

SENATE BILL REPORT

SB 5672

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 24, 2009

Title: An act relating to protecting consumers from discrimination based on lawful source of income.

Brief Description: Protecting consumers from discrimination based on lawful source of income.

Sponsors: Senators Kline and Kohl-Welles.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/23/09, 2/24/09 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5672 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; Honeyford.

Staff: Ingrid Mungia (786-7423)

Background: Under the Washington Law Against Discrimination (WLAD), it is an unfair practice to discriminate in real estate transactions based on race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a person with a disability.

The Washington State Human Rights Commission (Commission) is responsible, in part, for administering and enforcing the WLAD. The Commission receives and investigates complaints that allege unfair practices in violation of the WLAD. If the Commission finds that there is reasonable cause to believe that discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If the parties do not reach an agreement, the Commission must refer the matter to an administrative law judge who may, after a hearing on the matter, issue an order providing relief to the complainant.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If an administrative law judge determines that the respondent engaged in discrimination in the rental of a dwelling, the judge may award damages and injunctive relief. In addition, the administrative law judge may assess a civil penalty against the respondent up to \$50,000 depending on whether the respondent has committed any unfair practices in the past.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): It is an unfair practice for any person to discriminate in a real estate transaction with a person because of the person's lawful source of income. "Lawful source of income" means verifiable legal income used in the renting or leasing of real property, including income derived from:

- employment;
- social security;
- supplemental security income;
- other retirement programs;
- child support;
- alimony; and
- any federal, state, local government, or nonprofit-administered benefit or subsidy program, including housing assistance, public assistance, and general assistance programs.

The prohibition on discrimination based on a person's lawful source of income does not apply to real estate transactions involving the sharing of a dwelling, or the rental or sublease of a portion of a dwelling when the dwelling is occupied by the owner or sublessor. The lawful source of income provisions only apply to tenancies covered by the Residential Landlord-Tenant Act, Chapter 59.18 RCW.

The unlawful source of income unfair practice protections do not apply to housing complexes where at least 20 percent of the tenants receive Section 8 voucher subsidies.

A complainant must first exhaust the administrative remedies provided for under the Human Rights Commission before filing a private right of action. If an administrative law judge finds that the respondent has engaged in discrimination based on a person's lawful source of income, the judge may award actual and injunctive relief, and may assess the respondent a civil penalty of:

- a maximum of \$10,000 for the first unfair practice in a real estate transaction;
- a maximum of \$25,000 if the respondent has committed one other unfair practice in a real estate transaction within a five-year period; or
- a maximum of \$50,000 if the respondent has committed two or more unfair practices in a real estate transaction within a seven-year period.

The Director of the Commission must provide a report to the appropriate committees of the Legislature including information related to lawful source of income complaints and their outcomes. The first report is due December 1, 2009, and annually thereafter.

The provisions of this act terminate on December 31, 2011.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This protection would reduce homelessness and help people who receive rental housing subsidy seek a safe affordable place to live. Allowing denial of housing based on source of income is a violation of civil liberties. Landlords could continue to use lawful and consistent screening. Section 8 vouchers come with federally-mandated criteria such as no violent criminal offenses. A drug offense results in a permanent bar from the program. Other states have implemented sources of income protections and it has been upheld by the Courts as constitutional. Landlords can still turn down people due to credit history, bad rental history, bad criminal history, etc. Section 8 is the most reliable source of income; the checks come regularly and on time. Seattle, King County, and Bellevue have sources of income protections. Last year, the city of Seattle Office of Civil Rights received nine sources of income complaints. Not every case resulted in a cause finding.

CON: The issue is not discriminating against a tenant based on source of income, but the regulations of the Section 8 program, which is a voluntary program. What is leasing and rental of property? Does it apply to commercial property? The local housing authorities administer the Section 8 voucher program. The Kitsap Housing Authority doesn't run a credit check. In Seattle, a tenant's rent was \$700 and the landlord wanted to raise it to \$800. The Housing Authority wanted a rent survey, and then turned down the request because there was a comparable unit with a rent of \$595. Section 8 doesn't pay late fees or a damages deposit and requires a 12-month lease. In Yakima Valley, seasonal housing is very important, so the 12-month lease requirement is a challenge. A memorial to Congress is a better idea. Ninety-six percent of Section 8 vouchers are used so obviously it's not a problem to obtain rental housing with the voucher. Mason County no longer has a housing authority so another authority administers the program and it takes too long to get approval (a tenant has to have the unit approved by the Housing Authority within a specified period of time). Do these provisions apply to adult family homes? An exemption is needed.

Persons Testifying: PRO: Shawna Mc Adams, Raina Gorton, Governor's Commission on Disability Issues and Employment, New Leaf; Carolyn Robinson, King County Housing Authority; Michele Thomas, Tenants Union; Eric Dunn, Northwest Justice Project; Nick Federici, Washington Low-Income House Alliance; Gregory Bell, Seattle Office of Civil Rights.

CON: John Woodring, Rental Housing Association, Manufactured Housing Communities of Washington; Doug Nyherd, Rental Housing Association of Puget Sound; Ron Newbry, Yakima Valley Landlord Association; Darlene Pennock, Washington Apartment Association; Terry Kohl, Washington State Residential Care Council of Adult Family Homes.