
SUBSTITUTE HOUSE BILL 2094

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Appleton, Green, Kagi, Moeller, Sells, Morrell, VanDeWege and Ormsby)

READ FIRST TIME 02/27/07.

1 AN ACT Relating to the taxpayer health care fairness act; adding a
2 new section to chapter 49.60 RCW; adding a new chapter to Title 49 RCW;
3 and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) Washington has a long history of recognizing its citizens'
7 right to appropriate health care services, and has long sought a
8 comprehensive approach to a health care system that could provide
9 access to appropriate health care services for all its citizens. In
10 furtherance of this goal, Washington was a pioneer in implementing a
11 state-funded basic health care program to reduce barriers to necessary
12 health care for low-wage workers and others who would not otherwise
13 have access to affordable health care;

14 (b) The goal of access to appropriate health care services for all
15 the state's citizens has not yet been met. In 2004, more than six
16 hundred thousand Washingtonians had no access to affordable health care
17 services. Most working-age adults without access to affordable health
18 care services have workers in their families, but low-wage workers are

1 at greatest risk of not having access to affordable health care
2 services. As a result:

3 (i) These low-wage workers seek health care services through
4 publicly funded programs such as the Washington basic health plan,
5 medicaid, and the state children's health insurance program.
6 Washington's ability to finance access to appropriate health care
7 services for low-income working families has been weakened by the
8 growth in the number of uninsured workers due, in substantial part, to
9 erosion in employer-sponsored access to health care services. These
10 numbers have resulted in one in six Washington state residents
11 receiving health care services through either the medicaid program, the
12 state children's health insurance program, or the Washington basic
13 health plan; and

14 (ii) These low-wage workers seek care in hospital emergency rooms
15 and community health clinics when addressing their health issues cannot
16 be delayed any longer. This shifts uncompensated care costs to health
17 care purchasers, including the state, its taxpayers, and private
18 employers; and

19 (c) An important part of a comprehensive approach to providing
20 appropriate health care for all Washington citizens involves
21 participation by employers in providing access to health care services
22 for their workers and their families. While most Washington citizens
23 obtain health care services through their employment or the employment
24 of a family member, some employers with adequate resources fail to
25 offer affordable access to health care services to their employees in
26 Washington state. This creates inappropriate competitive advantages
27 for those employers and greatly increases the likelihood that their
28 employees will not have access to affordable health care services or
29 will receive health care services through publicly funded health care
30 programs.

31 (2)(a) It is the intent of the legislature to establish, as part of
32 its comprehensive approach to expanding access to appropriate health
33 care services, a mechanism to reimburse the state for its costs of
34 providing access to appropriate health care services to Washington
35 workers. Employer participation in this comprehensive approach allows
36 the state to improve its financing of public health care programs and
37 prioritize those resources on populations not served through

1 employment. It also reduces the burden on taxpayers and the public
2 health care system, and protects the health, safety, and well-being of
3 all the state's residents.

4 (b) In establishing this program, it is not the intent of the
5 legislature to influence the establishment, content, or administration
6 of employee benefit plans. The legislature is neutral regarding
7 whether employers choose to provide access to affordable health care
8 coverage for their employees or pay an assessment to reimburse the
9 state's costs for health care services for their employees.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Agencies" means the authority and the department.

13 (2) "Assessment" means an amount equal to the per capita cost of
14 providing health benefits under the medical assistance program or the
15 cost of providing care under the basic health plan, as relevant.

16 (3) "Authority" means the health care authority.

17 (4) "Basic health plan" means the basic health plan established in
18 chapter 70.47 RCW.

19 (5) "Department" means the department of social and health
20 services.

21 (6) "Employee" means any individual employed by an employer, but
22 does not include:

23 (a) An employee employed by the employer for fewer than ninety
24 days;

25 (b) During the first twelve months of employment with the employer,
26 an employee who was employed through the job placement activities of
27 the department, the employment security department, or organizations
28 contracting with these agencies to provide job placement services;

29 (c) An employee of a franchisor's franchisees. Such employees are
30 employees of the franchisee; or

31 (d) An employee who is receiving disability benefits under the
32 federal old-age, survivors, and disability insurance act.

33 (7) "Employer" means an employer as defined in RCW 49.46.010 who
34 employed a total of one thousand or more employees at any and all
35 locations in Washington in the completed calendar quarter for which a
36 report is made in section 3 of this act, but does not include:

1 (a) An employer that makes payments for the purpose of providing or
2 reimbursing the cost of health care services, as defined in RCW
3 48.43.005, for all of its employees who are enrolled in the medical
4 assistance program or the basic health plan; or

5 (b) A seasonal employer.

6 (8) "Medical assistance program" means the same as the definition
7 in RCW 74.09.010.

8 (9) "Seasonal employer" means an employer in an industry, other
9 than the construction industry, that the agencies determine, upon
10 application by the employer:

11 (a) Customarily operates only during regularly recurring periods of
12 twenty-six weeks or less in any fifty-two consecutive week period; or

13 (b) Customarily employs fifty percent or more of its employees for
14 regularly recurring periods of twenty-six weeks or less within a period
15 of fifty-two consecutive weeks.

16 NEW SECTION. **Sec. 3.** (1) Beginning with the calendar quarter
17 ending June 30, 2008:

18 (a) Every employer shall report to the agencies, within thirty days
19 after the completion of a calendar quarter, the employees employed by
20 the employer during the immediately preceding calendar quarter,
21 including such information as the agencies require and in the form
22 specified by the agencies. The employer's chief executive officer or
23 an individual performing a similar function shall verify the report and
24 submit an affidavit under penalty of perjury. In the affidavit, the
25 signing officer shall affirm that the information in the report:

26 (i) Was reviewed by the signing officer, and is true to the best of
27 the signing officer's knowledge, information, and belief; and

28 (ii) Does not contain any untrue statement of a material fact or
29 omit a material fact necessary to make the statement not misleading.

30 (b) The agencies must identify the employees of each employer
31 reporting under this subsection (1) who are enrolled during a calendar
32 quarter in the medical assistance program or the basic health plan.
33 The agencies must make an actual comparison of records furnished by the
34 employer under this subsection (1) with records of the agencies and the
35 employment security department. The agencies may not disclose the
36 names of employees identified, but must provide the employer with the
37 number of employees identified as enrolled and other information that

1 provides a profile of information about the characteristics of enrolled
2 employees generally. The agencies must, within sixty days after the
3 completion of a calendar quarter, notify every employer who has
4 employees enrolled in the medical assistance program or the basic
5 health plan that the employer must either, within thirty days after
6 receiving the notice:

7 (i) Pay an assessment specified in the notice for each employee
8 enrolled in the medical assistance program or basic health plan; or

9 (ii)(A) For each employee enrolled in the basic health plan, enter
10 into an agreement with the authority to reimburse the authority for the
11 authority's premium contribution, up to one hundred percent of the
12 authority's cost, to provide health care coverage for the employee.
13 The agreement negotiated must be satisfactory to the authority and must
14 take into account the intent of this chapter to assure health care
15 coverage for all citizens of the state; and

16 (B) Enter into an agreement with the department with respect to
17 each employee enrolled in the medical assistance program to reimburse
18 the department, up to one hundred percent of the cost, for the
19 department's contribution to the purchase of health care coverage for
20 the employee. The department may require the employee to enroll in
21 available employer-sponsored coverage when it is cost-effective for the
22 state to do so. Any contribution made by the department must be
23 cost-effective for the state and consistent with Title XIX of the
24 federal social security act.

25 (2) An employer that fails:

26 (a) To file a timely and complete report as required under
27 subsection (1) of this section is subject to a penalty of up to two
28 hundred fifty dollars for each offense; and

29 (b) Within the time period required by subsection (1)(b) of this
30 section, to pay the assessment provided for in subsection (1)(b)(i) of
31 this section or enter into an agreement provided for in subsection
32 (1)(b)(ii) of this section is subject to:

33 (i) A civil penalty of five percent of the assessment due for the
34 first month or part thereof, ten percent of the assessment due for the
35 second month or part thereof, and twenty percent of the assessment due
36 for the third month or part thereof; and

37 (ii) An interest penalty of one percent per month on the assessment
38 due.

1 (3)(a) An employer may request a hearing by filing a request with
2 the agencies within thirty days after the date on which the employer
3 received the notice required in subsection (1)(b) of this section. The
4 hearing must be conducted in accordance with chapter 34.05 RCW.

5 (b) If any employer fails to pay an assessment after it has become
6 a final and unappealable order, or after the court has entered final
7 judgment in favor of the agencies, the agencies shall refer the matter
8 to the state attorney general, who shall recover the amount assessed,
9 and any penalties and interest, by action in the superior court. In
10 such an action, the validity and appropriateness of the final order
11 imposing the penalty is not subject to review.

12 NEW SECTION. **Sec. 4.** (1) An enrollee or prospective enrollee has
13 a right to be free of interference, coercion, discrimination, or
14 reprisal from an employer for exercising his or her rights under
15 chapter 74.09 RCW. The remedies provided in this section are not
16 exclusive, and an enrollee or prospective enrollee has all other rights
17 and remedies afforded by law.

18 (2)(a) An employer may not discriminate in any manner against an
19 employee or job applicant because the person has:

20 (i) Made inquiries about enrollment or his or her rights to
21 enrollment in the medical assistance program or the basic health plan
22 or assisted another in regard to rights to such enrollment;

23 (ii) Applied for or enrolled in, or communicated an intent to
24 enroll in, the medical assistance program or the basic health plan,
25 caused any proceeding related to such enrollment to be instituted, or
26 testified in any proceeding so commenced; or

27 (iii) Cooperated with an agency with respect to becoming enrolled
28 in the medical assistance program or the basic health plan or for
29 purposes of section 3 of this act.

30 (b) Any discrimination or attempt to discriminate against an
31 employee within ninety days after notification of the employer under
32 section 3 of this act that the employer has employees enrolled in the
33 medical assistance program or the basic health plan establishes a
34 rebuttable presumption that such action was in violation of this
35 section.

36 (3) A person who believes that he or she has been discriminated
37 against in violation of this section:

1 (a) May, within six months after the alleged act of discrimination,
2 file a complaint with the human rights commission alleging
3 discrimination. Upon receipt of such complaint, the human rights
4 commission shall cause an investigation to be made as the commission
5 deems appropriate. Within sixty days after the receipt of a complaint
6 filed under this section, the human rights commission shall notify the
7 complainant of his or her determination. If, after such investigation,
8 the human rights commission determines that this section has been
9 violated, the commission shall bring an action in the superior court of
10 the county in which the violation is alleged to have occurred. If the
11 human rights commission determines that this section has not been
12 violated, the employee may institute the action on his or her own
13 behalf as provided in (b) of this subsection, but this subsection does
14 not require a complainant to file a complaint with the human rights
15 commission before pursuing remedies under (b) of this subsection; and

16 (b) Has a civil cause of action for damages against the employer.

17 (4) In any action brought under this section, the court shall award
18 a prevailing plaintiff costs, including expert witness costs, and
19 reasonable attorneys' fees and actual damages, or statutory damages of
20 five thousand dollars, whichever is greater, to be awarded to the
21 aggrieved employee or job applicant. The court has jurisdiction, for
22 cause shown, to restrain violations of this section and to order all
23 appropriate relief including reinstatement of an employee, or hiring of
24 a job applicant, with back pay.

25 (5) For the purposes of this section, "discrimination" includes,
26 but is not limited to:

27 (a) Refusal to employ, reemploy, or promote;

28 (b) Discharge from employment or demotion or suspension;

29 (c) Reduction in hours of work, compensation, or other adverse
30 changes in the conditions of employment; and

31 (d) Involuntary transfer to another position or other duties.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.60 RCW
33 to read as follows:

34 Any person claiming to be aggrieved by a violation of section 4 of
35 this act may file a complaint with the commission. The commission
36 shall promptly investigate and take other appropriate action as
37 provided in section 4 of this act.

1 NEW SECTION. **Sec. 6.** The agencies shall:

2 (1) Cooperatively administer and enforce this chapter, including
3 but not limited to sending notices required in section 3 of this act,
4 determining the amount of employer assessments, entering into
5 negotiations and agreements with employers, and collecting employer
6 assessments, including penalties and interest, using the procedures
7 authorized under chapter 74.09 RCW;

8 (2) Have authority to inspect records and conduct investigations
9 and audits of employment and payroll, as the agencies deem necessary or
10 appropriate, to determine whether an employer has complied with this
11 chapter;

12 (3) Adopt rules necessary to implement this chapter; and

13 (4) Deposit assessments and interest and civil penalties collected
14 under this chapter into the health services account established under
15 RCW 43.72.900.

16 NEW SECTION. **Sec. 7.** If any part of this act is found to be in
17 conflict with federal requirements that are a prescribed condition to
18 the allocation of federal funds to the state, the conflicting part of
19 this act is inoperative solely to the extent of the conflict and with
20 respect to the agencies directly affected, and this finding does not
21 affect the operation of the remainder of this act in its application to
22 the agencies concerned. Rules adopted under this act must meet federal
23 requirements that are a necessary condition to the receipt of federal
24 funds by the state.

25 NEW SECTION. **Sec. 8.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 9.** This act may be known and cited as the
30 taxpayer health care fairness act.

31 NEW SECTION. **Sec. 10.** Sections 1 through 4 and 6 through 9 of
32 this act constitute a new chapter in Title 49 RCW.

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