

SENATE BILL REPORT

SB 5110

As Reported by Senate Committee On:
Labor & Commerce, January 17, 2023

Title: An act relating to adding penalties for certain prohibited practices in chapter 49.44 RCW.

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

Sponsors: Senators Keiser and Kuderer.

Brief History:

Committee Activity: Labor & Commerce: 1/12/23, 1/17/23 [DPS, DNP].

Brief Summary of First Substitute Bill

- Adds penalties for the provisions in the Revised Code of Washington, Chapter 49.44 that do not already have specified criminal or civil remedies.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5110 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Robinson and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

Staff: Jarrett Sacks (786-7448)

Background: The Revised Code of Washington (RCW), Chapter 49.44, contains various prohibited employment practices, such as:

- requiring lie detector tests as a condition of employment;

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

- public employers misclassifying an employee to avoid providing employment-based benefits;
- requiring genetic screening as a condition of employment;
- requesting, requiring, or coercing an employee to grant access to personal social media accounts;
- age discrimination; and
- obtaining individually identifiable information regarding an employee's participation in an employee assistance program.

Some provisions in RCW 49.44 have prescribed civil or criminal remedies while others do not.

Summary of Bill (First Substitute): An employee, applicant, or prospective applicant may bring a civil action for a violation of a provision in RCW 49.44 unless a criminal or civil remedy is otherwise 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.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

Provisions that already contain criminal or civil remedies, rather than criminal or civil penalties, are excluded from the bill. An aggrieved employee, applicant, or prospective applicant, rather than an aggrieved person, may bring a civil action under the bill. A court is required to award a prevailing employee, applicant, or prospective applicant reasonable attorneys' fees and costs. The provision allowing the court to award a prevailing party against whom a frivolous action was brought reasonable expenses and attorneys' fees is removed.

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: *The committee recommended a different version of the bill than what was heard.* PRO: The bill tries to harmonize the prohibited employment practices statutes, where there are statutes without any enforcement mechanism. For example, the prohibition on genetic testing has no remedy in statute. These

sections need enforcement provisions. A right that exists without enforcement is not really a right.

CON: 49.44 RCW is a catch-all chapter for employment practices. A one-size-fits-all approach does not work here. Instead, the Legislature should look at the individual statutes.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Kelli Carson, Washington State Association for Justice; John Traynor, Washington State Labor Council, AFL-CIO.

CON: Bob Battles, Association of Washington Business (AWB).

Persons Signed In To Testify But Not Testifying: No one.