

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 71

BY WINTROW

AN ACT

RELATING TO THE COMMISSION ON HUMAN RIGHTS; AMENDING SECTION 67-5909, IDAHO CODE, TO PROHIBIT CERTAIN ACTS BY AN EMPLOYER; AND AMENDING SECTION 67-5910, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5909, Idaho Code, be, and the same is hereby amended to read as follows:

67-5909. ACTS PROHIBITED. It shall be a prohibited act to discriminate against a person because of, or on a basis of, race, color, religion, sex or national origin, in any of the following subsections. It shall be a prohibited act to discriminate against a person because of, or on the basis of, age in subsections (1), (2), (3) and (4) of this section. It shall be a prohibited act to discriminate against a person because of, or on the basis of, disability in subsections (1), (2), (3) and (4) of this section, provided that the prohibition against discrimination because of disability shall not apply if the particular disability, even with a reasonable accommodation, prevents the performance of the work required in that job, and in subsections (~~6~~8), (~~8~~10), (~~9~~11), (~~10~~2) and (~~11~~3) of this section. The prohibition to discriminate shall also apply to those individuals without disabilities who are associated with a person with a disability.

(1) For an employer to fail or refuse to hire, to discharge, or to otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment or to reduce the wage of any employee in order to comply with this chapter;

(2) For an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against an individual or to classify or refer an individual for employment;

(3) For a labor organization:

(a) To exclude or to expel from membership, or to otherwise discriminate against, a member or applicant for membership,

(b) To limit, segregate or classify membership, or to fail or refuse to refer for employment an individual in any way,

1. Which would deprive an individual of employment opportunities, or

2. Which would limit employment opportunities or adversely affect the status of an employee or of an applicant for employment, or

(c) To cause or attempt to cause an employer to violate this chapter.

(4) For an employer labor organization or employment agency to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by an employment agency, indicating

1 a preference, limitation, specification or discrimination; but a notice or
 2 advertisement may indicate a preference limitation, specification, or dis-
 3 crimination when such is a bona fide occupational qualification for employ-
 4 ment;

5 (5) For an employer to, orally or in writing, seek salary history infor-
 6 mation about an applicant for employment.

7 (6) For an employer to require, as a condition of employment, that an
 8 employee refrain from inquiring about, discussing or disclosing information
 9 about either the employee's own wages, including benefits or other compensa-
 10 tion, or about any other employee's wages.

11 (7) For a person:

12 (a) To deny an individual the full and equal enjoyment of the goods,
 13 services, facilities, privileges, advantages and accommodations of a
 14 place of public accommodation, or

15 (b) To print, circulate, post, or mail or otherwise cause to be pub-
 16 lished a statement, advertisement or sign which indicates that the full
 17 and equal enjoyment of the goods, services, facilities, privileges, ad-
 18 vantages of a place of public accommodation will be refused, withheld
 19 from, or denied an individual or that an individual's patronage of or
 20 presence at a place of public accommodation is objectionable, unwel-
 21 come, unacceptable, or undesirable.

22 ~~(68)~~ For a person who owns, leases or operates a place of public accom-
 23 modation:

24 (a) To deny an individual on the basis of disability the full and equal
 25 enjoyment of the goods, services, facilities, privileges, advantages
 26 or accommodations of a place of public accommodation;

27 (b) To impose or apply eligibility criteria that screen out or tend to
 28 screen out an individual with a disability or any class of individuals
 29 with disabilities from fully and equally enjoying any goods, services,
 30 facilities, privileges, advantages or accommodations of a place of pub-
 31 lic accommodation, unless such criteria can be shown to be necessary for
 32 the provision of the goods, services, facilities, privileges, advan-
 33 tages or accommodations being offered;

34 (c) To fail to make reasonable modifications in policies, practices, or
 35 procedures when such modifications are necessary to afford such goods,
 36 services, facilities, privileges, advantages, or accommodations to
 37 individuals with disabilities, unless the entity can demonstrate that
 38 making such modifications would fundamentally alter the nature of such
 39 goods, services, facilities, privileges, advantages or accommoda-
 40 tions;

41 (d) To fail to take such steps as may be necessary to ensure that no
 42 individual with a disability is excluded, denied services, segregated
 43 or otherwise treated differently than other individuals because of the
 44 absence of auxiliary aids and services, unless the entity can demon-
 45 strate that taking such steps would fundamentally alter the nature of
 46 the goods, services, facilities, privileges, advantages, or accommoda-
 47 tions being offered or would result in an undue burden;

48 (e) To fail to remove architectural barriers and communication barriers
 49 that are structural in nature, in existing facilities and trans-
 50 portation barriers in existing vehicles used by an establishment for

1 transporting individuals (not including barriers that can only be re-
2 moved through retrofitting of vehicles), where such removal is readily
3 achievable; or

4 (f) Where an entity can demonstrate that the removal of a barrier un-
5 der paragraph (e) of this subsection is not readily achievable, to fail
6 to make such goods, services, facilities, privileges, advantages or ac-
7 commodations available through alternative methods if such methods are
8 readily achievable.

9 (79) For an educational institution:

10 (a) To exclude, expel, limit, or otherwise discriminate against an in-
11 dividual seeking admission as a student or an individual enrolled as a
12 student in the terms, conditions, and privileges of the institution, or

13 (b) To make or use a written or oral inquiry or form of application for
14 admission that elicits or attempts to elicit information, or to make or
15 keep a record, of an applicant for admission, except as permitted by the
16 regulations of the commission,

17 (c) To print or publish or cause to be printed or published a catalogue
18 or other notice or advertisement indicating a preference, limitation,
19 specification, discrimination of an applicant for admission, or

20 (d) To announce or follow a policy of denial or limitation through a
21 quota or otherwise of educational opportunities of a group or its mem-
22 bers.

23 (§10) For an owner or any other person engaging in a real estate transac-
24 tion, or for a real estate broker or salesman:

25 (a) To refuse to engage in a real estate transaction with a person,

26 (b) To discriminate against a person in the terms, conditions or privi-
27 leges of a real estate transaction or in the furnishing of facilities or
28 services in connection therewith,

29 (c) To refuse to receive or to fail to transmit a bona fide offer to en-
30 gage in a real estate transaction from a person,

31 (d) To refuse to negotiate a real estate transaction with a person,

32 (e) To represent to a person that real property is not available for in-
33 spection, sale, rental, or lease when in fact it is so available, or to
34 fail to bring a property listing to his attention, or to refuse to permit
35 him to inspect real property,

36 (f) To print, circulate, post or mail or cause to be so published a
37 statement, advertisement or sign, or to use a form of application for a
38 real estate transaction, or to make a record or inquiry in connection
39 with a prospective real estate transaction, which indicates, directly
40 or indirectly, an intent to make a limitation, specification, or dis-
41 crimination with respect thereto,

42 (g) To offer, solicit, accept, use or retain a listing of real property
43 with the understanding that a person may be discriminated against in a
44 real estate transaction or in the furnishing of facilities or services
45 in connection therewith, or

46 (h) To refuse to permit, at the expense of a person with a disability,
47 reasonable modifications of existing premises occupied or to be oc-
48 cupied by such person if the modifications may be necessary to afford
49 such person full enjoyment of the premises. Provided, that in the case
50 of a rental, the landlord may, where it is reasonable to do so, condi-

1 tion permission for a modification on the renter agreeing to restore
 2 the interior, exterior, or both, of the premises, to the condition that
 3 existed before the modification, reasonable wear and tear excepted.
 4 The provision for restoration shall be included in any lease or rental
 5 agreement.

6 (~~9~~11) For a person to whom application is made for financial assistance
 7 in connection with a real estate transaction or for the construction, reha-
 8 bilitation, repair, maintenance, or improvement of real property, or a rep-
 9 resentative of such a person:

10 (a) To discriminate against the applicant,

11 (b) To use a form of application for financial assistance or to make or
 12 keep a record or inquiry in connection with applications for financial
 13 assistance which indicates directly or indirectly, an intent to make a
 14 limitation, specification, or discrimination.

15 (~~10~~2) To insert in a written instrument relating to real property a pro-
 16 vision which purports to forbid or restrict the conveyance, encumbrance, oc-
 17 cupancy or lease thereof;

18 (~~11~~3) For a person for the purpose of inducing a real estate transaction
 19 from which he may benefit financially:

20 (a) To represent that a change has occurred or will or may occur in the
 21 composition of the owners or occupants in the block, neighborhood, or
 22 area in which the real property is located, or

23 (b) To represent that this change will or may result in the lowering of
 24 property values, an increase in criminal or antisocial behavior, or a
 25 decline in the quality of schools in the block, neighborhood, or area in
 26 which the real property is located.

27 SECTION 2. That Section 67-5910, Idaho Code, be, and the same is hereby
 28 amended to read as follows:

29 67-5910. LIMITATIONS. (1) This chapter does not apply to a religious
 30 corporation, association, or society with respect to the employment of indi-
 31 viduals of a particular religion to perform work connected with the carrying
 32 on by the corporation, association, or society of its religious activities.

33 (2) It is not a discriminatory practice:

34 (a) For an employer to employ an employee, or an employment agency to
 35 classify or refer for employment an individual, for a labor organiza-
 36 tion to classify its membership or to classify or refer for employment
 37 an individual, or for an employer, labor organization, or joint labor-
 38 management committee controlling an apprenticeship or other training
 39 or retraining program, on the basis of his religion, sex, national ori-
 40 gin, or age if religion, sex, national origin, or age is a bona fide oc-
 41 cupational qualification reasonably necessary to the normal operation
 42 of the business or enterprise, or

43 (b) For an employer, employment agency, or labor organization to ob-
 44 serve the terms of a bona fide seniority system or any bona fide employee
 45 benefit plan such as a retirement, pension, or insurance plan, which
 46 is not a subterfuge to evade the purposes of this chapter, except that
 47 no such employee benefit plan shall excuse the failure to hire any in-
 48 dividual, and no such seniority system or employee benefit plan shall
 49 require or permit involuntary retirement of any individual specified

1 in subsection (9) of this section because of the age of such individ-
2 ual; however, the prohibition against age discrimination contained in
3 this chapter shall not be construed to prohibit compulsory retirement
4 if such retirement is permitted under the terms of 29 U.S.C., section
5 631(c) (1) and (2), or

6 (c) For a religious educational institution or an educational organi-
7 zation to limit employment or give preference to members of the same re-
8 ligion, or

9 (d) For an employer, employment agency, or labor organization to dis-
10 criminate against a person with a disability which, under the circum-
11 stances, poses a direct threat to the health or safety of the person with
12 a disability or others. The burden of proving this defense is upon the
13 employer, labor organization, or employment agency.

14 (3) Nothing in this chapter shall require a person who owns, leases or
15 operates a place of public accommodation, to permit an individual with a dis-
16 ability to participate in or benefit from the goods, services, facilities,
17 privileges, advantages and accommodations of such place of public accommo-
18 dation, where such individual poses a direct threat to the health or safety
19 of others. The burden of proving this defense is upon the person who owns,
20 leases or operates a place of public accommodation.

21 (4) This chapter does not apply to a private club, or other establish-
22 ment not in fact open to the public, except to the extent that the goods,
23 services, facilities, privileges, advantages or accommodations of the es-
24 tablishment are made available to the customers or patrons of another estab-
25 lishment that is a place of public accommodation.

26 (5) The provisions of section 67-5909 (~~68~~), Idaho Code, do not apply to:

27 (a) Any agency of or any governmental entity within the state; or

28 (b) Religious organizations or entities controlled by religious orga-
29 nizations, including places of worship.

30 (6) Notwithstanding any other provisions of this chapter, it is not a
31 discriminatory practice for:

32 (a) A religious educational institution or an educational institution
33 operated, supervised, or controlled by a religious institution or or-
34 ganization to limit admission or give preference to applicants of the
35 same religion, or

36 (b) An educational institution to accept and administer an inter vivos
37 or testamentary gift upon the terms and conditions prescribed by the
38 donor.

39 (7) The provisions of section 67-5909 (~~9~~10), Idaho Code, do not apply:

40 (a) To the rental of a housing accommodation in a building which con-
41 tains housing accommodations for not more than two (2) families living
42 independently of each other, if the lessor or a member of his family re-
43 sides in one (1) of the housing accommodations, or

44 (b) To the rental of a room or rooms in a housing accommodation by an
45 individual if he or a member of his family resides therein.

46 (8) It is not a discriminatory practice for a religious institution or
47 organization or a charitable or educational organization operated, super-
48 vised or controlled by a religious institution or organization to give pref-
49 erence to members of the same religion in a real property transaction.

1 (9) The prohibitions against discrimination based on age contained
2 in this chapter shall be limited to individuals who are at least forty (40)
3 years of age.