

SENATE BILL REPORT

SB 6548

As Reported by Senate Committee On:
Law & Justice, February 3, 2016

Title: An act relating to allowing the use of gender-segregated facilities.

Brief Description: Allowing the use of gender-segregated facilities.

Sponsors: Senators Warnick, Padden, Roach and Benton.

Brief History:

Committee Activity: Law & Justice: 2/01/16, 2/03/16 [DPS, DNP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6548 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Frockt.

Staff: Tim Ford (786-7423)

Background: The Washington Law Against Discrimination (WLAD), first adopted in 1949, establishes that it is a civil right to be free from discrimination based on race; creed; color; national origin; families with children; sex; marital status; age; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a disabled person. This right applies to employment; places of public resort, accommodation, assemblage, or amusement; commerce; and real estate, credit, and insurance transactions.

In 2006, WLAD was expanded to prohibit discrimination on the basis of sexual orientation and gender identity in the areas of employment, housing, public accommodation, credit, and insurance. "Sexual orientation" is defined as heterosexuality, homosexuality, bisexuality, and gender expression or identity. "Gender expression or identity" is defined as having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

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.

The Washington State Human Rights Commission (Commission) consists of five members appointed by the Governor with the advice and consent of the Senate. The Commission may adopt, amend, and rescind suitable rules to carry out the provisions of WLAD. The rules must be consistent with the WLAD, and those rules may interpret and explain the WLAD. The commission adopted a final rule on sexual orientation, gender identity, and gender expression which became effective on December 26, 2015. The rule applies to employers, public accommodations, and places that provide goods and services to the public. Examples of public accommodations include: restaurants; hotels, motels, and inns; stores, markets, and shopping malls; theaters, cinemas, concert halls, and arenas; parks, fairs, and arcades; libraries; schools; state and local government offices; and hospitals. The rule prohibits discrimination against individuals because of their sexual orientation, their gender identity, or their gender expression.

Under the new rule, there is a specific requirement for covered entities that have gender-segregated facilities. Gender-segregated facilities are locations such as restrooms, locker rooms, dressing rooms, and homeless or emergency shelters, that are separated for use by only one gender - either for women only or for men only. If a covered entity has gender-segregated facilities, individuals must be allowed to use the bathroom or locker room that matches his or her gender identity or expression. So, for example, a person who identifies as "male" must be allowed to use the men's room. Prohibited conduct includes asking unwelcome personal questions about an individual's sexual orientation, gender expression or gender identity, transgender status, or sex assigned at birth. A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender expression or gender identity, or request or require an individual to use a separate or gender-neutral facility. If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender expression or gender identity, the person expressing discomfort should be directed to a separate or gender-neutral facility, if available.

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

Summary of Bill (Recommended Substitute): The Washington Law Against Discrimination does not grant any right to access gender segregated facilities, and a public or private entity may limit access to a gender segregated facility such as a bathroom, restroom, toilet, shower, locker room, or sauna, to a person if the person is preoperative, non-operative, or otherwise has genitalia of a different gender from that for which the facility is segregated.

A minor child or person with a disability may enter a gender segregated facility where the gender of the child or person does not match the segregated facility when accompanied and supervised by a parent, guardian, or caretaker. The parent, guardian, or caretaker must be of the matching gender for which the facility is segregated.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Substitute): A minor child or person with a disability may enter a gender segregated facility where the gender of the child or person does not match the segregated facility when accompanied and supervised by a parent, guardian, or caretaker. The parent, guardian, or caretaker must be of the matching gender for which the facility is segregated.

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 on First Substitute: PRO: Safety and privacy is a paramount concern when an individual is in a locker room or restroom. The rule allowing transgender access to restrooms of their choice will endanger public safety, violate privacy, and discourage the public from continuing membership in facilities such as the YMCA. A male sex predator could pose as a transgender and say that they must be allowed access to the girls rest room. The Human Rights Commission rule prohibits facilities from restricting restrooms based on biology, so places like the YMCA must allow men to enter the female rest room if they say they identify as female. The Commission didn't have enough public hearings or didn't receive enough public testimony.

CON: It is a violation of the law to discriminate against transgender persons since 2006. The Commission's rule provides instruction to public accommodations for complying with the law. Transgender persons are more prone to be victims of gender violence. Transgender persons are not sex predators, we are mothers, fathers, and children. We have civil rights to use restrooms and SB 6548 is reminiscent of Jim Crow laws. If this law passes, transgender persons will be at greater risk to violence. Transgender youth should be loved and accepted unconditionally just as they are, not how some adults may wish they were.

Persons Testifying on First Substitute: PRO: Senator Warnick, prime sponsor; Gretchen Flores, Erich Jaber, Kaeley Triller, Paul MacLurg, Cynthia Stuart, Mike Gordon, Mariah Herman, Joseph Backholm, Mike Keith, Ruth Stuart, Bryan Bailon, Leah Neiman, Donna Hager, Michelle Andres.

CON: David Ward, Ryan Trainer, Ari LaTourette, Victoree Jamiel, Jim Ritter, Lisa Hesse, Jenn Popkin, Simon Knaphus, Karin White, Lisa Keating, Rabbi Rona Matlow, Cory Grandinetti, Cheryl Cristello, Gretchen Holtz.

Persons Signed In To Testify But Not Testifying on First Substitute: Rachel Grutz, Rich Stuart, Tony Flores, William Chandler, Shawnta Mulligan, Carolyn Fort, Jordan Goralski, David Sattler, Krystal Atkinson, Michael Woodward, Scott Simmons, Carrie Graciano, Laurel Ramseyer, Karen Meyer, Ric Fritz, Marlene Mayer, Michael Keith, Gunner Scott, Philip Wilson, Monisha Harrell, Karen Kirsch, Stacy Norton, Emily Proffitt, Cory Miller, Bruce Stabbert, Ruth Stuart, Gabi Clayton, Danni Asleini, Josie Ellison, Joshua Meeks, Teresa Guajardo, Shannon Bushnell.