and majority
13 population groups of the state through seminars, conferences,
14 educational programs, and other intergroup relations activities.

15 **Sec. 4.** RCW 49.60.205 and 1985 c 185 s 28 are each amended to read
16 as follows:

17 No person shall be considered to have committed an unfair practice
18 on the basis of age discrimination unless the practice (~~(discriminates~~
19 ~~against a person between the age of forty and seventy years and~~))
20 violates RCW 49.44.090. It is a defense to any complaint of an unfair
21 practice of age discrimination that the practice does not violate RCW
22 49.44.090.

23 **Sec. 5.** RCW 49.60.215 and 1985 c 203 s 1 and 1985 c 90 s 6 are
24 each reenacted and amended to read as follows:

25 It shall be an unfair practice for any person or ~~((his))~~ the
26 person's agent or employee to commit an act which directly or
27 indirectly results in any distinction, restriction, or discrimination,
28 or the requiring of any person to pay a larger sum than the uniform

1 rates charged other persons, or the refusing or withholding from any
2 person the admission, patronage, custom, presence, frequenting,
3 dwelling, staying, or lodging in any place of public resort,
4 accommodation, assemblage, or amusement, except for conditions and
5 limitations established by law and applicable to all persons,
6 regardless of race, creed, color, national origin, sex, marital status,
7 the presence of any sensory, mental, or physical handicap, or the use
8 of a trained dog guide by a blind, deaf, or physically disabled person:
9 PROVIDED, That this section shall not be construed to require
10 structural changes, modifications, or additions to make any place
11 accessible to a handicapped person except as otherwise required by law:
12 PROVIDED, That behavior or actions constituting a risk to property or
13 other persons can be grounds for refusal and shall not constitute an
14 unfair practice.

15 **Sec. 6.** RCW 49.60.223 and 1979 c 127 s 9 are each amended to read
16 as follows:

17 It is an unfair practice for any person, for profit, to induce or
18 attempt to induce any person to sell or rent any real property by
19 representations regarding the entry or prospective entry into the
20 neighborhood of a person or persons of a particular race, creed, color,
21 national origin, sex, marital status, or with any sensory, mental, or
22 physical handicap.

23 **Sec. 7.** RCW 49.60.224 and 1979 c 127 s 10 are each amended to read
24 as follows:

25 (1) Every provision in a written instrument relating to real
26 property which purports to forbid or restrict the conveyance,
27 encumbrance, occupancy, or lease thereof to individuals of a specified
28 race, creed, color, national origin, or with any sensory, mental, or

1 physical handicap, or the use of a trained dog guide by a blind, deaf,
2 or physically disabled person, and every condition, restriction, or
3 prohibition, including a right of entry or possibility of reverter,
4 which directly or indirectly limits the use or occupancy of real
5 property on the basis of race, creed, color, national origin, ~~((or))~~
6 sex, marital status, the presence of any sensory, mental, or physical
7 handicap, or the use of a trained dog guide dog by a blind, deaf, or
8 physically disabled person is void.

9 (2) It is an unfair practice to insert in a written instrument
10 relating to real property a provision that is void under this section
11 or to honor or attempt to honor such a provision in the chain of title.

12 **Sec. 8.** RCW 49.60.230 and 1985 c 185 s 21 are each amended to read
13 as follows:

14 (1) Who may file a complaint:

15 ~~((1))~~ (a) Any person claiming to be aggrieved by an alleged
16 unfair practice may, personally or by his or her attorney, make, sign,
17 and file with the commission a complaint in writing under oath or by
18 declaration. The complaint shall state the name ~~((and address))~~ of the
19 person alleged to have committed the unfair practice and the
20 particulars thereof, and contain such other information as may be
21 required by the commission.

22 ~~((2))~~ (b) Whenever it has reason to believe that any person has
23 been engaged or is engaging in an unfair practice, the commission may
24 issue a
25 complaint.

26 ~~((3))~~ (c) Any employer or principal whose employees, or agents,
27 or any of them, refuse or threaten to refuse to comply with the
28 provisions of this chapter may file with the commission a written

1 complaint under oath or by declaration asking for assistance by
2 conciliation or other remedial action.

3 (2) Any complaint filed pursuant to this section must be so filed
4 within six months after the alleged act of discrimination.

5 **Sec. 9.** RCW 49.60.240 and 1985 c 185 s 22 are each amended to read
6 as follows:

7 After the filing of any complaint, the chairperson of the
8 commission shall refer it to the appropriate section of the
9 commission's staff for prompt investigation and ascertainment of the
10 facts alleged in the complaint. The investigation shall be limited to
11 the alleged facts contained in the complaint. The results of the
12 investigation shall be reduced to written findings of fact, and a
13 finding shall be made that there is or that there is not reasonable
14 cause for believing that an unfair practice has been or is being
15 committed. A copy of said findings shall be (~~furnished~~) provided to
16 the complainant and to the person named in such complaint, hereinafter
17 referred to as the respondent.

18 If the finding is made that there is reasonable cause for believing
19 that an unfair practice has been or is being committed, the
20 commission's staff shall immediately endeavor to eliminate the unfair
21 practice by conference, conciliation and persuasion.

22 If an agreement is reached for the elimination of such unfair
23 practice as a result of such conference, conciliation and persuasion,
24 the agreement shall be reduced to writing and signed by the respondent,
25 and an order shall be entered by the commission setting forth the terms
26 of said agreement. No order shall be entered by the commission at this
27 stage of the proceedings except upon such written agreement.

1 If no such agreement can be reached, a finding to that effect shall
2 be made and reduced to writing, with a copy thereof ((furnished))
3 provided to the complainant and the respondent.

4 **Sec. 10.** RCW 49.60.250 and 1989 c 175 s 115 are each amended to
5 read as follows:

6 (1) In case of failure to reach an agreement for the elimination of
7 such unfair practice, and upon the entry of findings to that effect,
8 the entire file, including the complaint and any and all findings made,
9 shall be certified to the chairperson of the commission. The
10 chairperson of the commission shall thereupon request the appointment
11 of an administrative law judge under Title 34 RCW to hear the complaint
12 and shall cause to be issued and served in the name of the commission
13 a written notice, together with a copy of the complaint, as the same
14 may have been amended, requiring the respondent to answer the charges
15 of the complaint at a hearing before the administrative law judge, at
16 a time and place to be specified in such notice.

17 (2) The place of any such hearing may be the office of the
18 commission or another place designated by it. The case in support of
19 the complaint shall be presented at the hearing by counsel for the
20 commission: PROVIDED, That the complainant may retain independent
21 counsel and submit testimony and be fully heard. No member or employee
22 of the commission who previously made the investigation or caused the
23 notice to be issued shall participate in the hearing except as a
24 witness, nor shall the member or employee participate in the
25 deliberations of the administrative law judge in such case. Any
26 endeavors or negotiations for conciliation shall not be received in
27 evidence.

28 (3) The respondent shall file a written answer to the complaint and
29 appear at the hearing in person or otherwise, with or without counsel,

1 and submit testimony and be fully heard. The respondent has the right
2 to cross-examine the complainant.

3 (4) The administrative law judge conducting any hearing may permit
4 reasonable amendment to any complaint or answer. Testimony taken at
5 the hearing shall be under oath and recorded.

6 (5) If, upon all the evidence, the administrative law judge finds
7 that the respondent has engaged in any unfair practice, the
8 administrative law judge shall state findings of fact and shall issue
9 and file with the commission and cause to be served on such respondent
10 an order requiring such respondent to cease and desist from such unfair
11 practice and to take such affirmative action, including, (but not
12 limited to) hiring, reinstatement or upgrading of employees, with or
13 without back pay, an admission or restoration to full membership rights
14 in any respondent organization, or to take such other action as, in the
15 judgment of the administrative law judge, will effectuate the purposes
16 of this chapter, including action that could be ordered by a court,
17 except that damages for humiliation and mental suffering shall not
18 exceed ((one)) thirty-five thousand dollars, and including a
19 requirement for report of the matter on compliance.

20 (6) The final order of the administrative law judge shall include
21 a notice to the parties of the right to obtain judicial review of the
22 order by appeal in accordance with the provisions of RCW 34.05.510
23 through 34.05.598, and that such appeal must be served and filed within
24 thirty days after the service of the order on the parties.

25 (7) If, upon all the evidence, the administrative law judge finds
26 that the respondent has not engaged in any alleged unfair practice, the
27 administrative law judge shall state findings of fact and shall
28 similarly issue and file an order dismissing the complaint.

29 (8) An order dismissing a complaint may include an award of
30 reasonable attorneys' fees in favor of the respondent if the

1 administrative law judge concludes that the complaint was frivolous,
2 unreasonable, or groundless.

3 (9) The commission shall establish rules of practice to govern,
4 expedite, and effectuate the foregoing procedure.

5 **Sec. 11.** RCW 49.44.090 and 1985 c 185 s 30 are each amended to
6 read as follows:

7 It shall be an unfair practice:

8 (1) For an employer or licensing agency, because an individual is
9 (~~between the ages of~~) forty (~~and seventy~~) years of age or older, to
10 refuse to hire or employ or license or to bar or to terminate from
11 employment such individual, or to discriminate against such individual
12 in promotion, compensation or in terms, conditions or privileges of
13 employment: PROVIDED, That employers or licensing agencies may
14 establish reasonable minimum and/or maximum age limits with respect to
15 candidates for positions of employment, which positions are of such a
16 nature as to require extraordinary physical effort, endurance,
17 condition or training, subject to the approval of the executive
18 secretary of the Washington state human rights commission or the
19 director of labor and industries through the division of industrial
20 relations.

21 (2) For any employer, licensing agency or employment agency to
22 print or circulate or cause to be printed or circulated any statement,
23 advertisement, or publication, or to use any form of application for
24 employment or to make any inquiry in connection with prospective
25 employment, which expresses any limitation, specification or
26 discrimination respecting individuals (~~between the ages of~~) forty
27 (~~and seventy~~) years of age or older: PROVIDED, That nothing herein
28 shall forbid a requirement of disclosure of birth date upon any form of
29 application for employment or by the production of a birth certificate

1 or other sufficient evidence of the applicant's true age after an
2 employee is hired.

3 Nothing contained in this section or in RCW 49.60.180 as to age
4 shall be construed to prevent the termination of the employment of any
5 person who is physically unable to perform his duties or to affect the
6 retirement policy or system of any employer where such policy or system
7 is not merely a subterfuge to evade the purposes of this section; nor
8 shall anything in this section or in RCW 49.60.180 be deemed to
9 preclude the varying of insurance coverages according to an employee's
10 age; nor shall this section be construed as applying to any state,
11 county, or city law enforcement agencies, or as superseding any law
12 fixing or authorizing the establishment of reasonable minimum or
13 maximum age limits with respect to candidates for certain positions in
14 public employment which are of such a nature as to require
15 extraordinary physical effort, or which for other reasons warrant
16 consideration of age factors.

17 **Sec. 12.** RCW 70.124.060 and 1981 c 174 s 5 are each amended to
18 read as follows:

19 (1) A person participating in good faith in the making of a report
20 pursuant to this chapter, or testifying as to alleged patient abuse or
21 neglect in a judicial proceeding, shall in so doing be immune from any
22 liability, civil or criminal, arising out of such reporting or
23 testifying under any law of this state or its political subdivisions,
24 and if such person is an employee of a nursing home or state hospital
25 it shall be an unfair practice under chapter 49.60 RCW for the employer
26 to ~~((dismiss said))~~ discharge, expel, or otherwise discriminate against
27 the employee for such activity.

28 (2) Conduct conforming with the reporting requirements of this
29 chapter shall not be deemed a violation of the confidential

1 communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110.
2 Nothing in this chapter shall be construed as to supersede or abridge
3 remedies provided in chapter 4.92 RCW.