

ESHB 1646 - H AMD 605

By Representative Short

NOT ADOPTED 02/03/2016

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 prevent 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)) is guilty of a misdemeanor.~~~~

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

26 (b) A differential in (~~(wages between employees))~~ compensation
27 or employment opportunities based in good faith on a bona fide job-
28 related factor or factors (~~(other than sex shall))~~, including but
29 not limited to education, training, or experience, that is not based
30 on gender, unless the differential is otherwise permitted by law,
31 does not constitute discrimination within the meaning of (~~(RCW~~
32 ~~49.12.010 through 49.12.180)) this section.~~

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34

1 NEW SECTION. **Sec. 4.** WORKPLACE PRACTICES. (1) An employer may
2 not:

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

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

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

10 (a) Inquiring about, disclosing, comparing, or otherwise
11 discussing the employee's wages or the wages of any other employee;

12 (b) Asking the employer to provide a reason for the employee's
13 wages or reasons for a lack of employment advancement available to
14 the employee; or

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

17 (3) An employer may prohibit a human resources or other manager
18 from disclosing the wages of other employees unless the disclosure
19 is otherwise required by law.

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

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29 NEW SECTION. **Sec. 6.** CAUSE OF ACTION. An employee may bring a
30 civil action against an employer for violation of section 4 or 5 of
31 this act for actual damages, plus statutory damages equal to the
32 amount of actual damages or five thousand dollars, whichever is
33 greater, and costs and reasonable attorneys' fees. The court may
34 also order reinstatement and injunctive relief.

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

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

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

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

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

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EFFECT: Makes the following changes to the engrossed substitute bill:

- Deletes from the Equal Pay Act the violation for receiving less favorable employment opportunities. (Retains language that a differential in employment opportunities under the employer defense does not constitute discrimination.)
- Provides that the employer defense factors are expressly not limited to education, training, or experience.
- Provides that an employer may prohibit other managers, in addition to human resources managers, from disclosing wages.
- 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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