

**SHB 1646 - H AMD 219**

By Representative Short

WITHDRAWN 03/11/2015

1 Strike everything after the enacting clause and insert the  
2 following:

3  
4 NEW SECTION. **Sec. 1.** INTENT. According to census bureau data,  
5 forty percent of households in the United States rely on a woman as  
6 the leading or sole breadwinner. In addition, women hold a  
7 significant percentage of minimum wage jobs. Income disparities  
8 limit the ability of women to provide for their families, leading to  
9 higher rates of poverty among women and children.

10 The legislature finds that in order to establish equality among  
11 workers, men and women in the same job must be compensated as  
12 equals. The legislature finds that gaps in employee wages is a form  
13 of gender discrimination. Policies that encourage retaliation or  
14 discipline towards workers who discuss or inquire about compensation  
15 prevents workers from moving forward.

16 The legislature intends to update the existing Washington state  
17 equal pay act, not modified since 1943, to address income  
18 disparities, employer discrimination, and retaliation practices, and  
19 to reflect the equal status of all workers in Washington state.

20

21 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
22 section apply throughout this chapter unless the context clearly  
23 requires otherwise.

24 (1) "Compensation" means discretionary and nondiscretionary  
25 wages and benefits provided by an employer to an employee as a  
26 result of the employment relationship.

27

1 (2) "Department," "director," "employee," and "employer" have  
2 the same meaning as defined in RCW 49.12.005.

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4 **Sec. 3.** RCW 49.12.175 and 1943 c 254 s 1 are each amended to  
5 read as follows:

6 EQUAL PAY OPPORTUNITY.

7 (1) Any employer in this state~~((, employing both males and~~  
8 ~~females, who shall discriminate in any way in the payment of wages~~  
9 ~~as between sexes or who shall pay any female a less wage, be it time~~  
10 ~~or piece work, or salary, than is being paid to males))~~ who  
11 discriminates in providing compensation based on gender between  
12 individuals similarly employed~~((, or in any employment formerly~~  
13 ~~performed by males, shall be))~~ in equal jobs is guilty of a  
14 misdemeanor. "Equal jobs" means jobs the performance of which  
15 requires equal skill, effort, and responsibility, and which are  
16 performed under similar working conditions, except where  
17 compensation is made pursuant to: (a) A seniority system; (b) a  
18 merit system; (c) a system which measures earnings by quantity or  
19 quality of production; or (d) a differential based on any other  
20 factor other than gender.

21 (2)(a) If any ~~((female))~~ employee ~~((shall))~~ receives less  
22 compensation because of being discriminated against on account of  
23 ~~((her sex, and))~~ gender in violation of this section, ~~((she shall~~  
24 ~~be))~~ that employee is entitled to recover in a civil action the full  
25 amount of compensation that ~~((she))~~ the employee would have received  
26 had ~~((she))~~ the employee not been discriminated against. An employee  
27 is entitled to recover any actual damages, plus statutory damages  
28 equal to the amount of actual damages or five thousand dollars,  
29 whichever is greater, and costs and reasonable attorneys' fees. In  
30 addition, the court may order injunctive relief. In such action,  
31 however, the employer shall be credited with any compensation which  
32 has been paid to ~~((her))~~ the employee upon account.

33 (b) A differential in ~~((wages between employees))~~ compensation  
34 or employment opportunities based in good faith on a bona fide job-

1 related factor or factors ((~~other than sex shall~~)), including but  
2 not limited to education, training, or experience, that is not based  
3 on gender, unless the differential is otherwise permitted by law,  
4 does not constitute discrimination within the meaning of ((RCW  
5 49.12.010 through 49.12.180)) this section.

6  
7 NEW SECTION. Sec. 4. WORKPLACE PRACTICES. (1) An employer may  
8 not:

9 (a) Require nondisclosure by an employee of his or her wages as  
10 a condition of employment; or

11 (b) Require an employee to sign a waiver or other document that  
12 prevents the employee from disclosing the amount of the employee's  
13 wages.

14 (2) An employer may not discharge or in any other manner  
15 retaliate against an employee for:

16 (a) Inquiring about, disclosing, comparing, or otherwise  
17 discussing the employee's own wages with his or her employer;

18 (b) Asking the employer to provide a reason for the employee's  
19 wages or reasons for a lack of employment advancement available to  
20 the employee; or

21 (c) Aiding or encouraging an employee to exercise their rights  
22 under this section.

23  
24 NEW SECTION. Sec. 5. NO RETALIATION. An employer may not  
25 discharge or otherwise discriminate against an employee because the  
26 employee has filed any complaint, or instituted or caused to be  
27 instituted any proceeding under this chapter, or testified or is  
28 about to testify in any such proceeding, or because of the exercise  
29 by such employee on behalf of himself or herself or others of any  
30 right afforded by this chapter.

31  
32 NEW SECTION. Sec. 6. CAUSE OF ACTION. An employee may bring a  
33 civil action against an employer for violation of section 4 or 5 of  
34 this act for actual damages, plus statutory damages equal to the

1 amount of actual damages or five thousand dollars, whichever is  
2 greater, and costs and reasonable attorneys' fees. The court may  
3 also order reinstatement and injunctive relief.

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5 NEW SECTION. **Sec. 7.** NOTICE. The department may include notice  
6 of the provisions of this chapter in the next reprinting of  
7 employment posters.

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9 NEW SECTION. **Sec. 8.** RULE MAKING. The department may adopt  
10 rules to implement sections 1 through 5 of this act.

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12 NEW SECTION. **Sec. 9.** SHORT TITLE. This chapter shall be known  
13 and cited as the "equal pay opportunity act."

14  
15 NEW SECTION. **Sec. 10.** CODIFICATION. (1) Sections 1, 2, and 4  
16 through 9 of this act constitute a new chapter in Title 49 RCW.

17 (2) RCW 49.12.175 is recodified as a section in chapter 49.---  
18 RCW (the new chapter created in this section)."

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EFFECT: Makes the following changes to the substitute bill:

- Deletes from the Equal Pay Act the violation for receiving less favorable employment opportunities. (Retains language that a differential in employment opportunities does not constitute discrimination.)
- Adds that the prohibited discrimination between individuals similarly employed is between individuals in equal jobs. Defines equal jobs as jobs the performance of which requires equal skill, effort, and responsibility, performed under similar working conditions, except where compensation is based on a seniority or merit system, a system which measures earnings by quantity or quality, or a differential based on any other factor than gender.
- Provides that the employer defense factors are expressly not limited to education, training, or experience.
- Changes the prohibition against retaliation for discussing wages to discussing the employee's own wages (and not the wages of other employees) with the employer (and not in general).

- Changes statutory damages from twice the actual damages or \$5,000, whichever is greater, to an amount equal to the actual damages or \$5,000, whichever is greater, and strikes interest.
- Strikes intent language finding an unfair gap and inequality in wages among workers, especially women, with a more disparate gap for women of color, and stating that women working full-time in the state earn 80 cents for every dollar earned by a man working the same job.

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