
SUBSTITUTE HOUSE BILL 2772

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Schual-Berke, Cody, O'Brien, G. Simpson, Moeller, Dickerson, Chase and Conway)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to genetic information; amending RCW 48.18.480,
2 49.60.020, 49.60.030, 49.60.040, 49.60.180, 49.60.190, and 49.60.200;
3 and adding a new section to chapter 49.44 RCW.

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

5 **Sec. 1.** RCW 48.18.480 and 1957 c 193 s 12 are each amended to read
6 as follows:

7 ~~((No))~~ An insurer shall not make or permit any unfair
8 discrimination between insureds or subjects of insurance having
9 substantially like insuring, risk, and exposure factors, and expense
10 elements, in the terms or conditions of any insurance contract, or in
11 the rate or amount of premium charged therefor, or in the benefits
12 payable or in any other rights or privileges accruing thereunder. This
13 ~~((provision shall))~~ section does not prohibit fair discrimination by a
14 life insurer as between individuals having unequal expectation of life,
15 except that insurers shall neither require nor use genetic information
16 as a basis for that discrimination.

17 (1) "Genetic information" means information about inherited
18 characteristics that is derived from a genetic test, as defined by this
19 section, or explanation of such a result. For purposes of this

1 section, "genetic information" does not include information about an
2 identifiable person that is taken pertaining to the abuse of drugs or
3 alcohol, which is derived from tests given for the exclusive purpose of
4 determining the abuse of drugs or alcohol.

5 (2) "Genetic test" means a test of human DNA, RNA, mitochondrial
6 DNA, chromosomes, or other material for the purpose of identifying
7 genes, inherited or acquired genetic abnormalities, or the presence or
8 absence of inherited or acquired characteristics in the genetic
9 material. For the purposes of this section, "genetic test" does not
10 include tests given for drugs, alcohol, cholesterol, or HIV.

11 NEW SECTION. Sec. 2. A new section is added to chapter 49.44 RCW
12 to read as follows:

13 It is unlawful for any person, firm, corporation, or the state of
14 Washington, its political subdivisions, or municipal corporations to
15 require, directly or indirectly, that any employee or prospective
16 employee submit genetic information or submit to screening for genetic
17 information as a condition of employment or continued employment. On
18 the effective date of this section, if an employer possesses genetic
19 information about an employee, it is unlawful for the employer to
20 disclose the genetic information without the employee's informed
21 consent.

22 (1) "Genetic information" means information about inherited
23 characteristics that is derived from a genetic test, as defined by this
24 section, or explanation of such a result. For purposes of this
25 section, "genetic information" does not include information about an
26 identifiable person that is taken pertaining to the abuse of drugs or
27 alcohol, which is derived from tests given for the exclusive purpose of
28 determining the abuse of drugs or alcohol.

29 (2) "Genetic test" means a test of human DNA, RNA, mitochondrial
30 DNA, chromosomes, or other material for the purpose of identifying
31 genes, inherited or acquired genetic abnormalities, or the presence or
32 absence of inherited or acquired characteristics in the genetic
33 material. For the purposes of this section, "genetic test" does not
34 include tests given for drugs, alcohol, cholesterol, or HIV.

35 **Sec. 3.** RCW 49.60.020 and 1993 c 510 s 2 are each amended to read
36 as follows:

1 (~~The provisions of~~) This chapter shall be construed liberally for
2 the accomplishment of the purposes thereof. (~~Nothing contained in~~)
3 This chapter (~~shall be deemed to~~) does not repeal any of the
4 provisions of any other law of this state relating to discrimination
5 because of race, color, creed, national origin, sex, genetic
6 information, marital status, age, or the presence of any sensory,
7 mental, or physical disability, other than a law which purports to
8 require or permit doing any act which is an unfair practice under this
9 chapter. (~~Nor shall anything herein contained be construed to~~) This
10 chapter does not deny the right to any person to institute any action
11 or pursue any civil or criminal remedy based upon an alleged violation
12 of his or her civil rights.

13 **Sec. 4.** RCW 49.60.030 and 1997 c 271 s 2 are each amended to read
14 as follows:

15 (1) The right to be free from discrimination because of race,
16 creed, color, national origin, sex, genetic information, or the
17 presence of any sensory, mental, or physical disability or the use of
18 a trained dog guide or service animal by a disabled person is
19 recognized as and declared to be a civil right. This right shall
20 include, but not be limited to:

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

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

25 (c) The right to engage in real estate transactions without
26 discrimination, including discrimination against families with
27 children;

28 (d) The right to engage in credit transactions without
29 discrimination;

30 (e) The right to engage in insurance transactions or transactions
31 with health maintenance organizations without discrimination(~~+~~
32 ~~PROVIDED, That~~). A practice (~~which~~) that is not unlawful under RCW
33 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair
34 practice for the purposes of this subparagraph; and

35 (f) The right to engage in commerce free from any discriminatory
36 boycotts or blacklists. Discriminatory boycotts or blacklists for
37 purposes of this section shall be defined as the formation or execution

1 of any express or implied agreement, understanding, policy or
2 contractual arrangement for economic benefit between any persons which
3 is not specifically authorized by the laws of the United States and
4 which is required or imposed, either directly or indirectly, overtly or
5 covertly, by a foreign government or foreign person in order to
6 restrict, condition, prohibit, or interfere with or in order to exclude
7 any person or persons from any business relationship on the basis of
8 race, color, creed, religion, sex, the presence of any sensory, mental,
9 or physical disability, or the use of a trained dog guide or service
10 animal by a disabled person, or national origin or lawful business
11 relationship(~~(: PROVIDED HOWEVER, That)~~). Nothing herein contained
12 shall prohibit the use of boycotts as authorized by law pertaining to
13 labor disputes and unfair labor practices.

14 (2) Any person deeming himself or herself injured by any act in
15 violation of this chapter shall have a civil action in a court of
16 competent jurisdiction to enjoin further violations, or to recover the
17 actual damages sustained by the person, or both, together with the cost
18 of suit including reasonable attorneys' fees or any other appropriate
19 remedy authorized by this chapter or the United States Civil Rights Act
20 of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988
21 (42 U.S.C. Sec. 3601 et seq.).

22 (3) Except for any unfair practice committed by an employer against
23 an employee or a prospective employee, or any unfair practice in a real
24 estate transaction which is the basis for relief specified in the
25 amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any
26 unfair practice prohibited by this chapter which is committed in the
27 course of trade or commerce as defined in the Consumer Protection Act,
28 chapter 19.86 RCW, is, for the purpose of applying that chapter, a
29 matter affecting the public interest, is not reasonable in relation to
30 the development and preservation of business, and is an unfair or
31 deceptive act in trade or commerce.

32 **Sec. 5.** RCW 49.60.040 and 1997 c 271 s 3 are each amended to read
33 as follows:

34 As used in this chapter:

35 (1) "Person" includes one or more individuals, partnerships,
36 associations, organizations, corporations, cooperatives, legal
37 representatives, trustees and receivers, or any group of persons; it

1 includes any owner, lessee, proprietor, manager, agent, or employee,
2 whether one or more natural persons; and further includes any political
3 or civil subdivisions of the state and any agency or instrumentality of
4 the state or of any political or civil subdivision thereof;

5 (2) "Commission" means the Washington state human rights
6 commission;

7 (3) "Employer" includes any person acting in the interest of an
8 employer, directly or indirectly, who employs eight or more persons,
9 and does not include any religious or sectarian organization not
10 organized for private profit;

11 (4) "Employee" does not include any individual employed by his or
12 her parents, spouse, or child, or in the domestic service of any
13 person;

14 (5) "Labor organization" includes any organization which exists for
15 the purpose, in whole or in part, of dealing with employers concerning
16 grievances or terms or conditions of employment, or for other mutual
17 aid or protection in connection with employment;

18 (6) "Employment agency" includes any person undertaking with or
19 without compensation to recruit, procure, refer, or place employees for
20 an employer;

21 (7) "Marital status" means the legal status of being married,
22 single, separated, divorced, or widowed;

23 (8) "National origin" includes "ancestry";

24 (9) "Full enjoyment of" includes the right to purchase any service,
25 commodity, or article of personal property offered or sold on, or by,
26 any establishment to the public, and the admission of any person to
27 accommodations, advantages, facilities, or privileges of any place of
28 public resort, accommodation, assemblage, or amusement, without acts
29 directly or indirectly causing persons of any particular race, creed,
30 color, sex, national origin, or with any sensory, mental, or physical
31 disability, or the use of a trained dog guide or service animal by a
32 disabled person, to be treated as not welcome, accepted, desired, or
33 solicited;

34 (10) "Any place of public resort, accommodation, assemblage, or
35 amusement" includes, but is not limited to, any place, licensed or
36 unlicensed, kept for gain, hire, or reward, or where charges are made
37 for admission, service, occupancy, or use of any property or
38 facilities, whether conducted for the entertainment, housing, or

1 lodging of transient guests, or for the benefit, use, or accommodation
2 of those seeking health, recreation, or rest, or for the burial or
3 other disposition of human remains, or for the sale of goods,
4 merchandise, services, or personal property, or for the rendering of
5 personal services, or for public conveyance or transportation on land,
6 water, or in the air, including the stations and terminals thereof and
7 the garaging of vehicles, or where food or beverages of any kind are
8 sold for consumption on the premises, or where public amusement,
9 entertainment, sports, or recreation of any kind is offered with or
10 without charge, or where medical service or care is made available, or
11 where the public gathers, congregates, or assembles for amusement,
12 recreation, or public purposes, or public halls, public elevators, and
13 public washrooms of buildings and structures occupied by two or more
14 tenants, or by the owner and one or more tenants, or any public library
15 or educational institution, or schools of special instruction, or
16 nursery schools, or day care centers or children's camps: PROVIDED,
17 That nothing contained in this definition shall be construed to include
18 or apply to any institute, bona fide club, or place of accommodation,
19 which is by its nature distinctly private, including fraternal
20 organizations, though where public use is permitted that use shall be
21 covered by this chapter; nor shall anything contained in this
22 definition apply to any educational facility, columbarium, crematory,
23 mausoleum, or cemetery operated or maintained by a bona fide religious
24 or sectarian institution;

25 (11) "Real property" includes buildings, structures, dwellings,
26 real estate, lands, tenements, leaseholds, interests in real estate
27 cooperatives, condominiums, and hereditaments, corporeal and
28 incorporeal, or any interest therein;

29 (12) "Real estate transaction" includes the sale, appraisal,
30 brokering, exchange, purchase, rental, or lease of real property,
31 transacting or applying for a real estate loan, or the provision of
32 brokerage services;

33 (13) "Dwelling" means any building, structure, or portion thereof
34 that is occupied as, or designed or intended for occupancy as, a
35 residence by one or more families, and any vacant land that is offered
36 for sale or lease for the construction or location thereon of any such
37 building, structure, or portion thereof;

38 (14) "Sex" means gender;

1 (15) "Aggrieved person" means any person who: (a) Claims to have
2 been injured by an unfair practice in a real estate transaction; or (b)
3 believes that he or she will be injured by an unfair practice in a real
4 estate transaction that is about to occur;

5 (16) "Complainant" means the person who files a complaint in a real
6 estate transaction;

7 (17) "Respondent" means any person accused in a complaint or
8 amended complaint of an unfair practice in a real estate transaction;

9 (18) "Credit transaction" includes any open or closed end credit
10 transaction, whether in the nature of a loan, retail installment
11 transaction, credit card issue or charge, or otherwise, and whether for
12 personal or for business purposes, in which a service, finance, or
13 interest charge is imposed, or which provides for repayment in
14 scheduled payments, when such credit is extended in the regular course
15 of any trade or commerce, including but not limited to transactions by
16 banks, savings and loan associations or other financial lending
17 institutions of whatever nature, stock brokers, or by a merchant or
18 mercantile establishment which as part of its ordinary business permits
19 or provides that payment for purchases of property or service therefrom
20 may be deferred;

21 (19) "Families with children status" means one or more individuals
22 who have not attained the age of eighteen years being domiciled with a
23 parent or another person having legal custody of such individual or
24 individuals, or with the designee of such parent or other person having
25 such legal custody, with the written permission of such parent or other
26 person. Families with children status also applies to any person who
27 is pregnant or is in the process of securing legal custody of any
28 individual who has not attained the age of eighteen years;

29 (20) "Covered multifamily dwelling" means: (a) Buildings
30 consisting of four or more dwelling units if such buildings have one or
31 more elevators; and (b) ground floor dwelling units in other buildings
32 consisting of four or more dwelling units;

33 (21) "Premises" means the interior or exterior spaces, parts,
34 components, or elements of a building, including individual dwelling
35 units and the public and common use areas of a building;

36 (22) "Dog guide" means a dog that is trained for the purpose of
37 guiding blind persons or a dog that is trained for the purpose of
38 assisting hearing impaired persons;

1 (23) "Service animal" means an animal that is trained for the
2 purpose of assisting or accommodating a disabled person's sensory,
3 mental, or physical disability;

4 (24) "Genetic information" means information about inherited
5 characteristics that is derived from a genetic test, as defined by this
6 section, or explanation of such a result. For purposes of this
7 section, "genetic information" does not include information about an
8 identifiable person that is taken pertaining to the abuse of drugs or
9 alcohol, which is derived from tests given for the exclusive purpose of
10 determining the abuse of drugs or alcohol.

11 (25) "Genetic test" means a test of human DNA, RNA, mitochondrial
12 DNA, chromosomes, or other material for the purpose of identifying
13 genes, inherited or acquired genetic abnormalities, or the presence or
14 absence of inherited or acquired characteristics in the genetic
15 material. For the purposes of this section, "genetic test" does not
16 include tests given for drugs, alcohol, cholesterol, or HIV.

17 **Sec. 6.** RCW 49.60.180 and 1997 c 271 s 10 are each amended to read
18 as follows:

19 It is an unfair practice for any employer:

20 (1) To refuse to hire any person because of age, sex, marital
21 status, race, creed, color, national origin, genetic information, or
22 the presence of any sensory, mental, or physical disability or the use
23 of a trained dog guide or service animal by a disabled person, unless
24 based upon a bona fide occupational qualification: PROVIDED, That the
25 prohibition against discrimination because of such disability shall not
26 apply if the particular disability prevents the proper performance of
27 the particular worker involved.

28 (2) To discharge or bar any person from employment because of age,
29 sex, marital status, race, creed, color, national origin, genetic
30 information, or the presence of any sensory, mental, or physical
31 disability or the use of a trained dog guide or service animal by a
32 disabled person.

33 (3) To discriminate against any person in compensation or in other
34 terms or conditions of employment because of age, sex, marital status,
35 race, creed, color, national origin, genetic information, or the
36 presence of any sensory, mental, or physical disability or the use of
37 a trained dog guide or service animal by a disabled person: PROVIDED,

1 That it shall not be an unfair practice for an employer to segregate
2 washrooms or locker facilities on the basis of sex, or to base other
3 terms and conditions of employment on the sex of employees where the
4 commission by regulation or ruling in a particular instance has found
5 the employment practice to be appropriate for the practical realization
6 of equality of opportunity between the sexes.

7 (4) To print, or circulate, or cause to be printed or circulated
8 any statement, advertisement, or publication, or to use any form of
9 application for employment, or to make any inquiry in connection with
10 prospective employment, which expresses any limitation, specification,
11 or discrimination as to age, sex, marital status, race, creed, color,
12 national origin, genetic information, or the presence of any sensory,
13 mental, or physical disability or the use of a trained dog guide or
14 service animal by a disabled person, or any intent to make any such
15 limitation, specification, or discrimination, unless based upon a bona
16 fide occupational qualification(~~(:—PROVIDED, Nothing contained herein~~
17 ~~shall))~~). This subsection does not prohibit advertising in a foreign
18 language.

19 (5) To offer a person an inducement to disclose genetic
20 information; to question a person about his or her genetic information;
21 to solicit submission to, require, or administer a genetic test to any
22 person as a condition of employment; or to collect, solicit, or require
23 disclosure of genetic information from any person as a condition of
24 employment.

25 **Sec. 7.** RCW 49.60.190 and 1997 c 271 s 11 are each amended to read
26 as follows:

27 It is an unfair practice for any labor union or labor organization:

28 (1) To deny membership and full membership rights and privileges to
29 any person because of age, sex, marital status, race, creed, color,
30 national origin, genetic information, or the presence of any sensory,
31 mental, or physical disability or the use of a trained dog guide or
32 service animal by a disabled person.

33 (2) To expel from membership any person because of age, sex,
34 marital status, race, creed, color, national origin, genetic
35 information, or the presence of any sensory, mental, or physical
36 disability or the use of a trained dog guide or service animal by a
37 disabled person.

1 (3) To discriminate against any member, employer, employee, or
2 other person to whom a duty of representation is owed because of age,
3 sex, marital status, race, creed, color, national origin, genetic
4 information, or the presence of any sensory, mental, or physical
5 disability or the use of a trained dog guide or service animal by a
6 disabled person.

7 (4) To offer a person an inducement to disclose genetic
8 information; to question a person about his or her genetic information;
9 to solicit submission to, require, or administer a genetic test to any
10 person as a condition of membership; or to collect, solicit, or require
11 disclosure of genetic information from any person as a condition of
12 membership.

13 **Sec. 8.** RCW 49.60.200 and 1997 c 271 s 12 are each amended to read
14 as follows:

15 It is an unfair practice for any employment agency:

16 (1) To fail or refuse to classify properly or refer for employment,
17 or otherwise to discriminate against, an individual because of age,
18 sex, marital status, race, creed, color, national origin, genetic
19 information, or the presence of any sensory, mental, or physical
20 disability or the use of a trained dog guide or service animal by a
21 disabled person, or to print or circulate, or cause to be printed or
22 circulated any statement, advertisement, or publication, or to use any
23 form of application for employment, or to make any inquiry in
24 connection with prospective employment, which expresses any limitation,
25 specification or discrimination as to age, sex, race, creed, color, or
26 national origin, genetic information, or the presence of any sensory,
27 mental, or physical disability or the use of a trained dog guide or
28 service animal by a disabled person, or any intent to make any such
29 limitation, specification, or discrimination, unless based upon a bona
30 fide occupational qualification(~~(:—PROVIDED, Nothing contained herein~~
31 ~~shall~~)). This subsection does not prohibit advertising in a foreign
32 language.

33 (2) To offer a person an inducement to disclose genetic
34 information; to question a person about his or her genetic information;
35 to solicit submission to, require, or administer a genetic test to any
36 person as a condition of employment classification, assignment, or

1 referral; or to collect, solicit, or require disclosure of genetic
2 information from any person as a condition of employment
3 classification, assignment, or referral.

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