

SENATE BILL 5244

State of Washington

52nd Legislature

1991 Regular Session

By Senators Talmadge and Conner.

Read first time January 24, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to human reproductive rights regarding hazardous
2 substances in the workplace; amending RCW 49.70.010, 49.70.130,
3 49.17.240, and 49.60.030; adding a new section to chapter 18.73 RCW;
4 adding a new section to chapter 49.44 RCW; and adding a new section to
5 chapter 49.70 RCW.

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

7 **Sec. 1.** RCW 49.70.010 and 1984 c 289 s 2 are each amended to read
8 as follows:

9 The legislature finds and declares that the proliferation of
10 hazardous substances in the environment poses a growing threat to the
11 public health, safety, and welfare; that the constantly increasing
12 number and variety of hazardous substances, and the many routes of
13 exposure to them make it difficult and expensive to monitor adequately
14 and detect any adverse health effects attributable thereto; that
15 individuals themselves are often able to detect and thus minimize

1 effects of exposure to hazardous substances if they are aware of the
2 identity of the substances and the early symptoms of unsafe exposure;
3 and that individuals have an inherent right to know the full range of
4 the risks they face so that they can make reasoned decisions and take
5 informed action concerning their employment and their living
6 conditions.

7 The legislature further declares that the workplace environment may
8 expose individuals to substances which may cause birth defects or
9 constitute a hazard to an employee's reproductive system or to a fetus,
10 and that employers should disclose information on workplace exposure to
11 substances, chemical or physical, which may cause a birth defect or
12 harm an individual's reproductive capacity. The legislature further
13 declares that women are being subjected to discrimination in employment
14 because of the increasingly widespread use in the workplace of
15 materials which are feared to be potentially harmful to pregnant women
16 and their unborn children, and in some cases women choose sterilization
17 to avoid this discrimination. The legislature finds that the lack of
18 public and professional education and of an organized and consistent
19 approach to assessing pregnancy risks and providing information
20 regarding pregnancy risks has led to heightened anxiety, improper
21 decisions concerning continued exposure, and sometimes unnecessary
22 pregnancy termination, pregnancy loss, premature birth, or birth
23 defects.

24 The legislature further declares that local health, fire, police,
25 safety, and other government officials require detailed information
26 about the identity, characteristics, and quantities of hazardous
27 substances used and stored in communities within their jurisdictions,
28 in order to plan adequately for, and respond to, emergencies, enforce
29 compliance with applicable laws and regulations concerning these
30 substances, and to compile records of exposures to hazardous substances

1 over a period of time that will facilitate the diagnosis, treatment,
2 and prevention of disease.

3 The legislature further declares that the extent of the toxic
4 contamination of the air, water, and land in this state has caused a
5 high degree of concern among its residents and that much of this
6 concern is needlessly aggravated by the unfamiliarity of these
7 substances to residents.

8 The legislature therefore determines that while these substances
9 have contributed to the high quality of life we enjoy in our state, it
10 is in the public interest to establish a comprehensive program for the
11 disclosure of information about hazardous substances in the workplace
12 and the community, and to provide a procedure whereby residents of this
13 state may gain access to this information.

14 **Sec. 2.** RCW 49.70.130 and 1984 c 289 s 18 are each amended to read
15 as follows:

16 (1) The council shall:

17 (a) Advise the department on the revision of the workplace
18 hazardous substance lists;

19 (b) Advise the department on the revision of state exposure
20 standards to include gases, vapors, dust, or other airborne particles,
21 toxic materials, or harmful physical agents, which the department finds
22 may cause birth defects or constitute a hazard to an employee's
23 reproductive system or to a fetus when the employee is exposed to any
24 of such substances in the workplace. The council shall strive to
25 ensure that under the standards no employee will suffer impairment of
26 reproductive functional capacity or that the fetus will suffer from
27 birth defects or that a nursing mother will be exposed to toxins which
28 can contaminate breast milk;

1 (c) Study the impact of this chapter on employers and make
2 recommendations to the legislature. Special emphasis shall be given to
3 the study of the impacts on agricultural and small business employers;

4 ~~((e))~~ (d) Prepare an updated fiscal note of the costs of this
5 chapter to the department and to local governments, school districts,
6 institutions of higher education and hospitals;

7 ~~((d))~~ (e) Report to the legislature its findings under ~~((b)~~
8 ~~and))~~ (c) and (d) of this section by January 1, 1985;

9 ~~((e))~~ (f) Advise the department on the implementation of this
10 chapter; and

11 ~~((f))~~ (g) Review any matters submitted to it by the department.

12 (2) The council may:

13 (a) Review any aspect of the implementation of this chapter, and
14 transmit its recommendations to the department; and

15 (b) Hold public meetings or hearings within the state on any matter
16 or matters related to this chapter.

17 NEW SECTION. Sec. 3. A new section is added to chapter 49.70 RCW
18 to read as follows:

19 Upon offering employment to a prospective employee, each employer
20 shall inform the prospective employee of any chemicals, toxic
21 substances, radioactive materials, or other substances, which the
22 employer should have reasonable cause to believe will cause birth
23 defects or constitute a hazard to an individual's reproductive system
24 or to a fetus when the individual is exposed in the workplace to any of
25 such substances in the course of the job assignment. This information
26 shall be made available to current employees who are exposed to such
27 hazards.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.44 RCW
2 to read as follows:

3 (1) No employer, including the state or any political subdivision
4 thereof, may condition the employment, transfer, or promotion of any
5 individual on the sterilization of that individual, nor shall
6 reproductive status be a criterion of employment. Employers are
7 prohibited from firing employees who are exposed to reproductive
8 hazards and who will not submit to compulsory sterilization.

9 (2) No employer, employment agency, or agent of either may request
10 or require information from an employee or person seeking employment
11 relating to the individual's child-bearing age or plans, pregnancy, or
12 function of the individual's reproductive system, unless such
13 information is directly related to a bona fide occupational
14 qualification or need, but an employer, through a physician, may
15 request from an employee any such information which is directly related
16 to workplace exposure to substances which may cause birth defects or
17 constitute a hazard to an individual's reproductive system or to a
18 fetus if the employer first informs the employee of the hazards
19 involved in exposure to such substances.

20 **Sec. 5.** RCW 49.17.240 and 1973 c 80 s 24 are each amended to read
21 as follows:

22 (1) The director in the promulgation of rules under the authority
23 of this chapter shall establish safety and health standards for
24 conditions of employment of general and/or specific applicability for
25 all industries, businesses, occupations, crafts, trades, and
26 employments subject to the provisions of this chapter, or those that
27 are a national or accepted federal standard. In adopting safety and
28 health standards for conditions of employment, the director shall

1 solicit and give due regard to all recommendations by any employer,
2 employee, or labor representative of employees.

3 (2) Any safety and health standard adopted by rule of the director
4 shall, where appropriate, prescribe the use of labels or other forms of
5 warning to insure that employees are apprised of all hazards to which
6 they may be exposed, relevant symptoms, and appropriate emergency
7 treatment, and proper conditions and precautions of safe use or
8 exposure. Where appropriate, such rules shall so prescribe suitable
9 protective equipment and control or technological procedures to be used
10 in connection with such hazards and shall provide for monitoring or
11 measuring employee exposure at such locations and intervals, and in
12 such manner as may be reasonably necessary for the protection of
13 employees. In addition, where appropriate, any such rule shall
14 prescribe the type and frequency of medical examinations or other tests
15 which shall be made available, by the employer or at his cost, to
16 employees exposed to such hazards in order to most effectively
17 determine whether the health of such employees is adversely affected by
18 such exposure. In the event that such medical examinations are in the
19 nature of research, as determined by the director, such examinations
20 may be furnished at the expense of the department. The results of such
21 examinations or tests shall be furnished only to the director, other
22 appropriate agencies of government, and at the request of the employee
23 to his physician.

24 (3) Whenever the director adopts by rule any safety and health
25 standard he may at the same time provide by rule the effective date of
26 such standard which shall not be less than thirty days, excepting
27 emergency rules, but may be made effective at such time in excess of
28 thirty days from the date of adoption as specified in any rule adopting
29 a safety and health standard. Any rule not made effective thirty days
30 after adoption, having a delayed effectiveness in excess of thirty

1 days, may only be made upon a finding made by the director that such
2 delayed effectiveness of the rule is reasonably necessary to afford the
3 affected employers a reasonable opportunity to make changes in methods,
4 means, or practices to meet the requirements of the adopted rule.
5 Temporary orders granting a variance may be utilized by the director in
6 lieu of the delayed effectiveness in the adoption of any rule.

7 (4) The director shall adopt rules setting standards for the
8 provision of temporary job modification for employees of either sex who
9 are contemplating parenting and who may otherwise be exposed in the
10 workplace to substances hazardous to the reproductive function of such
11 employees, including job modification for nursing mothers so they are
12 protected against toxins that can contaminate breast milk.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.73 RCW
14 to read as follows:

15 The department shall establish, through the four state poison
16 control network centers, a telephone information service to provide
17 information on requests concerning potential effects on a fetus
18 resulting from exposure during pregnancy to drugs, chemicals,
19 infections, and environmental hazards.

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

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

27 (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.