
SUBSTITUTE HOUSE BILL 2954

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representative Heavey)

Read first time 02/07/92.

1 AN ACT Relating to discrimination in commerce; amending RCW
2 19.100.180, 19.100.010, and 49.60.030; reenacting and amending RCW
3 49.60.040; prescribing penalties; and declaring an emergency.

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

5 **Sec. 1.** RCW 19.100.180 and 1991 c 226 s 11 are each amended to
6 read as follows:

7 Without limiting the other provisions of this chapter, the
8 following specific rights and prohibitions shall govern the relation
9 between the franchisor or subfranchisor and the franchisees:

10 (1) The parties shall deal with each other in good faith.

11 (2) For the purposes of this chapter and without limiting its
12 general application, it shall be an unfair or deceptive act or practice
13 or an unfair method of competition and therefore unlawful and a
14 violation of this chapter for any person to:

1 (a) Restrict or inhibit the right of the franchisees to join an
2 association of franchisees.

3 (b) Require a franchisee to purchase or lease goods or services of
4 the franchisor or from approved sources of supply unless and to the
5 extent that the franchisor satisfies the burden of proving that such
6 restrictive purchasing agreements are reasonably necessary for a lawful
7 purpose justified on business grounds, and do not substantially affect
8 competition: PROVIDED, That this provision shall not apply to the
9 initial inventory of the franchise. In determining whether a
10 requirement to purchase or lease goods or services constitutes an
11 unfair or deceptive act or practice or an unfair method of competition
12 the courts shall be guided by the decisions of the courts of the United
13 States interpreting and applying the anti-trust laws of the United
14 States.

15 (c) Discriminate between franchisees in the charges offered or made
16 for royalties, goods, services, equipment, rentals, advertising
17 services, or in any other business dealing, unless and to the extent
18 that the franchisor satisfies the burden of proving that any
19 classification of or discrimination between franchisees is: (i)
20 Reasonable, (ii) based on franchises granted at materially different
21 times and such discrimination is reasonably related to such difference
22 in time, or is based on other proper and justifiable distinctions
23 considering the purposes of this chapter, and (iii) is not arbitrary.
24 However, nothing in (c) of this subsection precludes negotiation of the
25 terms and conditions of a franchise at the initiative of the
26 franchisees.

27 (d) Sell, rent, or offer to sell to a franchisee any product or
28 service for more than a fair and reasonable price.

29 (e) Obtain money, goods, services, anything of value, or any other
30 benefit from any other person with whom the franchisee does business on

1 account of such business unless such benefit is disclosed to the
2 franchisee.

3 (f) If the franchise provides that the franchisee has an exclusive
4 territory, which exclusive territory shall be specified in the
5 franchise agreement, for the franchisor or subfranchisor to compete
6 with the franchisee in an exclusive territory or to grant competitive
7 franchises in the exclusive territory area previously granted to
8 another franchisee.

9 (g) Require franchisee to assent to a release, assignment,
10 novation, or waiver which would relieve any person from liability
11 imposed by this chapter, except as otherwise permitted by RCW
12 19.100.220.

13 (h) Impose on a franchisee by contract, rule, or regulation,
14 whether written or oral, any standard of conduct unless the person so
15 doing can sustain the burden of proving such to be reasonable and
16 necessary.

17 (i) Refuse to renew a franchise without fairly compensating the
18 franchisee for the fair market value, at the time of expiration of the
19 franchise, of the franchisee's inventory, supplies, equipment, and
20 furnishings purchased from the franchisor, and good will, exclusive of
21 personalized materials which have no value to the franchisor, and
22 inventory, supplies, equipment and furnishings not reasonably required
23 in the conduct of the franchise business: PROVIDED, That compensation
24 need not be made to a franchisee for good will if (i) the franchisee
25 has been given one year's notice of nonrenewal and (ii) the franchisor
26 agrees in writing not to enforce any covenant which restrains the
27 franchisee from competing with the franchisor: PROVIDED FURTHER, That
28 a franchisor may offset against amounts owed to a franchisee under this
29 subsection any amounts owed by such franchisee to the franchisor.

1 (j) Terminate a franchise prior to the expiration of its term
2 except for good cause. Good cause shall include, without limitation,
3 the failure of the franchisee to comply with lawful material provisions
4 of the franchise or other agreement between the franchisor and the
5 franchisee and to cure such default after being given written notice
6 thereof and a reasonable opportunity, which in no event need be more
7 than thirty days, to cure such default, or if such default cannot
8 reasonably be cured within thirty days, the failure of the franchisee
9 to initiate within thirty days substantial and continuing action to
10 cure such default: PROVIDED, That after three willful and material
11 breaches of the same term of the franchise agreement occurring within
12 a twelve-month period, for which the franchisee has been given notice
13 and an opportunity to cure as provided in this subsection, the
14 franchisor may terminate the agreement upon any subsequent willful and
15 material breach of the same term within the twelve-month period without
16 providing notice or opportunity to cure: PROVIDED FURTHER, That a
17 franchisor may terminate a franchise without giving prior notice or
18 opportunity to cure a default if the franchisee: (i) Is adjudicated a
19 bankrupt or insolvent; (ii) makes an assignment for the benefit of
20 creditors or similar disposition of the assets of the franchise
21 business; (iii) voluntarily abandons the franchise business; or (iv) is
22 convicted of or pleads guilty or no contest to a charge of violating
23 any law relating to the franchise business. Upon termination for good
24 cause, the franchisor shall purchase from the franchisee at a fair
25 market value at the time of termination, the franchisee's inventory and
26 supplies, exclusive of (i) personalized materials which have no value
27 to the franchisor; (ii) inventory and supplies not reasonably required
28 in the conduct of the franchise business; and (iii), if the franchisee
29 is to retain control of the premises of the franchise business, any
30 inventory and supplies not purchased from the franchisor or on his

1 express requirement: PROVIDED, That a franchisor may offset against
2 amounts owed to a franchisee under this subsection any amounts owed by
3 such franchisee to the franchisor.

4 (k) Discriminate against any franchisee by refusing to sell or
5 refusing to allow the sale of a franchise to a franchisee on the basis
6 of race, creed, color, national origin, alienage, residence, sex, or
7 the presence of any sensory, mental, or physical handicap.

8 (l) Discriminate against any franchisee with respect to the
9 conditions of a franchise agreement or the offering price of a
10 franchise on the basis of race, creed, color, national origin,
11 alienage, residence, sex, or the presence of any sensory, mental, or
12 physical handicap.

13 Until July 1, 1994, any person deeming himself or herself injured
14 by any act in violation of (k) or (l) of this subsection shall have a
15 civil action in a court of competent jurisdiction to seek specific
16 performance of the franchise agreement, to recover the monetary damages
17 sustained by him or her, or both, together with the cost of the suit
18 including reasonable attorneys' fees. If the court finds a violation
19 of (k) of this subsection, the measure of monetary damages shall be no
20 less than twenty percent and no more than one hundred percent of the
21 fair market value of the franchise. A violation of a court order
22 requiring specific performance under (k) of this subsection may be
23 punished by the court by holding the party in contempt of court.

24 **Sec. 2.** RCW 19.100.010 and 1991 c 226 s 1 are each amended to read
25 as follows:

26 When used in this chapter, unless the context otherwise requires:

27 (1) "Advertisement" means any written or printed communication or
28 any communication by means of recorded telephone messages or spoken on

1 radio, television, or similar communication media published in
2 connection with an offer or sale of a franchise.

3 (2) "Affiliate" means a person controlling, controlled by, or under
4 common control with another person, every officer or director of such
5 person, and every person occupying a similar status or performing
6 similar functions.

7 (3) "Director" means the director of licensing.

8 (4) "Franchise" means:

9 (a) An agreement, express or implied, oral or written, by which:

10 (i) A person is granted the right to engage in the business of
11 offering, selling, or distributing goods or services under a marketing
12 plan prescribed or suggested in substantial part by the grantor or its
13 affiliate;

14 (ii) The operation of the business is substantially associated with
15 a trademark, service mark, trade name, advertising, or other commercial
16 symbol designating, owned by, or licensed by the grantor or its
17 affiliate; and

18 (iii) The person pays, agrees to pay, or is required to pay,
19 directly or indirectly, a franchise fee(~~(-)~~); or

20 (b) An agreement, express or implied, oral or written, by which a
21 major professional sports team, including but not limited to
22 professional baseball, basketball, football, hockey, and soccer teams,
23 is authorized to use the trademark, service mark, trade name,
24 advertising, or other commercial symbol designating, owned by, or
25 licensed by a national or international league or association of
26 professional sports teams.

27 (c) The following shall not be construed as a franchise within the
28 meaning of this chapter:

1 (i) The payment of a reasonable service charge to the issuer of a
2 credit card by an establishment accepting or honoring such credit card
3 or any transaction relating to a bank credit card plan;

4 (ii) Actions or transactions otherwise permitted, prohibited or
5 regulated under laws administered by the insurance commissioner of this
6 state;

7 (iii) Any motor vehicle dealer franchise subject to the provisions
8 of chapter 46.70 RCW.

9 (5) "Marketing plan" means a plan or system concerning an aspect of
10 conducting business. A marketing plan may include one or more of the
11 following:

12 (a) Price specifications, special pricing systems or discount
13 plans;

14 (b) Sales or display equipment or merchandising devices;

15 (c) Sales techniques;

16 (d) Promotional or advertising materials or cooperative
17 advertising;

18 (e) Training regarding the promotion, operation, or management of
19 the business; or

20 (f) Operational, managerial, technical, or financial guidelines or
21 assistance.

22 (6) "Bank credit card plan" means a credit card plan in which the
23 issuer of credit cards is a national bank, state bank, trust company or
24 any other banking institution subject to the supervision of the
25 supervisor of banking of this state or any parent or subsidiary of such
26 bank.

27 (7) "Franchisee" means a person to whom a franchise is offered or
28 granted.

29 (8) "Franchisor" means a person who grants a franchise to another
30 person.

1 (9) "Subfranchise" means an agreement, express or implied, oral or
2 written, by which a person pays or agrees to pay, directly or
3 indirectly, a franchisor or affiliate for the right to grant, sell or
4 negotiate the sale of a franchise.

5 (10) "Subfranchisor" means a person to whom a subfranchise is
6 granted.

7 (11) "Franchise broker" means a person who directly or indirectly
8 engages in the business of the offer or sale of franchises. The term
9 does not include a franchisor, subfranchisor, or their officers,
10 directors, or employees.

11 (12) "Franchise fee" means any fee or charge that a franchisee or
12 subfranchisor is required to pay or agrees to pay for the right to
13 enter into a business or to continue a business under a franchise
14 agreement, including, but not limited to, the payment either in lump
15 sum or by installments of an initial capital investment fee, any fee or
16 charges based upon a percentage of gross or net sales whether or not
17 referred to as royalty fees, any payment for the mandatory purchase of
18 goods or services or any payment for goods or services available only
19 from the franchisor, or any training fees or training school fees or
20 charges; however, the following shall not be considered payment of a
21 franchise fee: (a) the purchase or agreement to purchase goods at a
22 bona fide wholesale price; (b) the purchase or agreement to purchase
23 goods by consignment; if, and only if the proceeds remitted by the
24 franchisee from any such sale shall reflect only the bona fide
25 wholesale price of such goods; (c) a bona fide loan to the franchisee
26 from the franchisor; (d) the purchase or agreement to purchase goods at
27 a bona fide retail price subject to a bona fide commission or
28 compensation plan that in substance reflects only a bona fide wholesale
29 transaction; (e) the purchase or lease or agreement to purchase or
30 lease supplies or fixtures necessary to enter into the business or to

1 continue the business under the franchise agreement at their fair
2 market or rental value; (f) the purchase or lease or agreement to
3 purchase or lease real property necessary to enter into the business or
4 to continue the business under the franchise agreement at the fair
5 market or rental value; (g) amounts paid for trading stamps redeemable
6 in cash only; (h) amounts paid for trading stamps to be used as
7 incentives only and not to be used in, with, or for the sale of any
8 goods.

9 (13) "Person" means a natural person, corporation, partnership,
10 trust, or other entity and in the case of an entity, it shall include
11 any other entity which has a majority interest in such an entity or
12 effectively controls such other entity as well as the individual
13 officers, directors, and other persons in act of control of the
14 activities of each such entity.

15 (14) "Publish" means publicly to issue or circulate by newspaper,
16 mail, radio, or television or otherwise to disseminate to the public.

17 (15) "Sale or sell" includes every contract of sale, contract to
18 sell, or disposition of a franchise.

19 (16) "Offer or offer to sell" includes every attempt or offer to
20 dispose of or solicitation of an offer to buy a franchise or an
21 interest in a franchise.

22 **Sec. 3.** RCW 49.60.030 and 1984 c 32 s 2 are each amended to read
23 as follows:

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

28 (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.

10 **Sec. 4.** RCW 49.60.040 and 1985 c 203 s 2 and 1985 c 185 s 2 are
11 each reenacted and amended to read as follows:

12 As used in this chapter:

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

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

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

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

27 "Labor organization" includes any organization which exists for the
28 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 "National origin" includes "ancestry", alienage, or residence;

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

16 "Any place of public resort, accommodation, assemblage, or
17 amusement" includes, but is not limited to, any place, licensed or
18 unlicensed, kept for gain, hire, or reward, or where charges are made
19 for admission, service, occupancy, or use of any property or
20 facilities, whether conducted for the entertainment, housing, or
21 lodging of transient guests, or for the benefit, use, or accommodation
22 of those seeking health, recreation, or rest, or for the burial or
23 other disposition of human remains, or for the sale of goods,
24 merchandise, services, or personal property, or for the rendering of
25 personal services, or for public conveyance or transportation on land,
26 water, or in the air, including the stations and terminals thereof and
27 the garaging of vehicles, or where food or beverages of any kind are
28 sold for consumption on the premises, or where public amusement,
29 entertainment, sports, or recreation of any kind is offered with or
30 without charge, or where medical service or care is made available, or

1 where the public gathers, congregates, or assembles for amusement,
2 recreation, or public purposes, or public halls, public elevators, and
3 public washrooms of buildings and structures occupied by two or more
4 tenants, or by the owner and one or more tenants, or any public library
5 or educational institution, or schools of special instruction, or
6 nursery schools, or day care centers or children's camps: PROVIDED,
7 That nothing contained in this definition shall be construed to include
8 or apply to any institute, bona fide club, or place of accommodation,
9 which is by its nature distinctly private, including fraternal
10 organizations, though where public use is permitted that use shall be
11 covered by this chapter; nor shall anything contained in this
12 definition apply to any educational facility, columbarium, crematory,
13 mausoleum, or cemetery operated or maintained by a bona fide religious
14 or sectarian institution;

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

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

21 "Sex" means gender.

22 "Credit transaction" includes any open or closed end credit
23 transaction, whether in the nature of a loan, retail installment
24 transaction, credit card issue or charge, or otherwise, and whether for
25 personal or for business purposes, in which a service, finance, or
26 interest charge is imposed, or which provides for repayment in
27 scheduled payments, when such credit is extended in the regular course
28 of any trade or commerce, including but not limited to transactions by
29 banks, savings and loan associations or other financial lending
30 institutions of whatever nature, stock brokers, or by a merchant or

1 mercantile establishment which as part of its ordinary business permits
2 or provides that payment for purchases of property or service therefrom
3 may be deferred.

4 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and shall take
7 effect immediately.

8 NEW SECTION. **Sec. 6.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.