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SENATE BILL 6268

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State of Washington

58th Legislature

2004 Regular Session

By Senators Kohl-Welles, Carlson, Jacobsen, Schmidt, Shin, Regala, Kline, McAuliffe and Franklin; by request of Governor Locke

Read first time . Referred to .

1 AN ACT Relating to bringing state law into conformity with 2003  
2 United States supreme court affirmative action decisions; amending RCW  
3 49.60.400; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature continues to recognize the  
6 need to ensure that all members of our community are protected from  
7 discriminatory treatment on the basis of race, color, ethnicity, or  
8 national origin. The legislature also acknowledges that there is a  
9 large body of academic studies that demonstrates a substantial  
10 educational benefit in maintaining a diverse student population in our  
11 universities and colleges. The presence of a diverse learning  
12 environment helps students acquire the skills needed to live and work  
13 successfully in our increasingly diverse society. The United States  
14 supreme court and the Washington supreme court have recognized the  
15 benefits of such educational diversity in a student body as a  
16 compelling state interest as long as the means employed to promote  
17 diversity are within narrowly tailored guidelines that ensure that  
18 individuals are not unduly impacted. In light of this recognition, it  
19 is the intent of the legislature to give universities and colleges some

1 flexibility in considering race, color, ethnicity, or national origin  
2 as positive factors in their admission and transfer policies to promote  
3 diversity by enrolling meaningful numbers of students from groups that  
4 would not otherwise be so represented. To ensure the highest quality  
5 of education is provided at our universities and colleges, they must  
6 have the ability to engage in a holistic review of each applicant that  
7 includes all the positive qualities and experiences that an applicant  
8 possesses. It is not the intent of the legislature to allow any form  
9 of quota or set aside system to be implemented by a university or  
10 college to insulate an applicant from comparison with all other  
11 candidates solely because of his or her racial status.

12 **Sec. 2.** RCW 49.60.400 and 1999 c 3 s 1 are each amended to read as  
13 follows:

14 (1) The state shall not discriminate against, or grant preferential  
15 treatment to, any individual or group on the basis of race, sex, color,  
16 ethnicity, or national origin in the operation of public employment,  
17 public education, or public contracting.

18 (2) This section applies only to action taken after December 3,  
19 1998.

20 (3) This section does not affect any law or governmental action  
21 that does not discriminate against, or grant preferential treatment to,  
22 any individual or group on the basis of race, sex, color, ethnicity, or  
23 national origin.

24 (4) This section does not affect any otherwise lawful  
25 classification that:

26 (a) Is based on sex and is necessary for sexual privacy or medical  
27 or psychological treatment; or

28 (b) Is necessary for undercover law enforcement or for film, video,  
29 audio, or theatrical casting; or

30 (c) Provides for separate athletic teams for each sex.

31 (5) This section does not invalidate any court order or consent  
32 decree that is in force as of December 3, 1998.

33 (6) This section does not prohibit action that must be taken to  
34 establish or maintain eligibility for any federal program, if  
35 ineligibility would result in a loss of federal funds to the state.

36 (7) This section does not prohibit a public college, university, or  
37 community college from considering race, color, ethnicity, or national

1 origin in its admission or transfer policies for the purpose of  
2 promoting diversity at the campus if the policy meets the following  
3 minimum requirements:

4 (a) No admission slots may be set aside on the basis of race,  
5 color, ethnicity, or national origin nor shall any person be given  
6 separate consideration based solely on race, color, ethnicity, or  
7 national origin;

8 (b) All qualified applicants shall be given individual  
9 consideration in which all qualities and experiences that may be  
10 valuable contributions to student body diversity are considered;

11 (c) Race, color, ethnicity, or national origin shall not be given  
12 a predetermined numerical value or weight in the admissions process;

13 (d) The policy shall establish criteria for evaluating whether the  
14 consideration of race, color, ethnicity, or national origin is still  
15 necessary to promote diversity and shall include provisions for  
16 periodic reviews; and

17 (e) There must be a process established for periodically exploring  
18 workable race-neutral alternatives to considering race, color,  
19 ethnicity, or national origin to achieve the diversity the college or  
20 university is seeking, without compromising academic quality.

21 (8) For the purposes of this section, "state" includes, but is not  
22 necessarily limited to, the state itself, any city, county, public  
23 college or university, community college, school district, special  
24 district, or other political subdivision or governmental  
25 instrumentality of or within the state.

26 ~~((+8))~~ (9) The remedies available for violations of this section  
27 shall be the same, regardless of the injured party's race, sex, color,  
28 ethnicity, or national origin, as are otherwise available for  
29 violations of Washington antidiscrimination law.

30 ~~((+9))~~ (10) This section shall be self-executing. If any part or  
31 parts of this section are found to be in conflict with federal law, the  
32 United States Constitution, or the Washington state Constitution, the  
33 section shall be implemented to the maximum extent that federal law,  
34 the United States Constitution, and the Washington state Constitution  
35 permit. Any provision held invalid shall be severable from the  
36 remaining portions of this section.

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