

SENATE BILL REPORT

SHB 2602

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 28, 2008

Title: An act relating to increasing the safety and economic security of victims of domestic violence, sexual assault, or stalking.

Brief Description: Regarding employment leave for victims of domestic violence, sexual assault, or stalking.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Kessler, Dickerson, Williams, O'Brien, Hurst, Lantz, Moeller, Hasegawa, Pedersen, Ormsby, VanDeWege, Conway, Goodman, Hudgins, Santos, Campbell, Upthegrove, Chase, Darneille, Barlow, Green and Simpson).

Brief History: Passed House: 2/18/08, 81-14.

Committee Activity: Labor, Commerce, Research & Development: 2/28/08 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass as amended.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, King, Murray and Prentice.

Staff: Ingrid Mungia (786-7423)

Background: Under federal and state family leave laws, larger employers must grant family leave to employees who meet certain requirements. Family leave may be taken for the birth and care of a child, the placement of a child for adoption or foster care, and for the employee's own or a family member's serious health condition. Beginning in October 2009, paid family leave will be available for certain employees for the birth and care of a child or placement of a child for adoption.

The state family care law applies to nearly all employers. Under this law, employees may use sick leave and other paid time off to care for: (1) a child with a health condition that requires treatment or supervision; or (2) certain family members with a serious health or emergency condition.

Individuals who voluntarily leave work because of domestic violence or stalking are entitled to unemployment benefits under some circumstances.

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.

Summary of Bill (Recommended Amendments): Leave. An employee may take reasonable leave from work, intermittent leave, or leave on a reduced leave schedule for specified activities related to an employee or family member being a victim of domestic violence, sexual assault, or stalking. These activities are to:

- seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family member;
- seek treatment by a health care provider for physical or mental injuries or to attend treatment for a family member;
- obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program;
- obtain, or assist a family member in obtaining, mental health counseling related to an incident in which the employee or the employee's family member was a victim; or
- participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or family member.

The leave is with or without pay. The employee may choose to use sick leave and other paid time off, compensatory time, or unpaid leave time.

Eligibility. Any employee working for an employer of one or more persons, including a public employer, is eligible for the leave.

Notice/Verification. An employee must give an employer advance notice of leave. The timing of the notice must be consistent with the employer's stated policy for requesting such leave, if the employer has a policy. If advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice no later than the end of the first day that the employee takes leave.

An employer may require verification that the employee or the family member is a victim and that the leave was taken for one of the permitted purposes. If the employer requires verification, it must be provided in a timely manner. If advance notice cannot be given, verification must be provided within a reasonable time during or after the leave. Verification may be satisfied by providing:

- a police report indicating that the employee or family member was a victim;
- a court order protecting or separating the employee or family member from the perpetrator, or other evidence from the court or prosecuting attorney that the employee or family member appeared, or is scheduled to appear, in court in connection with an incident;
- documentation from an advocate for victims, an attorney, a clergy member, or a medical or other professional from whom the employee or family member sought assistance; or
- an employee's written statement that the employee or the family member is a victim and that the leave was taken for a permitted purpose.

Verification of familial status may be made by a statement from the employee, a birth certificate, a court document, or other similar documentation.

Confidentiality. An employee is not required to produce or discuss any information with the employer beyond the scope of the verification, or that would compromise the employee's or family member's safety. An employer must maintain the confidentiality of all notice and

verification information unless requested or consented to by the employee, ordered by a court or administrative agency, or otherwise required by law.

Job Protection. Upon return from leave, an employer must restore the employee to the employee's former position or a position with equivalent benefits, pay, and other terms and conditions of employment. An employer must also maintain coverage under any health insurance plan to the extent allowed by law.

Relationship to Other Laws. The leave rights are in addition to other rights. Nothing in the provisions is to discourage employers from adopting greater leave rights for victims, or to diminish an employer's obligation to comply with any collective bargaining agreement, or any benefit program or plan that provides greater leave rights.

Administrative Remedy. The Department of Labor and Industries (Department) must investigate complaints that the law has been violated. An employer may be fined up to \$500 for the first infraction and \$1,000 for a subsequent infraction within three years of a previous infraction. The Director of the Department may also order the employer to restore the employee to the employee's former position or an equivalent position.

Civil Remedy. Regardless of whether the employee complained to the Department and regardless of any finding under an administrative action, an employee injured by a violation has a civil cause of action to enjoin further violations and to recover actual damages, reasonable attorneys' fees, and costs.

Discrimination. It is a violation to discriminate against an employee for exercising his or her rights, filing a complaint, or participating or assisting in another employee's attempt to exercise rights under the provisions.

Publicity. The Department must include notice of the provisions in the next reprinting of employment posters and employers must post the notice. Prosecuting attorney and victim/witness offices are encouraged to make information about the provisions available for distribution. In any criminal or juvenile court proceeding, victims must be notified of their right to reasonable leave under the provisions.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Recommended Amendments): Language is added exempting temporary staffing companies and employees hired for a specific term or to perform work on a discrete project from the job restoration requirement.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Substitute Bill: PRO: This bill will allow survivors to participate in the criminal justice system. It hurts all of society when people lose their job and cannot follow through on prosecution. Over 50 percent of victims lose their jobs or have been demoted as a result of having to take leave. The House bill is a tighter

version than the Senate. This version is probably better for employers. This bill represents an opportunity to remind employers of the need for their support of victims. This is a workable bill. This is not family leave. This leave is more sporadic to allow victims to go to court and other appointments. This is a win-win bill. This bill will allow survivors to participate in the criminal justice system.

CON: This bill would be better if it was incorporated into an existing leave law. This bill adds another layer of leave to overlapping and uncoordinated leave policies.

Persons Testifying: PRO: Representative Kessler, prime sponsor; Sara Ainsworth, Northwest Women's Law Center; Carolee Wynhoff, Sexual Assault Center of Pierce County; Pam Crone, Grace Huang, Washington Coalition Against Domestic Violence; Lonnie Johns-Brown, Washington Coalition of Sexual Assault.

CON: Vicky Marin, WA Retail Association.