
HOUSE BILL 2954

State of Washington 52nd Legislature 1992 Regular Session

By Representative Heavey

Read first time 02/05/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to discrimination in commerce; amending RCW
2 19.100.180 and 49.60.030; prescribing penalties; and declaring an
3 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, sex, or the presence
7 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, sex, or the presence of any sensory, mental, or physical
12 handicap.

13 Any person deeming himself or herself injured by any act in
14 violation of (k) or (l) of this subsection shall have a civil action in
15 a court of competent jurisdiction to seek specific performance of the
16 franchise agreement, to recover the monetary damages sustained by him
17 or her, or both, together with the cost of the suit including
18 reasonable attorneys' fees. If the court finds a violation of (k) of
19 this subsection, the measure of monetary damages shall be no less than
20 twenty percent and no more than one hundred percent of the fair market
21 value of the franchise. A violation of a court order requiring
22 specific performance under (k) of this subsection may be punished by
23 the court by holding the party in contempt of court. In an action
24 based upon an alleged violation of (k) or (l) of this subsection a
25 rebuttable presumption lies in favor of the party alleging unlawful
26 discrimination, if the complainant establishes that he or she belongs
27 to the protected class of persons. The presumption may be rebutted
28 only by proof that the action complained of was reasonably based on a
29 factor or factors other than race, creed, color, national origin,

1 alienage, sex, or the presence of any sensory, mental, or physical
2 handicap.

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

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

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

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

13 (c) The right to engage in real estate transactions without
14 discrimination;

15 (d) The right to engage in credit transactions without
16 discrimination;

17 (e) The right to engage in insurance transactions or transactions
18 with health maintenance organizations without discrimination:
19 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,
20 48.44.220, or 48.46.370 does not constitute an unfair practice for the
21 purposes of this subparagraph; and

22 (f) The right to engage in commerce free from any discriminatory
23 boycotts or blacklists. Discriminatory boycotts or blacklists for
24 purposes of this section shall be defined as the formation or execution
25 of any express or implied agreement, understanding, policy or
26 contractual arrangement for economic benefit between any persons which
27 is not specifically authorized by the laws of the United States and
28 which is required or imposed, either directly or indirectly, overtly or
29 covertly, (~~by a foreign government or foreign person~~) in order to

1 restrict, condition, prohibit, or interfere with or in order to exclude
2 any person or persons from any business relationship on the basis of
3 race, color, creed, religion, sex, national origin or lawful business
4 relationship: PROVIDED HOWEVER, That nothing herein contained shall
5 prohibit the use of boycotts as authorized by law pertaining to labor
6 disputes and unfair labor practices.

7 (2) Any person deeming himself injured by any act in violation of
8 this chapter shall have a civil action in a court of competent
9 jurisdiction to enjoin further violations, to recover the actual
10 damages sustained by him, or both, together with the cost of suit
11 including a reasonable attorney's fees or any other remedy authorized
12 by this chapter or the United States Civil Rights Act of 1964; and

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

20 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and shall take
23 effect immediately.