

HOUSE BILL REPORT

ESHB 1445

As Passed House
March 16, 1993

Title: An act relating to expanding the state law against discrimination.

Brief Description: Modifying the scope of the state law against discrimination.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives J. Kohl, Brough, Wineberry, Romero, Veloria, Ogden, G. Cole, Thibaudeau, Anderson, Sheldon, Leonard, Shin, Wang and Heavey.)

Brief History:

Reported by House Committee on:
Commerce & Labor, February 19, 1993, DPS;
Appropriations, March 6, 1993, DPS(CL-A APP);
Passed House, March 16, 1993, 61-36.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Conway; King; Springer; and Veloria.

Minority Report: Do not pass. Signed by 3 members: Representatives Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; and Horn.

Staff: Jim Kelley (786-7166).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Labor be substituted therefore and the substitute bill as amended by Committee on Appropriations do pass. Signed by 18 members: Representatives Locke, Chair; Valle, Vice Chair; Appelwick; Basich; Dellwo; Dorn; Dunshee; G. Fisher; Jacobsen; Lemmon; Leonard; Linville; Peery; Rust; Sommers; Wang; Wineberry; and Wolfe.

Minority Report: Do not pass. Signed by 8 members: Representatives Silver, Ranking Minority Member; Carlson,

Assistant Ranking Minority Member; Ballasiotes; Cooke; Sehlin; Sheahan; Stevens; and Talcott.

Staff: John Woolley (786-7154).

Background: The Washington State Human Rights Commission was established in 1971 and given general jurisdiction and power to eliminate and prevent discrimination in employment and other settings. The freedom from discrimination statute additionally grants a civil cause of action to any person deeming himself or herself injured due to discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

The freedom from discrimination statute includes the rights to obtain and hold employment, to the full enjoyment of public premises, and to engage in real estate, credit, insurance and commercial transactions free from discrimination. Unfair practices in the employment setting include using any of the impermissible considerations in making employment decisions such as refusing to hire, discharging, compensating or conditioning employment, or advertising any employment position with a discriminatory limitation or specification.

An "employer" is defined as any person who employs eight or more persons, and the definition of "employee" excludes the parent, spouse, or child of an employer. Employers with fewer than eight employees are exempt from the law against discrimination. Religious organizations that are nonprofit are not "employers."

The Washington law refers to a disability as a "handicap." The federal Americans with Disabilities Act uses the term "disability."

Summary of Bill: The freedom from discrimination statute applies to employers who employ one or more persons. References to a physical "handicap" are changed to physical "disability." Religious organizations are not "employers" only with respect to the employment of individuals of a particular religion to carry out the activities of the organization.

The Human Rights Commission may not consider a complaint against an employer having fewer than eight employees if the unfair practice occurred before or on June 30, 1995, unless specific funding is provided to the agency by June 30, 1993 in the omnibus appropriations act.

The Human Rights Commission is required to make available an informational brochure designed to help employers comply

with discrimination laws. The commission is encouraged to consult with representatives of small business to ensure that the brochure is useful and practical to small employers. The commission is also required to hold educational seminars across the state to explain the discrimination laws. The commission is authorized to charge fees for these services and the fees shall be sufficient to cover the costs of the programs and materials.

Fiscal Note: Available. New fiscal note requested on the substitute bill on February 22, 1993.

Effective Date: The bill contains an emergency clause and takes effective July 1, 1993. For administrative actions against an employer of fewer than eight employees the bill takes effect July 1, 1995.

Testimony For: (Commerce & Labor) The current law leaves many employees without any recourse if they suffer discrimination. The bill will not unfairly burden small employers. Employees are entitled to a workplace free of discrimination regardless of the size of the employer. As of 1987, 23 different states protected employees of employers with fewer than eight employees. The Human Rights Commission is the best place to resolve these issues; but, we should not foreclose the private right of action.

(Appropriations) The bill deals with protection from discrimination; the size of the company should not be the issue -- discrimination is discrimination. The arguments against the bill, such as difficulty of implementation are not valid, especially when 27 other states have the same sort of law. Addition of language including religious organizations will bring large institutions, such as hospitals, that are run by religious organizations under antidiscrimination laws. There may be fewer actual complaints than the fiscal note identifies, thereby lowering the cost of the bill. Recent surveys by the Dental Hygienist Association show that many members leave their jobs because of discrimination but most employers are not covered.

Neutral: The substitute bill as passed requires additional staff for the Human Rights Commission, not reflected in the original fiscal note.

Testimony Against: (Commerce & Labor) This bill could easily lead to frivolous lawsuits, costing employers money that could go to employee wages. Employers need a manual they can follow to be assured that they are complying with the law. There should not be a private right of action; lawsuits are too costly. The Human Rights Commission needs

a big appropriation to enforce these cases. The language in the original bill referring to employees "in this state" could easily limit existing rights that employees have.

(Appropriations) While agreeing with the intent, the bill imposes a large burden on small businesses. A manual and training on discrimination should be developed for small employers. The complexities of existing legislation are such that litigation is encouraged, rather than the elimination of discrimination. There should be a change in the law to allow for administrative remedy, with appeal rights.

Witnesses: (Commerce & Labor) Representative Jeanne Kohl, prime sponsor (in favor); Harriet Strasbourg and Debbie Schmitz, Northwest Women's Law Center (in favor); Ann Simons, Washington Women United (in favor); Lonnie Johns-Brown, National Organization of Women (in favor); Julia Porter and Clif Finch, Association of Washington Business (had concerns); Gary Smith, Independent Business Association (had concerns); Carolyn Logue, National Federation of Independent Business (opposed); Judie Fortier, city of Tacoma (in favor); and Dennis Martin, Washington State Trial Lawyers Association (in favor with committee amendment).

(Appropriations) Representative Jeanne Kohl, prime sponsor (support); Representative Jim Springer (support); Lonnie Johns-Brown, National Organization for Women (support); Anne Simons, Washington Women United (support); Jeff Larson, Washington State Dental Hygienists (support); Judy Turpin, Northwest Women's Law Center (support); Gary Smith, Independent Business Association (concerns); and Clif Finch Association of Washington Business (concerns).