
HOUSE BILL 2772

State of Washington

58th Legislature

2004 Regular Session

By Representatives Schual-Berke, Cody, O'Brien, Simpson, G., Moeller, Dickerson, Chase and Conway

Read first time 01/20/2004. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to genetic information; amending RCW 48.18.480,
2 49.60.020, 49.60.040, 49.60.180, 49.60.190, and 49.60.200; adding a new
3 section to chapter 49.44 RCW; adding a new chapter to Title 7 RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds and declares the
7 following:

8 (1) Every individual possesses a fundamental right of privacy with
9 respect to his or her genetic information;

10 (2) Genetic information is uniquely private and personal
11 information that should not be collected, retained, or disclosed
12 without the individual's authorization;

13 (3) The improper collection, retention, or disclosure of genetic
14 information can lead to significant harm to the individual, including
15 stigmatization and discrimination in areas such as employment and
16 insurance;

17 (4) Current legal protections may be inadequate to protect genetic
18 privacy;

1 (5) Therefore, the purpose of this act is to prohibit the
2 disclosure of genetic information without the consent of the individual
3 to whom the information pertains; prohibit discrimination based on
4 genetic information in employment decisions; and prohibit the use of
5 genetic information to discriminate in the life insurance contract.

6 NEW SECTION. **Sec. 2.** (1) An individual's genetic information is
7 the property of the individual. A person may not obtain, use, store,
8 or disclose for any purpose an individual's genetic information without
9 first obtaining the individual's informed consent to do so.

10 (2) Informed consent requires:

11 (a) An explanation of the purpose for which the genetic information
12 is being obtained;

13 (b) Identification of the entity obtaining the genetic information;

14 (c) Disclosure of any entity with whom the genetic information may
15 be shared, including disclosure that the genetic information may be
16 shared in the future with an unknown entity;

17 (d) A statement of the expected duration that the genetic
18 information may be kept;

19 (e) A description of reasonably foreseeable risks or harm
20 associated with providing the genetic information;

21 (f) An explanation of how the genetic information will be
22 maintained and whether the physical sample will be destroyed or stored,
23 including how and where it will be stored;

24 (g) A statement describing any reasonably expected benefits or
25 advantages associated with providing the genetic information;

26 (h) A statement describing any confidentiality or privacy
27 protections for the genetic information;

28 (i) Identification of an individual contact and contact information
29 from whom further information may be obtained or reported relative to
30 the genetic information;

31 (j) Provisions explaining whether the genetic information may be
32 expunged or removed from the entity that obtained it and the method to
33 do it;

34 (k) The exclusion of any exculpatory provisions from liability
35 against the entity obtaining the genetic information; and

36 (l) A disclosure that providing genetic information is voluntary.

1 (3) Informed consent must be granted in writing each time genetic
2 information is obtained, used, stored, or disclosed. However, an
3 individual may grant continuous informed consent for the ongoing use
4 and storage of genetic information for research purposes. For
5 continuous informed consent to be granted, the individual must
6 specifically designate that his or her consent is continuous and
7 ongoing. Alternatively, an individual may grant informed consent for
8 a specified length of time if he or she specifically states the period
9 of time for which informed consent will be valid. Continuous informed
10 consent applies only to the use and storage of genetic information.
11 Obtaining and/or disclosure of genetic information requires informed
12 consent for each occurrence.

13 (4) An individual's informed consent is not required:

14 (a) In criminal matters if the genetic information is obtained or
15 used during a criminal investigation, trial, appeal, or pursuant to
16 specific common law or statutory authority, or a lawfully issued court
17 order. Once a criminal conviction is final, a report that was not
18 admitted into evidence, identifying a specific individual by analysis
19 of genetic information obtained in the course of an investigation,
20 shall be destroyed if the individual is found to be uninvolved in the
21 commission of the criminal act or acts;

22 (b) In situations where the individual requires emergency medical
23 care as long as the individual, or his or her representative in death
24 cases, is informed in a timely manner after the emergency that the
25 genetic information was obtained;

26 (c) In situations where an individual's bodily fluids are obtained
27 without consent pursuant to specific statutory requirement mandating
28 testing;

29 (d) In situations where the individual is deceased and the entity
30 requesting the genetic information establishes in a court of law that
31 obtaining individually identifiable genetic information benefits public
32 health, safety, and welfare, and outweighs the harm to the individual's
33 privacy interests, or the person requesting the genetic information is
34 a next of kin requesting the genetic information for purposes of health
35 care or other purpose that outweighs the harm to the individual's
36 privacy interests, or the entity requesting the genetic information has
37 been authorized by an institutional review board to use the genetic
38 information pursuant to an approved protocol;

1 (e) Subject to this section, if the entity or person is a health
2 care provider or facility, under chapter 70.02 RCW and is subject to
3 the federal health insurance portability and accountability act privacy
4 rules;

5 (f) Subject to this section, if the person obtains an individual's
6 genetic information in a form that does not identify that individual or
7 there is no reasonable basis to believe the information can be used to
8 identify an individual;

9 (g) Subject to this section, if the person who obtains genetic
10 information is acting according to the provisions of an institutional
11 review board established under federal law;

12 (h) In death investigations for purposes of identifying the
13 decedent;

14 (i) In matters of parentage proceedings under chapter 26.26 RCW.
15 Genetic information may not be released or disclosed for any purpose
16 other than that which is relevant to the parentage proceeding without
17 a court order or informed consent of the individual who furnished the
18 specimen; and

19 (j) When the division of child support has issued an order for
20 genetic testing pursuant to RCW 74.20.360. Genetic information may not
21 be released or disclosed for any purpose not relevant to the division
22 of child support's order without a court order or the informed consent
23 of the individual who furnished the specimen.

24 (5) For the purposes of this section, "genetic information" means
25 information about inherited characteristics that is derived from a DNA-
26 based or other laboratory test, family history, or medical examination.

27 **Sec. 3.** RCW 48.18.480 and 1957 c 193 s 12 are each amended to read
28 as follows:

29 ((No)) An insurer shall not make or permit any unfair
30 discrimination between insureds, prospective insureds, or subjects of
31 insurance having substantially like insuring, risk, and exposure
32 factors, and expense elements, in the terms or conditions of any
33 insurance contract, or in the rate or amount of premium charged
34 therefor, or in the benefits payable or in any other rights or
35 privileges accruing thereunder. This ((provision shall)) section does
36 not prohibit fair discrimination by a life insurer as between

1 individuals having unequal expectation of life, except that insurers
2 shall neither require nor use genetic information as a basis for that
3 discrimination.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.44 RCW
5 to read as follows:

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

15 "Genetic information" for purposes of this chapter, means
16 information about inherited characteristics that is derived from a DNA-
17 based or other laboratory test, family history, or medical examination.

18 **Sec. 5.** RCW 49.60.020 and 1993 c 510 s 2 are each amended to read
19 as follows:

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

32 **Sec. 6.** RCW 49.60.040 and 1997 c 271 s 3 are each amended to read
33 as follows:

34 As used in this chapter:

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

8 (2) "Commission" means the Washington state human rights
9 commission;

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

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

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

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

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

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

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

37 (10) "Any place of public resort, accommodation, assemblage, or
38 amusement" includes, but is not limited to, any place, licensed or

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

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

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

36 (13) "Dwelling" means any building, structure, or portion thereof
37 that is occupied as, or designed or intended for occupancy as, a

1 residence by one or more families, and any vacant land that is offered
2 for sale or lease for the construction or location thereon of any such
3 building, structure, or portion thereof;

4 (14) "Sex" means gender;

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

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

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

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

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

33 (20) "Covered multifamily dwelling" means: (a) Buildings
34 consisting of four or more dwelling units if such buildings have one or
35 more elevators; and (b) ground floor dwelling units in other buildings
36 consisting of four or more dwelling units;

37 (21) "Premises" means the interior or exterior spaces, parts,

1 components, or elements of a building, including individual dwelling
2 units and the public and common use areas of a building;

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

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

9 (24) "Genetic information" means information about inherited
10 characteristics that is derived from a DNA-based or other laboratory
11 test, family history, or medical examination.

12 **Sec. 7.** RCW 49.60.180 and 1997 c 271 s 10 are each amended to read
13 as follows:

14 It is an unfair practice for any employer:

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

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

28 (3) To discriminate against any person in compensation or in other
29 terms or conditions of employment because of age, sex, marital status,
30 race, creed, color, national origin, genetic information, or the
31 presence of any sensory, mental, or physical disability or the use of
32 a trained dog guide or service animal by a disabled person: PROVIDED,
33 That it shall not be an unfair practice for an employer to segregate
34 washrooms or locker facilities on the basis of sex, or to base other
35 terms and conditions of employment on the sex of employees where the
36 commission by regulation or ruling in a particular instance has found

1 the employment practice to be appropriate for the practical realization
2 of equality of opportunity between the sexes.

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

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

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

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

24 (1) To deny membership and full membership rights and privileges to
25 any person because of age, sex, marital status, race, creed, color,
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.

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

34 (3) To discriminate against any member, employer, employee, or
35 other person to whom a duty of representation is owed because of age,
36 sex, marital status, race, creed, color, national origin, genetic

1 information, or the presence of any sensory, mental, or physical
2 disability or the use of a trained dog guide or service animal by a
3 disabled person.

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

10 **Sec. 9.** RCW 49.60.200 and 1997 c 271 s 12 are each amended to read
11 as follows:

12 It is an unfair practice for any employment agency:

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

30 (2) 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 employment classification, assignment, or
34 referral; or to collect, solicit, or require disclosure of genetic
35 information from any person as a condition of employment
36 classification, assignment, or referral.

1 NEW SECTION. **Sec. 10.** Section 2 of this act constitutes a new
2 chapter in Title 7 RCW.

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