SENATE BILL REPORT
SB 6102

As Reported by Senate Committee On:
Health & Long Term Care, February 1, 2018

Title: An act relating to enacting the employee reproductive choice act.

Brief Description: Enacting the employee reproductive choice act.

Sponsors: Senators Ranker, Cleveland, Saldaña, Darneille, Palumbo, Nelson, Wellman, Dhingra, Keiser, Billig, Kuderer, Rolfes, Frockt, Takko, McCoy, Carlyle, Hasegawa, Mullet, Pedersen, Conway, Chase, Liias, Van De Wege and Hunt.

Brief History:
Committee Activity: Health & Long Term Care: 1/22/18, 2/01/18 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Makes it an unfair practice for employers to not provide its employees with contraception coverage at no cost to the employee.
- Makes it an unfair practice for an employer not regulated by the state due to federal preemption, to not comply with the ACA and federal rules on barrier-free access to contraceptive coverage.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 6102 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Kuderer, Vice Chair; Conway, Keiser, Mullet and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Rivers, Ranking Member; Bailey and Becker.

Staff: Evan Klein (786-7483)

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 no cost sharing. Under federal rules, preventive services include all Food and Drug

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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.

Pursuant to federal rules, a health plan is also not required to cover contraceptives if an organization or small business has an objection on the basis of moral conviction, not based in any particular religious belief. Federal courts in Pennsylvania and the Northern District of California issued preliminary injunctions, blocking implementation of this rule, in December 2017.

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 (First Substitute): It is an unfair practice for any employer who provides health insurance to its employees as part of the employee's benefit package, 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.

The state must recognize the right of individuals to receive the full range of services required by law to be covered.

EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Removes the prohibition on health plans charging any cost-sharing for contraceptive coverage.
- Clarifies that the state must recognize the right of individuals to receive the full range of services required by law to be covered.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Employers may now deny contraception to their employees based on any moral or religious beliefs, but it is important that employees have access to contraception. If the federal government will go backwards, the state of Washington must protect its citizens. This is an important codification of existing law and is an important step to prohibit cost-sharing for contraception. The contraceptive equity rule has already been in effect for many years and OIC currently ensures that religious organizations are protected when they object to providing coverage. Women should not lose their jobs for accessing contraceptive health care. We must reaffirm that discrimination is not accepted in the workplace in Washington State.

CON: This bill threatens to violate the constitutionally protected conscious rights of churches and other religious organizations and employers. Even though religious organizations may be exempt from the definition of employer in the bill, this bill may impose additional liability under federal law that did not exist before. It is worse that this bill also eliminates religious conscience protections. At a minimum, a freedom of conscience clause should be added to this bill. This country has a long history of accommodating religious beliefs and this tradition should be upheld. The failure of this bill to provide conscious rights is in violation of Washington law and the Constitution. The rising cost of taxes and government overreach is becoming too burdensome for small business owners. This bill is further excessive government intrusion, and this will lead to employees losing their jobs. Everything about this bill is offensive. Establishing contraceptive coverage as a civil right is ludicrous. The decision to take a baby’s life is not health care.

Persons Testifying: PRO: Senator Kevin Ranker, Prime Sponsor; Sara Ainsworth, Legal Voice; Emily Murphy, NARAL Pro-Choice Washington.

CON: Georgene Faries, President, Evergreen Republican Women; Daniel Mueggenborg, Bishop Achdiocese of Seattle; Faith Mischel, Electric Mirror.

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