

SENATE BILL REPORT

SB 5566

As of February 6, 2017

Title: An act relating to the admissibility of mental health evidence in claims for noneconomic damages under certain civil rights laws.

Brief Description: Concerning admissibility of mental health evidence in claims for noneconomic damages under certain civil rights laws.

Sponsors: Senators Kuderer, Pedersen, Keiser, Hasegawa, Billig and Chase.

Brief History:

Committee Activity: Law & Justice: 2/08/17.

Brief Summary of Bill

- Limits the admissibility of evidence of the mental health of a claimant seeking non-economic damages under the Washington Law Against Discrimination.
- Provides three exceptions to the limit where the claimant alleges a diagnosable injury, or relies on testimony of a health care provider, or alleges discrimination on the basis of a disability.
- Limits the exceptions in time, starting two years prior to the first alleged unlawful act.
- Requires the admission of evidence to specifically relate to the provided exceptions.

SENATE COMMITTEE ON LAW & JUSTICE

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.

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.

In a civil lawsuit under WLAD, a plaintiff may allege discrimination and also claim that the discriminatory action caused non-economic damages. Non-economic damages are defined in a different state law and mean subjective, non-monetary losses including but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship.

Summary of Bill: For claims of non-economic damages under WLAD, evidence of the claimant's mental health is not admissible if offered by the respondent. Three exceptions are provided to this rule when:

1. The claimant alleges a specific and diagnosable physical or psychiatric injury as a proximate cause of the respondents' conduct.
2. The claimant relies on the records or testimony of a health care provider or expert witness to seek general damages.
3. The claimant alleges failure to accommodate a disability or alleges discrimination on the basis of a disability.

If evidence is admissible or health care information is waived for any of the three exceptions, then the admissibility of that evidence is limited to a period beginning two years prior to the first alleged unlawful act and ending at the last alleged unlawful act for which the claimant seeks damages. The admissibility must relate specifically to the diagnosable injury, or the health care provider on which the claimant relies, or the disability specifically at issue in the allegation.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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