

**ESSB 6149** - H AMD TO H AMD (6149-S.E. AMH FARR TANG 135) **929**  
By Representative Short

**NOT ADOPTED 03/04/2016**

1 On page 1 of the striking amendment, strike all material after  
2 line 2 and insert the following:

3

4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.10  
5 RCW to read as follows:

6 (1) An employer must provide reasonable accommodations to an  
7 employee for a pregnancy-related or childbirth-related health  
8 condition if so requested, with written certification from a  
9 licensed health care provider, unless the employer demonstrates that  
10 the accommodation would impose an undue hardship on the operation of  
11 the employer's business. The employee must provide written notice  
12 to the employer stating that a health condition related to pregnancy  
13 or related to childbirth requires accommodation.

14 (2) Notwithstanding subsection (1) of this section, an employee  
15 who is pregnant or has a health condition related to pregnancy or  
16 childbirth shall not be required to obtain the advice of a licensed  
17 health care provider, nor may an employer claim undue hardship, for  
18 the following accommodations: (a) More frequent, longer, or flexible  
19 restroom, food, and water breaks; (b) seating; and (c) limits on  
20 lifting over twenty pounds.

21 (3) The employee and employer shall engage in an interactive  
22 process with respect to an employee's request for a reasonable  
23 accommodation. To assist in this process, the department shall post  
24 information in a printable format, such as a brochure, explaining  
25 the respective rights and responsibilities of the employer and the  
26 employee who has a health condition related to pregnancy or  
27 childbirth. Additionally, the department shall include information

1 in the "Your Rights as a Worker" poster, or similar required  
2 workplace poster, regarding these respective rights and  
3 responsibilities.

4 (4) Notwithstanding any other provision of this section, an  
5 employer shall not be required to create a new or additional  
6 position in order to accommodate an employee pursuant to this  
7 section, and shall not be required to discharge any employee,  
8 transfer any other employee with greater seniority, or promote any  
9 employee.

10 (5) An employer shall not require an employee who has a  
11 pregnancy-related or childbirth-related health condition to accept  
12 an accommodation, if such accommodation is unnecessary to enable the  
13 employee to perform the job.

14 (6) An employer shall not:

15 (a) Take adverse action against an employee who requests or uses  
16 an accommodation under this section that affects the terms,  
17 conditions, or privileges of employment;

18 (b) Deny employment opportunities to an otherwise qualified  
19 employee if such denial is based on the employer's need to make  
20 reasonable accommodation required by this section; or

21 (c) Require an employee to take leave if another reasonable  
22 accommodation can be provided for the employee's pregnancy-related  
23 or childbirth-related health condition.

24 (7) This section does not preempt, limit, diminish, or otherwise  
25 affect any other provision of law relating to sex discrimination or  
26 pregnancy, or in any way diminish or limit the coverage for  
27 pregnancy, childbirth, or a pregnancy-related health condition.

28 (8) The definitions in this subsection apply throughout this  
29 section unless the context clearly requires otherwise.

30 (a) "Department" means the department of labor and industries.

31 (b) "Director" means the director of labor and industries.

32 (c) "Employee" means an individual employed by an employer.

33 (d) "Employer" means a person engaged in an industry who has  
34 fifteen or more employees for each working day in each of twenty or

1 more calendar weeks in the current or preceding calendar year,  
2 except that this section does not apply to an entity that is exempt  
3 from federal taxation under 26 U.S.C., Sec. 501(c).

4 (e) "Reasonable accommodation" means:

5 (i) Making existing facilities used by employees readily  
6 accessible to and usable by employees who have a pregnancy-related  
7 or childbirth-related disability;

8 (ii) Job restructuring, part-time or modified work schedules,  
9 reassignment to a vacant position, acquisition or modification of  
10 equipment or devices, or appropriate adjustment or modifications of  
11 examinations;

12 (iii) Temporary transfer to a less strenuous or hazardous  
13 position;

14 (iv) Limits on heavy lifting; and

15 (v) Scheduling flexibility for prenatal visits.

16 (f) "Undue hardship" means an action requiring significant  
17 difficulty or expense.

18 (9) The attorney general shall investigate complaints and  
19 enforce this section. In addition to the complaint process with the  
20 attorney general, any aggrieved person injured by any act in  
21 violation of this section has a civil cause of action in court to  
22 enjoin further violations, or to recover the actual damages  
23 sustained by the person, or both, together with the cost of suit  
24 including reasonable attorneys' fees or any other appropriate remedy  
25 authorized by state or federal law."

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EFFECT: Strikes the provisions of the striking amendment and replaces it with the provisions of the bill as it passed the Senate (restores the definitions of "employer," "reasonable accommodation," and "undue hardship"; uses the terms "pregnancy-related" and "child-birth related" health conditions, but not "pregnancy"; removes the requirement that the written certification describe the employee's specific needs, limitations, or conditions; removes language regarding subpoena power of the Attorney General; removes the language regarding laws on disability discrimination; and removes language regarding "within existing resources" in the provision

requiring the Department of Labor and Industries to include information in workplace posters.

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