
ENGROSSED 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 may not require a person to undergo a genetic test
16 or provide the results of a previous genetic test as a condition of
17 offering or renewing insurance. If an insurer has information from a
18 genetic test, the insurer may only use that information if it
19 demonstrates the active presence of disease or illness. An insurer may

1 not use information from a genetic test if the information only
2 demonstrates a propensity for a condition or illness and not the active
3 presence of disease or illness.

4 (1) "Genetic information" means written or recorded information
5 about genes, gene products, or genetic characteristics derived from an
6 individual or a family member of the individual. "Gene product" is a
7 scientific term that means messenger RNA and translated protein. For
8 purposes of this chapter, "genetic information" shall not include
9 routine physical measurements: Chemical, blood, and urine analysis,
10 unless conducted purposely to diagnose a genetic characteristic; tests
11 for the abuse of drugs; tests for cholesterol; and tests for the
12 presence of HIV. Family histories do not constitute genetic
13 information.

14 (2) "Genetic test" means a test of human DNA, RNA, mitochondrial
15 DNA, chromosomes, or other material for the purpose of identifying
16 genes, inherited or acquired genetic abnormalities, or the presence or
17 absence of inherited or acquired characteristics in the genetic
18 material. For the purposes of this section, "genetic test" does not
19 include tests given for cholesterol or HIV. Employers may test for the
20 presence of drugs or alcohol, but may not use the results of these
21 tests to gain genetic information.

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

24 It is unlawful for any person, firm, corporation, or the state of
25 Washington, its political subdivisions, or municipal corporations to
26 require, directly or indirectly, that any employee or prospective
27 employee submit genetic information or submit to screening for genetic
28 information as a condition of employment or continued employment. On
29 the effective date of this section, if an employer possesses genetic
30 information about an employee, it is unlawful for the employer to
31 disclose the genetic information without the employee's informed
32 consent.

33 (1) "Genetic information" means written or recorded information
34 about genes, gene products, or genetic characteristics derived from an
35 individual or a family member of the individual. "Gene product" is a
36 scientific term that means messenger RNA and translated protein. For
37 purposes of this chapter, "genetic information" shall not include

1 routine physical measurements: Chemical, blood, and urine analysis,
2 unless conducted purposely to diagnose a genetic characteristic; tests
3 for the abuse of drugs; tests for cholesterol; and tests for the
4 presence of HIV. Family histories do not constitute genetic
5 information.

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

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

16 ~~((The provisions of))~~ This chapter shall be construed liberally for
17 the accomplishment of the purposes thereof. ~~((Nothing contained in))~~
18 This chapter ~~((shall be deemed to))~~ does not repeal any of the
19 provisions of any other law of this state relating to discrimination
20 because of race, color, creed, national origin, sex, genetic
21 information, marital status, age, or the presence of any sensory,
22 mental, or physical disability, other than a law which purports to
23 require or permit doing any act which is an unfair practice under this
24 chapter. ~~((Nor shall anything herein contained be construed to))~~ This
25 chapter does not deny the right to any person to institute any action
26 or pursue any civil or criminal remedy based upon an alleged violation
27 of his or her civil rights.

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

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

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

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

4 (c) The right to engage in real estate transactions without
5 discrimination, including discrimination against families with
6 children;

7 (d) The right to engage in credit transactions without
8 discrimination;

9 (e) The right to engage in insurance transactions or transactions
10 with health maintenance organizations without discrimination(~~(--~~
11 ~~PROVIDED, That~~)). A practice ((which)) that is not unlawful under RCW
12 48.18.480, 48.30.300, 48.44.220, or 48.46.370 does not constitute an
13 unfair practice for the purposes of this subparagraph; and

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

30 (2) Any person deeming himself or herself injured by any act in
31 violation of this chapter shall have a civil action in a court of
32 competent jurisdiction to enjoin further violations, or to recover the
33 actual damages sustained by the person, or both, together with the cost
34 of suit including reasonable attorneys' fees or any other appropriate
35 remedy authorized by this chapter or the United States Civil Rights Act
36 of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988
37 (42 U.S.C. Sec. 3601 et seq.).

1 (3) Except for any unfair practice committed by an employer against
2 an employee or a prospective employee, or any unfair practice in a real
3 estate transaction which is the basis for relief specified in the
4 amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any
5 unfair practice prohibited by this chapter which is committed in the
6 course of trade or commerce as defined in the Consumer Protection Act,
7 chapter 19.86 RCW, is, for the purpose of applying that chapter, a
8 matter affecting the public interest, is not reasonable in relation to
9 the development and preservation of business, and is an unfair or
10 deceptive act in trade or commerce.

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

13 As used in this chapter:

14 (1) "Person" includes one or more individuals, partnerships,
15 associations, organizations, corporations, cooperatives, legal
16 representatives, trustees and receivers, or any group of persons; it
17 includes any owner, lessee, proprietor, manager, agent, or employee,
18 whether one or more natural persons; and further includes any political
19 or civil subdivisions of the state and any agency or instrumentality of
20 the state or of any political or civil subdivision thereof;

21 (2) "Commission" means the Washington state human rights
22 commission;

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

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

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

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

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

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

4 (9) "Full enjoyment of" includes the right to purchase any service,
5 commodity, or article of personal property offered or sold on, or by,
6 any establishment to the public, and the admission of any person to
7 accommodations, advantages, facilities, or privileges of any place of
8 public resort, accommodation, assemblage, or amusement, without acts
9 directly or indirectly causing persons of any particular race, creed,
10 color, sex, national origin, or with any sensory, mental, or physical
11 disability, or the use of a trained dog guide or service animal by a
12 disabled person, to be treated as not welcome, accepted, desired, or
13 solicited;

14 (10) "Any place of public resort, accommodation, assemblage, or
15 amusement" includes, but is not limited to, any place, licensed or
16 unlicensed, kept for gain, hire, or reward, or where charges are made
17 for admission, service, occupancy, or use of any property or
18 facilities, whether conducted for the entertainment, housing, or
19 lodging of transient guests, or for the benefit, use, or accommodation
20 of those seeking health, recreation, or rest, or for the burial or
21 other disposition of human remains, or for the sale of goods,
22 merchandise, services, or personal property, or for the rendering of
23 personal services, or for public conveyance or transportation on land,
24 water, or in the air, including the stations and terminals thereof and
25 the garaging of vehicles, or where food or beverages of any kind are
26 sold for consumption on the premises, or where public amusement,
27 entertainment, sports, or recreation of any kind is offered with or
28 without charge, or where medical service or care is made available, or
29 where the public gathers, congregates, or assembles for amusement,
30 recreation, or public purposes, or public halls, public elevators, and
31 public washrooms of buildings and structures occupied by two or more
32 tenants, or by the owner and one or more tenants, or any public library
33 or educational institution, or schools of special instruction, or
34 nursery schools, or day care centers or children's camps: PROVIDED,
35 That nothing contained in this definition shall be construed to include
36 or apply to any institute, bona fide club, or place of accommodation,
37 which is by its nature distinctly private, including fraternal
38 organizations, though where public use is permitted that use shall be

1 covered by this chapter; nor shall anything contained in this
2 definition apply to any educational facility, columbarium, crematory,
3 mausoleum, or cemetery operated or maintained by a bona fide religious
4 or sectarian institution;

5 (11) "Real property" includes buildings, structures, dwellings,
6 real estate, lands, tenements, leaseholds, interests in real estate
7 cooperatives, condominiums, and hereditaments, corporeal and
8 incorporeal, or any interest therein;

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

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

18 (14) "Sex" means gender;

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

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

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

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

1 (19) "Families with children status" means one or more individuals
2 who have not attained the age of eighteen years being domiciled with a
3 parent or another person having legal custody of such individual or
4 individuals, or with the designee of such parent or other person having
5 such legal custody, with the written permission of such parent or other
6 person. Families with children status also applies to any person who
7 is pregnant or is in the process of securing legal custody of any
8 individual who has not attained the age of eighteen years;

9 (20) "Covered multifamily dwelling" means: (a) Buildings
10 consisting of four or more dwelling units if such buildings have one or
11 more elevators; and (b) ground floor dwelling units in other buildings
12 consisting of four or more dwelling units;

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

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

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

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

32 (25) "Genetic test" means a test of human DNA, RNA, mitochondrial
33 DNA, chromosomes, or other material for the purpose of identifying
34 genes, inherited or acquired genetic abnormalities, or the presence or
35 absence of inherited or acquired characteristics in the genetic
36 material. For the purposes of this section, "genetic test" does not
37 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. 6.** RCW 49.60.180 and 1997 c 271 s 10 are each amended to read
4 as follows:

5 It is an unfair practice for any employer:

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

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

19 (3) To discriminate against any person in compensation or in other
20 terms or conditions of employment because of age, sex, marital status,
21 race, creed, color, national origin, genetic information, or the
22 presence of any sensory, mental, or physical disability or the use of
23 a trained dog guide or service animal by a disabled person: PROVIDED,
24 That it shall not be an unfair practice for an employer to segregate
25 washrooms or locker facilities on the basis of sex, or to base other
26 terms and conditions of employment on the sex of employees where the
27 commission by regulation or ruling in a particular instance has found
28 the employment practice to be appropriate for the practical realization
29 of equality of opportunity between the sexes.

30 (4) To print, or circulate, or cause to be printed or circulated
31 any statement, advertisement, or publication, or to use any form of
32 application for employment, or to make any inquiry in connection with
33 prospective employment, which expresses any limitation, specification,
34 or discrimination as to age, sex, marital status, race, creed, color,
35 national origin, genetic information, or the presence of any sensory,
36 mental, or physical disability or the use of a trained dog guide or
37 service animal by a disabled person, or any intent to make any such

1 limitation, specification, or discrimination, unless based upon a bona
2 fide occupational qualification(~~(: PROVIDED, Nothing contained herein~~
3 ~~shall))~~). This subsection does not prohibit advertising in a foreign
4 language.

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

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

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

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

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

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

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

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

3 It is an unfair practice for any employment agency:

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

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

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