

# SENATE BILL REPORT

## SB 5667

---

As Reported by Senate Committee On:  
Commerce, Labor & Sports, June 28, 2017  
Labor & Commerce, February 1, 2018

**Title:** An act relating to the off-duty conduct of an employee or a prospective employee.

**Brief Description:** Concerning the off-duty conduct of an employee or a prospective employee.

**Sponsors:** Senators Kuderer and Hasegawa.

**Brief History:**

**Committee Activity:** Commerce, Labor & Sports: 2/16/17, 6/28/17.  
Labor & Commerce: 1/17/18, 2/01/18 [DPS, DNP, w/oRec].

**Brief Summary of First Substitute Bill**

- Provides that it is an unfair practice for an employer to take an adverse employment action, or discriminate, against an employee or prospective employee because that person participates in any activity that is in furtherance of the exercise of their First Amendment rights.

---

### SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**Staff:** Jarrett Sacks (786-7448)

---

### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** That Substitute Senate Bill No. 5667 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Conway, Kuderer and Saldaña.

**Minority Report:** Do not pass.

Signed by Senators Braun, King and Wilson.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Baumgartner, Ranking Member.

---

*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.*

**Staff:** Jarrett Sacks (786-7448)

**Background:** In general, Washington is an at-will employment state, which means either the employee or employer can terminate an employment relationship at any time. In an at-will employment relationship, employment may be terminated without notice and without cause. There are several exceptions to the at-will doctrine, including provisions in collective bargaining agreements and state civil service laws that set requirements that must be met for the termination of an employee. There are also exceptions to the at-will doctrine based on public policy. For example, it is generally against public policy to terminate someone for refusing to commit an illegal act.

Generally, there is no explicit prohibition in state law against an employer taking an adverse employment action against an employee for off-duty actions.

**Summary of Bill (First Substitute):** It is an unfair practice for an employer to not hire an individual, to discharge an individual, or to otherwise discriminate against an individual because that person participates in an activity that is in furtherance of exercising that person's First Amendment rights. This prohibition does not apply to a non-profit employer with a primary purpose that conflicts with the employee's participation in a particular activity, to general or limited authority Washington law enforcement agencies, or to criminal justice agencies.

An employer may restrict an employee's participation in lawful activities if the restriction:

- relates to an occupational requirement, or is related to the responsibilities of a particular employee or group of employees; or
- is necessary to avoid a conflict of interest with any responsibilities to the employer.

**EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):** Provisions prohibiting employers from refusing to hire a prospective employee, or making an adverse employment decision toward an employee, for engaging in any activity that is lawful under state law is removed. A provision prohibiting employers from refusing to hire a prospective employee, or making an adverse employment decision toward an employee, for participating in any activity in furtherance of the exercise of the employee's First Amendment rights is added. An exception to the provisions of the bill for law enforcement agencies is added.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony on Original Bill (Commerce, Labor & Sports):** *Testimony from 2017 Regular Session.* PRO: Employers have the technical means, and sometimes the desire to find out what employees do on their own time. If it does not impact performance on the job, it should not matter what an employee does while they are off-duty.

It is important for people to be able to engage in social activism without risking their jobs. An employee should not be fired for what they post on a personal blog. Employees are currently prohibited from moonlighting even though it does not affect on-the-job performance. The bill protects workers' rights while still allowing employers to take action on work-related issues.

CON: The bill interferes with Washington's at-will status. Statements of an employee in private can be attached to the employer. Employers should still be able to drug test. The bill is vague as to what is work-related. There are employees that do not have traditional worksites, which would increase employer's liability under the bill.

**Persons Testifying (Commerce, Labor & Sports):** PRO: Senator Patty Kuderer, Prime Sponsor; Larry Shannon, Washington State Association for Justice; Jesse Wing, Washington Employment Lawyers Association.

CON: Jim King, Washington State HVAC Industry Association; Bob Battles, AWB; Heather Hansen, WA State Nursery and Landscape Association.

**Persons Signed In To Testify But Not Testifying (Commerce, Labor & Sports):** No one.

**Staff Summary of Public Testimony on Original Bill (Labor & Commerce):** *The committee recommended a different version of the bill than what was heard.* PRO: Our culture is changing and it is more difficult to keep private life private. It is now easier for employers to find out things about an employee's private life. Employers should not be able to restrict things that have no bearing on your work. This bill protects people's political activity and free speech. Other states have statutes protecting off-duty conduct, and Washington should join them.

CON: The bill threatens construction site safety, where drug free workplaces are really important. It is difficult to know how impaired someone would be at work if they did marijuana away from the employment premises. The bill makes it impossible to have a drug-free workplace policy. There are other professions, such as pilots and commercial truck drivers where drug-free workplaces are important.

OTHER: The bill needs a law enforcement exemption. There are lawful behaviors that people still do not want police officers doing while they are off duty. It is important for the public's trust in law enforcement.

**Persons Testifying (Labor & Commerce):** PRO: Senator Patty Kuderer, Prime Sponsor; Anne Silver, Washington Employment Lawyers Association.

CON: Bob Battles, AWB; Bruce Beckett, Washington Retail Association; Jerry VanderWood, Associated General Contractors of Washington; Patrick Connor, NFIB/Washington.

OTHER: James McMahan, Washington Association of Sheriffs & Police Chiefs.

**Persons Signed In To Testify But Not Testifying (Labor & Commerce):** CON: James King, Washington State HVAC Industry Association.