

SHB 2772 - H AMD 883

By Representative Schual-Berke

ADOPTED 02/17/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 48.18.480 and 1957 c 193 s 12 are each amended to
4 read as follows:

5 ((No)) An insurer shall not make or permit any unfair
6 discrimination between insureds or subjects of insurance having
7 substantially like insuring, risk, and exposure factors, and expense
8 elements, in the terms or conditions of any insurance contract, or in
9 the rate or amount of premium charged therefor, or in the benefits
10 payable or in any other rights or privileges accruing thereunder. This
11 ((provision shall)) section does not prohibit fair discrimination by a
12 life insurer as between individuals having unequal expectation of life,
13 except that insurers may not require a person to undergo a genetic test
14 or provide the results of a previous genetic test as a condition of
15 offering or renewing insurance. If an insurer has information from a
16 genetic test, the insurer may only use that information if it
17 demonstrates the active presence of disease or illness. An insurer may
18 not use information from a genetic test if the information only
19 demonstrates a propensity for a condition or illness and not the active
20 presence of disease or illness.

21 (1) "Genetic information" means written or recorded information
22 about genes, gene products, or genetic characteristics derived from an
23 individual or a family member of the individual. "Gene product" is a
24 scientific term that means messenger RNA and translated protein. For
25 purposes of this chapter, "genetic information" shall not include
26 routine physical measurements: Chemical, blood, and urine analysis,
27 unless conducted purposely to diagnose a genetic characteristic; tests
28 for the abuse of drugs; tests for cholesterol; and tests for the
29 presence of HIV. Family histories do not constitute genetic
30 information.

1 (2) "Genetic test" means a test of human DNA, RNA, mitochondrial
2 DNA, chromosomes, or other material for the purpose of identifying
3 genes, inherited or acquired genetic abnormalities, or the presence or
4 absence of inherited or acquired characteristics in the genetic
5 material. For the purposes of this section, "genetic test" does not
6 include tests given for cholesterol or HIV. Employers may test for the
7 presence of drugs or alcohol, but may not use the results of these
8 tests to gain genetic information.

9 **NEW SECTION. Sec. 2.** A new section is added to chapter 49.44 RCW
10 to read as follows:

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

20 (1) "Genetic information" means written or recorded information
21 about genes, gene products, or genetic characteristics derived from an
22 individual or a family member of the individual. "Gene product" is a
23 scientific term that means messenger RNA and translated protein. For
24 purposes of this chapter, "genetic information" shall not include
25 routine physical measurements: Chemical, blood, and urine analysis,
26 unless conducted purposely to diagnose a genetic characteristic; tests
27 for the abuse of drugs; tests for cholesterol; and tests for the
28 presence of HIV. Family histories do not constitute genetic
29 information.

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

1 presence of drugs or alcohol, but may not use the results of these
2 tests to gain genetic information.

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

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

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

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

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

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

29 (c) The right to engage in real estate transactions without
30 discrimination, including discrimination against families with
31 children;

32 (d) The right to engage in credit transactions without
33 discrimination;

34 (e) The right to engage in insurance transactions or transactions
35 with health maintenance organizations without discrimination(÷

1 ~~PROVIDED, That~~). A practice (~~which~~) that is not unlawful under RCW
2 48.18.480, 48.30.300, 48.44.220, or 48.46.370 does not constitute an
3 unfair practice for the purposes of this subparagraph; and

4 (f) The right to engage in commerce free from any discriminatory
5 boycotts or blacklists. Discriminatory boycotts or blacklists for
6 purposes of this section shall be defined as the formation or execution
7 of any express or implied agreement, understanding, policy or
8 contractual arrangement for economic benefit between any persons which
9 is not specifically authorized by the laws of the United States and
10 which is required or imposed, either directly or indirectly, overtly or
11 covertly, by a foreign government or foreign person in order to
12 restrict, condition, prohibit, or interfere with or in order to exclude
13 any person or persons from any business relationship on the basis of
14 race, color, creed, religion, sex, the presence of any sensory, mental,
15 or physical disability, or the use of a trained dog guide or service
16 animal by a disabled person, or national origin or lawful business
17 relationship(~~∴ PROVIDED HOWEVER, That~~). Nothing herein contained
18 shall prohibit the use of boycotts as authorized by law pertaining to
19 labor disputes and unfair labor practices.

20 (2) Any person deeming himself or herself injured by any act in
21 violation of this chapter shall have a civil action in a court of
22 competent jurisdiction to enjoin further violations, or to recover the
23 actual damages sustained by the person, or both, together with the cost
24 of suit including reasonable attorneys' fees or any other appropriate
25 remedy authorized by this chapter or the United States Civil Rights Act
26 of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988
27 (42 U.S.C. Sec. 3601 et seq.).

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

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

3 As used in this chapter:

4 (1) "Person" includes one or more individuals, partnerships,
5 associations, organizations, corporations, cooperatives, legal
6 representatives, trustees and receivers, or any group of persons; it
7 includes any owner, lessee, proprietor, manager, agent, or employee,
8 whether one or more natural persons; and further includes any political
9 or civil subdivisions of the state and any agency or instrumentality of
10 the state or of any political or civil subdivision thereof;

11 (2) "Commission" means the Washington state human rights
12 commission;

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

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

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

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

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

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

30 (9) "Full enjoyment of" includes the right to purchase any service,
31 commodity, or article of personal property offered or sold on, or by,
32 any establishment to the public, and the admission of any person to
33 accommodations, advantages, facilities, or privileges of any place of
34 public resort, accommodation, assemblage, or amusement, without acts
35 directly or indirectly causing persons of any particular race, creed,
36 color, sex, national origin, or with any sensory, mental, or physical

1 disability, or the use of a trained dog guide or service animal by a
2 disabled person, to be treated as not welcome, accepted, desired, or
3 solicited;

4 (10) "Any place of public resort, accommodation, assemblage, or
5 amusement" includes, but is not limited to, any place, licensed or
6 unlicensed, kept for gain, hire, or reward, or where charges are made
7 for admission, service, occupancy, or use of any property or
8 facilities, whether conducted for the entertainment, housing, or
9 lodging of transient guests, or for the benefit, use, or accommodation
10 of those seeking health, recreation, or rest, or for the burial or
11 other disposition of human remains, or for the sale of goods,
12 merchandise, services, or personal property, or for the rendering of
13 personal services, or for public conveyance or transportation on land,
14 water, or in the air, including the stations and terminals thereof and
15 the garaging of vehicles, or where food or beverages of any kind are
16 sold for consumption on the premises, or where public amusement,
17 entertainment, sports, or recreation of any kind is offered with or
18 without charge, or where medical service or care is made available, or
19 where the public gathers, congregates, or assembles for amusement,
20 recreation, or public purposes, or public halls, public elevators, and
21 public washrooms of buildings and structures occupied by two or more
22 tenants, or by the owner and one or more tenants, or any public library
23 or educational institution, or schools of special instruction, or
24 nursery schools, or day care centers or children's camps: PROVIDED,
25 That nothing contained in this definition shall be construed to include
26 or apply to any institute, bona fide club, or place of accommodation,
27 which is by its nature distinctly private, including fraternal
28 organizations, though where public use is permitted that use shall be
29 covered by this chapter; nor shall anything contained in this
30 definition apply to any educational facility, columbarium, crematory,
31 mausoleum, or cemetery operated or maintained by a bona fide religious
32 or sectarian institution;

33 (11) "Real property" includes buildings, structures, dwellings,
34 real estate, lands, tenements, leaseholds, interests in real estate
35 cooperatives, condominiums, and hereditaments, corporeal and
36 incorporeal, or any interest therein;

1 (12) "Real estate transaction" includes the sale, appraisal,
2 brokering, exchange, purchase, rental, or lease of real property,
3 transacting or applying for a real estate loan, or the provision of
4 brokerage services;

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

10 (14) "Sex" means gender;

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

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

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

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

31 (19) "Families with children status" means one or more individuals
32 who have not attained the age of eighteen years being domiciled with a
33 parent or another person having legal custody of such individual or
34 individuals, or with the designee of such parent or other person having
35 such legal custody, with the written permission of such parent or other
36 person. Families with children status also applies to any person who

1 is pregnant or is in the process of securing legal custody of any
2 individual who has not attained the age of eighteen years;

3 (20) "Covered multifamily dwelling" means: (a) Buildings
4 consisting of four or more dwelling units if such buildings have one or
5 more elevators; and (b) ground floor dwelling units in other buildings
6 consisting of four or more dwelling units;

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

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

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

16 (24) "Genetic information" means written or recorded information
17 about genes, gene products, or genetic characteristics derived from an
18 individual or a family member of the individual. "Gene product" is a
19 scientific term that means messenger RNA and translated protein. For
20 purposes of this chapter, "genetic information" shall not include
21 routine physical measurements: Chemical, blood, and urine analysis,
22 unless conducted purposely to diagnose a genetic characteristic; tests
23 for the abuse of drugs; tests for cholesterol; and tests for the
24 presence of HIV. Family histories do not constitute genetic
25 information.

26 (25) "Genetic test" means a test of human DNA, RNA, mitochondrial
27 DNA, chromosomes, or other material for the purpose of identifying
28 genes, inherited or acquired genetic abnormalities, or the presence or
29 absence of inherited or acquired characteristics in the genetic
30 material. For the purposes of this section, "genetic test" does not
31 include tests given for cholesterol or HIV. Employers may test for the
32 presence of drugs or alcohol, but may not use the results of these
33 tests to gain genetic information.

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

36 It is an unfair practice for any employer:

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

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

14 (3) To discriminate against any person in compensation or in other
15 terms or conditions of employment because of age, sex, marital status,
16 race, creed, color, national origin, 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: PROVIDED,
19 That it shall not be an unfair practice for an employer to segregate
20 washrooms or locker facilities on the basis of sex, or to base other
21 terms and conditions of employment on the sex of employees where the
22 commission by regulation or ruling in a particular instance has found
23 the employment practice to be appropriate for the practical realization
24 of equality of opportunity between the sexes.

25 (4) To print, or circulate, or cause to be printed or circulated
26 any statement, advertisement, or publication, or to use any form of
27 application for employment, or to make any inquiry in connection with
28 prospective employment, which expresses any limitation, specification,
29 or discrimination as to 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, or any intent to make any such
33 limitation, specification, or discrimination, unless based upon a bona
34 fide occupational qualification(~~(:—PROVIDED, Nothing contained herein~~
35 ~~shall)).~~ This subsection does not prohibit advertising in a foreign
36 language.

1 (5) To offer a person an inducement to disclose genetic
2 information; to question a person about his or her genetic information;
3 to solicit submission to, require, or administer a genetic test to any
4 person as a condition of employment; or to collect, solicit, or require
5 disclosure of genetic information from any person as a condition of
6 employment.

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

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

10 (1) To deny membership and full membership rights and privileges to
11 any person because of 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.

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

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

26 (4) To offer a person an inducement to disclose genetic
27 information; to question a person about his or her genetic information;
28 to solicit submission to, require, or administer a genetic test to any
29 person as a condition of membership; or to collect, solicit, or require
30 disclosure of genetic information from any person as a condition of
31 membership.

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

34 It is an unfair practice for any employment agency:

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

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

25 Correct the title.

EFFECT: Clarifies that life insurers may not require a person to undergo a genetic test or submit the results of a genetic test as a condition of offering or renewing insurance.

Clarifies that a life insurer may use information from a genetic test only if it demonstrates the active presence of disease or illness and not just a propensity for a condition or illness.

Clarifies the definition of "genetic information" and "genetic test."

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