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## Labor & Workplace Standards Committee

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### SSB 5110

**Brief Description:** Adding penalties for certain prohibited practices in chapter 49.44 RCW.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser and Kuderer).

#### Brief Summary of Substitute Bill

- Establishes a cause of action for enforcing any provision in chapter 49.44 of the Revised Code of Washington that is without a specified criminal or civil remedy.

**Hearing Date:** 3/15/23

**Staff:** Kelly Leonard (786-7147).

#### Background:

Chapter 49.44 of the Revised Code of Washington (RCW) prohibits several types of practices in labor relations and employment relationships. Most of these prohibitions include specific criminal or civil remedies. For example, engaging in blacklisting, bribery, or fraud would subject a violator to criminal prosecution, whereas requiring lie detector tests or intentionally misclassifying employees to avoid providing benefits would subject violators to a civil lawsuit for damages. Some provisions prohibiting certain terms in employment contracts, like a waiver of certain rights or unfair noncompete agreements, make those terms void and unenforceable.

Certain prohibited acts or practices in chapter 49.44 RCW do not contain express criminal or civil penalties or a cause of action. This includes:

- engaging in certain discriminatory practices against persons 40 years of age or older;

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- requiring genetic screening as a condition of employment; and
- obtaining individually identifiable information regarding an employee's participation in an employee assistance program.

Courts have recognized that certain statutes contain implied causes of action in the absence of other remedies. In the case of discriminatory practices against persons 40 years of age or older, Washington courts interpret the statute to have an implied cause of action, and have held that it must be applied in conjunction with other laws against discrimination.

The Washington Criminal Code provides that, if an act is prohibited by a statute and the statute does not specify a penalty, the committing of such act is a misdemeanor. Misdemeanors are punishable by imprisonment for a maximum term up to 90 days, or by a fine up to \$1,000, or by both.

**Summary of Bill:**

An employee, applicant, or prospective applicant may bring a civil action for any violation of a provision in chapter 49.44 RCW where a criminal or civil remedy is not specified.

In a civil action brought under the bill, a court may award any prevailing employee, applicant, or prospective applicant injunctive or other equitable relief, actual damages, and a penalty of no less than \$500 and no more than \$1,000. The court must award any prevailing employee, applicant, or prospective applicant reasonable attorneys' fees and costs.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.