

SENATE BILL REPORT

SB 5760

As of February 17, 2017

Title: An act relating to declaring that it is an unfair practice for any employer who provides health insurance to its employees as part of an employee's benefit package to not include contraceptive coverage as part of the benefit package, to fail to comply with federal rules adopted under the affordable care act relating to the provision of contraceptive coverage, or to discriminate against any employee based on that employee's use of any reproductive health care service, drug, or device.

Brief Description: Declaring that it is an unfair practice for any employer who provides health insurance to its employees as part of an employee's benefit package to not include contraceptive coverage as part of the benefit package, to fail to comply with federal rules adopted under the affordable care act relating to the provision of contraceptive coverage, or to discriminate against any employee based on that employee's use of any reproductive health care service, drug, or device.

Sponsors: Senators Ranker, Cleveland, Wellman, Frockt, Darneille, Keiser, Kuderer, Hasegawa, Mullet, Walsh, McCoy, Takko, Billig, Liias, Hobbs, Hunt, Carlyle, Rolfes, Pedersen and Conway.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/16/17.

Brief Summary of Bill

- Provides that it is an unfair practice under state discrimination laws for an employer that provides health insurance to its employees to not provide contraceptive coverage.
- Provides that it is an unfair practice to discriminate against an employee based on that employee's use of contraceptives.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Jarrett Sacks (786-7448)

Background: Federal Law on Contraceptive Coverage. Under the federal Patient Protection and Affordable Care Act (ACA), all group health plans must cover preventive services with

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no cost sharing. Under federal rules, preventive services include all Food and Drug Administration (FDA)-approved contraceptive methods. Drugs that induce abortions and vasectomies are not included in this coverage mandate.

A health plan purchased or offered by a non-profit religious organization is not required to cover contraceptives. In such an instance, an accommodation exists where the carrier covers the cost of coverage.

In *Burwell v. Hobby Lobby*, the United States Supreme Court ruled that requiring a closely-held corporation to cover contraceptives with no cost sharing, when such coverage violates the corporation's religious beliefs, violates the Religious Freedom Restoration Act. Under federal rule, a closely-held corporation that has a religious objection to providing contraceptive coverage may avail itself of the same accommodation that is available to non-profits.

State Law on Contraceptive Coverage. The ACA requires non-grandfathered individual and small group market health plans to offer essential health benefits. The essential health benefits are established by the state using a supplemented benchmark plan. Prescription drugs, including all FDA-approved contraceptive methods are included in the state's essential health benefits package.

By rule, state-regulated health plans that provide generally comprehensive coverage of prescription drugs may not exclude prescription contraceptives or cover them on a less favorable basis than other covered prescription drugs. This requirement applies regardless of whether the plan is subject to the essential health benefits requirement.

Human Rights Commission. The Washington Law Against Discrimination (WLAD) provides that a person has the right to be free from discrimination based on race, creed, color, national origin, sex, marital or family status, age, disability, or the use of a trained dog guide. This right applies to public accommodation, employment, real estate transactions, credit and insurance transactions, and commerce. The Washington State Humans Rights Commission (HRC) is responsible, in part, for administering and enforcing the WLAD.

The HRC investigates complaints alleging unfair practices. If there is reasonable cause to believe an unfair practice is, or has been, occurring, the HRC must act to eliminate the unfair practice through conference, conciliation, and persuasion. If no agreement is reached, HRC requests the appointment of an administrative law judge (ALJ). An ALJ is empowered to award damages, require the wrongful act cease and desist, and to order any other affirmative action to effectuate the purposes of the law.

Summary of Bill: It is an unfair practice under the WLAD for any employer that provides health insurance to its employees to not provide contraceptive coverage at no cost to the employee. For employers where state regulation does not apply due to federal preemption, it is an unfair practice for an employer to not comply with the ACA and federal rules on barrier-free access to contraceptive coverage. It is also an unfair practice to take adverse action or otherwise discriminate against an employee based on that employee's use of any FDA-approved contraceptive. An injured employee may file a complaint with the HRC or pursue a civil cause of action in court.

Appropriation: None.

Fiscal Note: Requested on February 12, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Employees must take employer's health plan, so employers should not interfere with an employee's private health decision. There is uncertainty at the federal level, so it is important for the state to act to preserve women's rights. The bill ensures choice for women and ensures their privacy rights. There are employers who refuse to file required federal paperwork, the bill would give an employee recourse if this happens. Most women use birth control and will do so for many years, it should be covered by health insurance. Not providing contraception when other prescriptions are covered is a form of discrimination, however, legal recourse is limited.

CON: Businesses should have the right to conscientiously object to providing drugs that cause abortions. FDA-approved contraceptives include drugs that cause abortions. Contraceptives can be found elsewhere in the community, an employer should not have to provide them. Requiring employers to do so violates their religious liberties. Even with the federal accommodation, the cost gets passed onto the employer. The bill itself does not protect religious objectors. The state should have its own version of the Religious Freedom Restoration Act. Employers should not have to go against personal beliefs. Many services have a co-pay, there is no reason why contraception should be singled out as free.

Persons Testifying: PRO: Senator Kevin Ranker, Prime Sponsor; Melanie Smith, NARAL Pro-Choice Washington; Nancy Sapiro, Legal Voice.

CON: Christopher Plante, Family Policy Institute of Washington; Sarah Davenport-Smith, Human Life of Washington; Luke Esser, Washington State Catholic Conference; Don LaMontagne; Rebecca Faust.

Persons Signed In To Testify But Not Testifying: No one.