

SENATE BILL REPORT

SB 5667

As of February 19, 2017

Title: An act relating to the off-duty conduct of an employee or a prospective employee.

Brief Description: Concerning the off-duty conduct of an employee or a prospective employee.

Sponsors: Senators Kuderer and Hasegawa.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/16/17.

Brief Summary of Bill

- Provides that it is an unfair practice for an employer to take an adverse employment action, or discriminate, against an employee or prospective employee because that person participates in an activity that is lawful under state law.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Jarrett Sacks (786-7448)

Background: In general, Washington is an at-will employment state, which means either the employee or employer can terminate an employment relationship at any time. In an at-will employment relationship, employment may be terminated without notice and without cause. There are several exceptions to the at-will doctrine, including provisions in collective bargaining agreements and state civil service laws that set requirements that must be met for the termination of an employee. There are also exceptions to the at-will doctrine based on public policy. For example, it is generally against public policy to terminate someone for refusing to commit an illegal act.

Generally, there is no explicit prohibition in state law against an employer taking an adverse employment action against an employee for off-duty actions.

Summary of Bill: It is an unfair practice for an employer to not hire an individual, to discharge an individual, or to otherwise discriminate against an individual because that person participates in an activity that is lawful under state law, so long as that activity occurs

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

away from the premises of the employer during non-working hours. This prohibition does not apply to a non-profit employer with a primary purpose that conflicts with the employee's participation in a particular activity.

An employer may restrict an employee's participation in lawful activities if the restriction:

- relates to an occupational requirement, or is related to the responsibilities of a particular employee or group of employees; or
- is necessary to avoid a conflict of interest with any responsibilities to the employer.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Employers have the technical means, and sometimes the desire to find out what employees do on their own time. If it does not impact performance on the job, it should not matter what an employee does while they are off-duty. It is important for people to be able to engage in social activism without risking their jobs. An employee should not be fired for what they post on a personal blog. Employees are currently prohibited from moonlighting even though it does not affect on-the-job performance. The bill protects workers' rights while still allowing employers to take action on work-related issues.

CON: The bill interferes with Washington's at-will status. Statements of an employee in private can be attached to the employer. Employers should still be able to drug test. The bill is vague as to what is work-related. There are employees that do not have traditional worksites, which would increase employer's liability under the bill.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Larry Shannon, Washington State Association for Justice; Jesse Wing, Washington Employment Lawyers Assoc..

CON: Jim King, WA St HVAC Industry Assn; Bob Battles, AWB; Heather Hansen, WA State Nursery and Landscape Assn..

Persons Signed In To Testify But Not Testifying: No one.