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SENATE BILL 5967

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Kohl-Welles, Fairley, Fraser, McAuliffe, and Kline

Read first time 02/11/09.      Referred to Committee on Government Operations & Elections.

1            AN ACT Relating to prohibiting unfair practices in public community  
2 athletics programs by prohibiting discrimination on the basis of sex;  
3 adding new sections to chapter 49.60 RCW; adding a new section to  
4 chapter 43.110 RCW; adding a new section to chapter 35.21 RCW; adding  
5 a new section to chapter 35.61 RCW; adding a new section to chapter  
6 35A.21 RCW; adding a new section to chapter 36.68 RCW; adding a new  
7 section to chapter 36.69 RCW; creating a new section; and providing an  
8 effective date.

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

10            NEW SECTION.    **Sec. 1.**    The legislature finds and declares:  
11            On June 23, 1972, President Richard Nixon signed into law Title IX  
12 of the Education Amendments of 1972 to the 1964 Civil Rights Act. This  
13 landmark legislation provides that: "No person in the United States  
14 shall, on the basis of sex, be excluded from participation in, be  
15 denied the benefits of, or be subjected to discrimination under any  
16 education program or activity receiving Federal financial  
17 assistance...." Title IX has expanded opportunities for males as well  
18 as females in educational programs and activities, including ensuring  
19 access to athletic opportunities for girls and women in educational

1 institutions and to male and female staff to coaching and athletics  
2 administrative positions in educational institutions. The dramatic  
3 increases in participation rates at both the high school and college  
4 levels since Title IX was passed show that when doors are opened to  
5 women and girls, they will participate.

6 Further, ensuring equality in the state of Washington, the  
7 legislature passed an amendment to the state Constitution, ratified by  
8 the voters in November 1972, providing "Equality of rights and  
9 responsibilities under the law shall not be denied or abridged on  
10 account of sex." In 1975, Washington continued to be at the forefront  
11 of this issue by adopting legislation that established our own  
12 statutory version of the federal Title IX law that prohibited  
13 "inequality in the educational opportunities afforded women and girls  
14 at all levels of the public schools in Washington state."

15 Athletic opportunities provide innumerable benefits to  
16 participants, including greater academic success, better physical and  
17 psychological health, responsible social behaviors, and enhanced  
18 interpersonal skills. Athletic scholarships make it possible for some  
19 young people to attend college. The Washington state legislature,  
20 recognizing the importance of full participation in athletics, has  
21 passed numerous bills directed at achieving equity and eliminating  
22 discrimination in intercollegiate athletics in the state's institutions  
23 of higher education.

24 Despite advances in educational settings and efforts by some local  
25 agencies to expand opportunities in community athletics programs,  
26 discrimination still exists that limits these opportunities. It is the  
27 intent of the legislature to expand and support equal participation in  
28 athletics programs, and provide all sports programs equal access to  
29 facilities administered by cities, towns, counties, metropolitan park  
30 districts, park and recreation service areas, or park and recreation  
31 districts.

32 Nothing in this act is intended to affect the holding in the  
33 Washington state supreme court's ruling in *Darrin v. Gould*, 85 Wn.2d  
34 859, 540 P.2d 882 (1975) and its progeny that held it is not acceptable  
35 to discriminate in contact sports on the basis of sex.

36 NEW SECTION. **Sec. 2.** (1) No city, town, county, or district may  
37 discriminate against any person on the basis of sex in the operation,

1 conduct, or administration of community athletics programs for youth or  
2 adults. Cities, towns, counties, districts, and public school  
3 districts shall not authorize or grant permits or other permission to  
4 third parties for community athletics programs if the third party's  
5 program discriminates against any person on the basis of sex.

6 (2) The definitions in this subsection apply throughout this  
7 section.

8 (a) "Community athletics program" means any athletic program that  
9 is organized for the purposes of training for and engaging in athletic  
10 activity and competition and that is in any way operated, conducted,  
11 administered, or supported by a city, town, county, district, or public  
12 school district other than those offered by the school and created  
13 solely for the students by the school.

14 (b) "District" means any metropolitan park district, park and  
15 recreation service area, or park and recreation district.

16 (3) It is the intent of the legislature in enacting this section  
17 that participants shall be accorded opportunities for participation in  
18 community athletics programs on an equal basis, both in quality and  
19 scope, regardless of the sex of the athletes.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.110 RCW  
21 to read as follows:

22 (1) A task force shall be established in October 2011 of interested  
23 stakeholders to compile and review the results of the reports as  
24 required under section 9 of this act and look for common themes to the  
25 types of complaints that are made statewide. The governor shall  
26 appoint members of the task force and must include, at a minimum,  
27 representatives from cities, towns, counties, park and recreation  
28 districts, gender equity support groups, and third-party community  
29 athletics programs that contract to use municipal facilities and  
30 resources. Each of the two largest caucuses of the house of  
31 representatives and the senate may submit names to the governor for  
32 consideration. Based on this review, the task force shall make  
33 recommendations to the legislature by January 1, 2012, on whether  
34 additional compliance monitoring of community athletic programs by the  
35 state is necessary to accomplish the intent of section 9 of this act,  
36 including whether there is a need for mandatory reporting guidelines.

1 (2) If it is determined that additional compliance monitoring in  
2 the form of reporting is necessary, the task force shall make  
3 recommendations regarding the specifics of such reporting requirements.

4 (3) Administrative costs for the task force, including per diem,  
5 travel expenses, staff time, or material production, will not be  
6 supported by public funds but may be supported by private funds.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.21 RCW  
8 to read as follows:

9 The antidiscrimination provisions of sections 2 and 9 of this act  
10 apply to programs and facilities operated under this chapter.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 35.61 RCW  
12 to read as follows:

13 The antidiscrimination provisions of sections 2 and 9 of this act  
14 apply to programs and facilities operated under this chapter.

15 NEW SECTION. **Sec. 6.** A new section is added to chapter 35A.21 RCW  
16 to read as follows:

17 The antidiscrimination provisions of sections 2 and 9 of this act  
18 apply to programs and facilities operated under this chapter.

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.68 RCW  
20 to read as follows:

21 The antidiscrimination provisions of sections 2 and 9 of this act  
22 apply to programs and facilities operated under this chapter.

23 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.69 RCW  
24 to read as follows:

25 The antidiscrimination provisions of sections 2 and 9 of this act  
26 apply to programs and facilities operated under this chapter.

27 NEW SECTION. **Sec. 9.** (1) In civil actions brought under this  
28 section or under other applicable antidiscrimination laws alleging  
29 discrimination in community youth athletics programs, courts shall  
30 consider the following factors, among others, in determining whether  
31 discrimination exists:

1 (a) Whether the selection of community athletic programs offered  
2 effectively accommodate the athletic interests and abilities of members  
3 of both sexes;

4 (b) The provision of moneys, equipment, supplies, and facilities;

5 (c) Assignment and compensation of coaches and game officials;

6 (d) Scheduling;

7 (e) Access to lands and areas accessed through permitting, leasing,  
8 or other land use arrangements, or otherwise accessed; and

9 (f) Publicity.

10 (2) A court may find that a violation of a single factor listed in  
11 subsection (1)(b) through (f) of this section constitutes unlawful  
12 discrimination if the resulting harms are so substantial as to deny  
13 equal participation opportunities in community athletics programs to  
14 athletes of one sex. This standard of compliance is taken from federal  
15 law.

16 (3) In making the determination of whether discrimination exists  
17 under subsection (1)(a) of this section, a court shall assess whether  
18 the community athletics program has effectively accommodated the  
19 athletic interests and abilities of both males and females in any one  
20 of the following ways:

21 (a) By showing that the community athletics program opportunities  
22 for both males and females are provided in numbers substantially  
23 proportionate to their respective numbers in the community;

24 (b) Where the members of one sex have been and continue to be  
25 underrepresented in community athletics programs, by showing a history  
26 and continuing practice of program expansion and allocation of  
27 resources that are demonstrably responsive to the developing interests  
28 and abilities of the members of that sex;

29 (c) Where the members of one sex are underrepresented in community  
30 athletics programs, by demonstrating that the interests and abilities  
31 of the members of that sex have been fully and effectively accommodated  
32 by the present program and allocation of resources.

33 (4) Beginning January 1, 2018, a community athletics program may no  
34 longer rely on subsection (3)(b) of this section to show that it has  
35 accommodated the athletic interests and abilities of both sexes.

36 (5)(a) A city, town, county, district, or public school district  
37 that permits or leases its facilities and resources to third parties  
38 for usage for community athletics programs shall not authorize such

1 permit or lease unless the third-party contractor is in compliance with  
2 this section and agrees to demonstrate compliance by filing an annual  
3 report as established in this subsection. Reports shall be submitted  
4 to the Washington state human rights commission, and notice that the  
5 report has been received shall be sent by the human rights commission  
6 to the appropriate city, town, county, district, or public school  
7 district. Each report shall cover the time period beginning on  
8 September 1st of the previous year and ending on August 30th of the  
9 year in which the report is due. Separate reports must be made for  
10 male and female teams. The city, town, county, district, or public  
11 school district may set additional reporting requirements at its  
12 discretion.

13 (b) If, after reviewing the annual report, the city, town, county,  
14 district, or public school district determines that the third-party  
15 contractor has failed to comply with this section, the contractor shall  
16 be required to prepare and submit a corrective plan and timeline for  
17 full implementation prior to receiving any future permits or leases.

18 (i) If the city, town, county, district, or public school district  
19 determines that the corrective plan prepared adequately addresses and  
20 provides for future compliance with this section, the plan and  
21 implementation timeline shall be approved and future permits or leases  
22 may be issued under the stipulation that the corrective plan shall be  
23 implemented according to the timeline provided.

24 (ii) If a complaint is filed pursuant to subsection (7) of this  
25 section within one year following the date of the approval of the  
26 corrective plan, the city, town, county, district, or public school  
27 district shall determine whether the third-party contractor has  
28 implemented the corrective plan or has demonstrated significant efforts  
29 towards implementation according to the established timeline. If the  
30 third-party contractor has not implemented the corrective plan or has  
31 not made significant efforts towards implementation, the permit shall  
32 be revoked for one year or until the third-party contractor  
33 demonstrates an affirmative effort towards compliance with this section  
34 and with implementation of the corrective plan.

35 (6) Each city, town, county, or district operating a community  
36 athletics program or issuing permission to a third party for the  
37 operation of such program on its facilities shall designate at least  
38 one employee to coordinate its efforts to comply with and carry out its

1 responsibilities under this section, including the investigation of any  
2 written complaints alleging noncompliance with this section. The  
3 employee designated under this subsection may be the same person  
4 designated to issue permits to third-party contractors. For a public  
5 school district issuing permission to a third party, the employee  
6 responsible for addressing the compliance monitoring requirements  
7 established under the authority of RCW 28A.640.030 shall be responsible  
8 for the provisions established under subsection (5) of this section.  
9 The city, town, county, or district operating a community athletics  
10 program shall annually make an effort to notify its users of the name,  
11 office address, and office telephone number of the employee or  
12 employees appointed pursuant to this subsection, and of the rights  
13 entitled to them under this act. Such notification shall be published  
14 on the appropriate city, town, county, or district web site.

15 (7) Each city, town, county, or district operating a community  
16 athletics program or issuing permission to a third party for the  
17 operation of such program on its facilities shall adopt and publish  
18 grievance procedures that establish the process by which complaints are  
19 filed and the procedures, including an estimated timeline, that will be  
20 used to ensure a prompt and equitable resolution of complaints. The  
21 grievance procedures must allow, at a minimum, complaints to be brought  
22 by a parent or guardian on behalf of her or his minor child who is a  
23 participant in a community athletics program, alleging any action that  
24 would be a violation of this section. The grievance procedures must  
25 be, at a minimum, published in existing publications of the city, town,  
26 county, or district and must be posted conspicuously wherever permits  
27 are issued under section 2 or 9 of this act. Public school districts  
28 issuing permission to a third party for the operation of a community  
29 athletics program on its facilities shall also follow the provisions of  
30 this subsection but may modify and use existing school district  
31 policies and procedures to the extent that is possible.

32 (8) Each city, town, county, or district operating a community  
33 athletics program or issuing permission to a third party for the  
34 operation of such program on its facilities shall submit annual reports  
35 to the Washington state human rights commission regarding its  
36 compliance with this section. Public school districts issuing  
37 permission to a third party for the operation of a community athletics

1 program on its facilities shall also submit annual reports as required  
2 by this subsection.

3 (9) This section shall not be construed to invalidate any existing  
4 consent decree or any other settlement agreement entered into by a  
5 city, town, county, or district to address equity in athletic programs.

6 NEW SECTION. **Sec. 10.** Sections 2 and 9 of this act are each added  
7 to chapter 49.60 RCW.

8 NEW SECTION. **Sec. 11.** This act takes effect January 1, 2010.

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