

# HOUSE BILL REPORT

## SB 5474

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As Reported By House Committee On:  
Judiciary

**Title:** An act relating to discrimination.

**Brief Description:** Revising laws relating to discrimination.

**Sponsors:** Senators A. Smith, Pelz, Niemi, Spanel, Drew, Prince, Roach and Franklin; by request of Human Rights Commission.

**Brief History:**

Reported by House Committee on:  
Judiciary, April 2, 1993, DPA.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

**Staff:** Patricia Shelledy (786-7149).

**Background:** The law against discrimination provides that a person has a right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap. The law prohibits discrimination for those reasons against a person in employment, use of public accommodations, and real estate, credit, and insurance transactions, and prohibits discriminatory blacklists or boycotts in commerce. Additionally, discrimination due to the person's marital status is prohibited in some circumstances.

In addition, a person has a right to be free from age discrimination if the person is between the ages of 40 and 70. Employers and employment agencies may not express any limitation on the hiring of persons between the ages of 40 and 70, except the employer or agency may require the person to disclose the person's date of birth.

The term "sensory, mental, or physical handicap" does not expressly include the use of a trained guide dog or service dog by a disabled person.

The term "sensory, mental, or physical handicap" is not defined in statute. The federal Americans with Disabilities Act (ADA) defines "disability," and contains certain express exclusions.

The law against discrimination specifically provides that discrimination, related to sex discrimination or discriminatory boycotts or blacklists, which is committed in the course of trade or commerce, is an unfair practice under the Consumer Protection Act. The Consumer Protection Act allows the person injured by the unfair practice to sue for treble damages, costs, and reasonable attorneys' fees.

A person claiming to be discriminated against may file a complaint with the Human Rights Commission. The complaint must be filed under oath. If an administrative law judge finds that the person was discriminated against, the judge may order a number of remedies, including awarding damages for humiliation and mental suffering not to exceed \$1,000.

Another provision of law designed to protect patients in nursing homes and state hospitals from abuse and neglect provides that any person who, in good faith, reports an incident of suspected abuse or neglect, may not be dismissed by the person's employer. A dismissal under those circumstances is a violation of the law against discrimination.

References to the list of protected classes is somewhat erratic in the law against discrimination, and one or more of the protected classes are not included in certain sections.

The definition of "public accommodation" does not explicitly state whether a newspaper or other advertising media is a "public accommodation" when selling or publishing advertising. First Amendment issues arise when regulations impact the First Amendment rights of the press.

**Summary of Amended Bill:** The phrase "sensory, mental, or physical handicap" is changed to "sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person."

The same exclusions from the definition of a disability under the Americans with Disabilities Act are included in the Washington law against discrimination. Those exclusions are as follows: homosexuality, bisexuality, transvestism,

transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, sexual behavior disorders, compulsive gambling, kleptomania, pyromania, psychoactive substance use disorders resulting from illegal drug use, and except in limited circumstances, anyone engaging in the illegal use of drugs. An illegal drug user may be covered by the act if the person has successfully completed a supervised drug rehabilitation program and is no longer using illegal drugs, or is in a supervised treatment program and is no longer using illegal drugs, or is erroneously considered to have engaged in illegal drug use.

Except for unfair practices by employers against employees or unfair practices in real estate transactions which form the basis for relief under provisions of proposed SHB 1476, any violation of the law against discrimination is a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair practice under the Consumer Protection Act.

The upper age limit of 70 for purposes of age discrimination is removed. An employer may not discriminate against a person 40 or older due to the person's age. Further, an employer may no longer ask for the person's date of birth until after the person is hired.

The damage limit for recovery of damages for humiliation and mental suffering due to discrimination is increased from \$1,000 to \$10,000.

A person who reports an incident of suspected abuse or neglect of a patient in a nursing home or state hospital may not be dismissed, discharged, expelled, or otherwise discriminated against because of the report.

Various sections are amended to add references to other protected categories apparently excluded from the original law. "Marital status" is defined.

A person may file a complaint in writing under oath or by declaration.

Newspapers and other advertising media are not "public accommodations" when selling or publishing advertisements.

A few technical changes are made.

**Amended Bill Compared to Original Bill:** Certain conditions are explicitly excluded from the meaning of the phrase, "sensory, mental, or physical disability." Those exclusions match the exclusions from the scope of the term "disability" in the federal American with Disabilities Act.

A change in the original bill was not adopted: the term "groundless" is restored to the provision that the administrative law judge may award reasonable attorneys' fees and costs to the defendant if the plaintiff's complaint was "frivolous, unreasonable, or groundless." The expanded consumer protection provision is amended to exclude unfair acts by employers against employees and unfair acts in some real estate transactions. Newspapers are exempted from the definition of "public accommodation" while selling or publishing advertisements.

**Fiscal Note:** Not requested.

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

**Testimony For:** The amount of money an injured person may recover through an administrative action should be increased from \$1,000 to \$10,000. The other provisions will also improve the law against discrimination.

**Testimony Against:** The amendment that was adopted by the Judiciary Committee in HB 1300 should not be adopted in this bill. State law provides greater protection to individuals than federal law. The expansion of the Consumer Protection Act liability to all violations of the law against discrimination is over broad; violations in the employer/employee context should not be Consumer Protection Act cases, nor should violations of landlord/tenant laws. The language concerning guide and service dogs should be deleted.

**Witnesses:** Merrit Long, Humans Rights Commission (pro); Sue Ammeter, Governor's Committee on Disability Issues and Employment (pro); Toby Olson, Governor's Committee on Disability Issues and Employment (pro); P. Cameron DeVore, attorney (pro on amendment request); Rowland Thompson, Allied Daily Newspapers (pro on amendment request); Jerry Sheehan, American Civil Liberties Union (con on Americans with Disabilities Act amendment); Arnold Fox, Washington Apartment Association (con on Certified Public Accounts' provision); and Clif Finch, Association of Washington Businesses (con in part, pro in part).