
HOUSE BILL 2908

State of Washington

65th Legislature

2018 Regular Session

By Representatives Macri, Jinkins, Robinson, Riccelli, Gregerson, Stonier, Slatter, Frame, Kagi, Ormsby, Ortiz-Self, Valdez, Goodman, Tarleton, Stanford, Pollet, and Doglio

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1 AN ACT Relating to enacting the employee reproductive choice act;
2 amending RCW 49.60.030; reenacting and amending RCW 49.60.040; adding
3 new sections to chapter 49.60 RCW; adding a new section to chapter
4 48.43 RCW; and creating new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 employee reproductive choice act.

8 NEW SECTION. **Sec. 2.** The legislature finds that the people of
9 the state of Washington have long supported privacy rights of
10 individuals and have repeatedly stated that discrimination based on
11 sex or interference with a woman's fundamental right to choose or
12 refuse birth control is against the public policy of the state. These
13 policies began with adoption of the state Constitution and Article I,
14 section 7 of the state Constitution, which provides that no one is to
15 be disturbed in their private affairs without authority of law. In
16 1972, Washington voters went further by approving Article XXXI of the
17 state Constitution, which provides that legal rights and
18 responsibilities shall not be abridged or denied on the basis of sex.
19 In 1991, Washington voters approved Initiative Measure No. 120, the
20 reproductive privacy act. That act clearly states that every

1 individual possesses a fundamental right of privacy with respect to
2 personal reproductive decisions and that every individual has the
3 fundamental right to choose or refuse birth control.

4 The legislature further finds that access to contraceptive
5 services provides economic and social benefits to women and their
6 families. Women with reliable access to contraceptive services have
7 forty percent higher earnings than those who lack such access, and
8 access to contraception can significantly increase a woman's earning
9 power. Women who use contraception to plan pregnancies tend to have
10 healthier pregnancies and, by spacing births, have healthier outcomes
11 for themselves as well as their babies.

12 The legislature also finds that the affordable care act requires
13 health plans to offer a comprehensive package of items and services,
14 known as essential health benefits. These benefits include the
15 provision of preventative and wellness services, with specific
16 services to be made available to women such as breast and cervical
17 cancer screening, sexually transmitted disease screening, and access
18 to all food and drug administration-approved contraceptive drugs and
19 devices. Because certain religious employers objected to providing
20 contraceptive coverage, an accommodation was developed through
21 federal rule, under which the religious employer's health insurance
22 carrier must provide separate payments for contraceptive coverage at
23 no cost to the employee or the employer.

24 The legislature further finds that while this contraceptive
25 coverage accommodation was originally available only to those
26 religious employers organized and operated as nonprofit entities, the
27 supreme court, in its June 30, 2014, decision in the matter of
28 *Burwell, Secretary of Health and Human Services, et al. v. Hobby*
29 *Lobby Stores, Inc.*, held that closely held for-profit corporations
30 whose owners have sincerely held religious beliefs are not required
31 to purchase contraceptive coverage for their employees under federal
32 law and may avail themselves of the federal contraceptive coverage
33 accommodation. In October 2017, the federal government issued interim
34 final rules expanding the contraceptive coverage exemption to include
35 nearly any for-profit entity that has moral or religious objections
36 to providing their employees with contraceptive services. The federal
37 rules also make the accommodation optional.

38 The legislature also finds that only those employers that qualify
39 as a religious or sectarian organization not organized for private

1 profit may claim an exemption to Washington's law against
2 discrimination.

3 Therefore, the legislature intends to clarify that, in
4 Washington, barrier free access to birth control remains a
5 fundamental right and that discriminating against women through
6 limitations on access to essential health benefits is against the
7 public policy of this state and subject to the jurisdiction of the
8 human rights commission and the state's law against discrimination.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.60
10 RCW to read as follows:

11 Except as provided in section 4 of this act, it is an unfair
12 practice for any employer who provides health insurance to its
13 employees as part of an employee's benefit package to fail to provide
14 contraceptive coverage at no cost to the employee.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.60
16 RCW to read as follows:

17 Employers for which state regulation under section 3 of this act
18 is preempted must, pursuant to the affordable care act, comply with
19 affordable care act requirements and rules on barrier free access to
20 contraceptive coverage. Failure to comply with affordable care act
21 requirements and rules constitutes an unfair practice, subject to the
22 jurisdiction of the human rights commission and the state's law
23 against discrimination.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.60
25 RCW to read as follows:

26 It is an unfair practice for any employer to discharge, expel, or
27 otherwise discriminate with respect to compensation, terms,
28 conditions, or privileges of employment against any employee based on
29 that employee's reproductive decisions, including whether to use any
30 reproductive health care service, contraceptive drug, or
31 contraceptive device.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.60
33 RCW to read as follows:

34 Any employee injured by an act in violation of section 3, 4, or 5
35 of this act:

1 (1) May file a complaint with the commission and the commission
2 must investigate the complaint if the commission determines that the
3 complaint is subject to the jurisdiction of this chapter; and

4 (2) May pursue a civil action in a court of competent
5 jurisdiction to either enjoin further violations, or recover actual
6 damages sustained by the employee, or both, together with the cost of
7 suit including reasonable attorneys' fees.

8 **Sec. 7.** RCW 49.60.030 and 2009 c 164 s 1 are each amended to
9 read as follows:

10 (1) The right to be free from discrimination because of race,
11 creed, color, national origin, sex, honorably discharged veteran or
12 military status, sexual orientation, or the presence of any sensory,
13 mental, or physical disability or the use of a trained dog guide or
14 service animal by a person with a disability is recognized as and
15 declared to be a civil right. This right shall include, but not be
16 limited to:

17 (a) The right to obtain and hold employment without
18 discrimination;

19 (b) The right to the full enjoyment of any of the accommodations,
20 advantages, facilities, or privileges of any place of public resort,
21 accommodation, assemblage, or amusement;

22 (c) The right to engage in real estate transactions without
23 discrimination, including discrimination against families with
24 children;

25 (d) The right to engage in credit transactions without
26 discrimination;

27 (e) The right to engage in insurance transactions or transactions
28 with health maintenance organizations without discrimination:
29 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,
30 48.44.220, or 48.46.370 does not constitute an unfair practice for
31 the purposes of this subparagraph;

32 (f) The right to engage in commerce free from any discriminatory
33 boycotts or blacklists. Discriminatory boycotts or blacklists for
34 purposes of this section shall be defined as the formation or
35 execution of any express or implied agreement, understanding, policy
36 or contractual arrangement for economic benefit between any persons
37 which is not specifically authorized by the laws of the United States
38 and which is required or imposed, either directly or indirectly,
39 overtly or covertly, by a foreign government or foreign person in

1 order to restrict, condition, prohibit, or interfere with or in order
2 to exclude any person or persons from any business relationship on
3 the basis of race, color, creed, religion, sex, honorably discharged
4 veteran or military status, sexual orientation, the presence of any
5 sensory, mental, or physical disability, or the use of a trained dog
6 guide or service animal by a person with a disability, or national
7 origin or lawful business relationship: PROVIDED HOWEVER, That
8 nothing herein contained shall prohibit the use of boycotts as
9 authorized by law pertaining to labor disputes and unfair labor
10 practices; (~~and~~)

11 (g) The right of a mother to breastfeed her child in any place of
12 public resort, accommodation, assemblage, or amusement; and

13 (h) The right of an employee whose employer provides health
14 insurance coverage as part of an employee benefit package to receive
15 contraceptive coverage from that employer's health plan free of
16 restrictions, exclusions, or reductions in coverage or benefits.

17 (2) Any person deeming himself or herself injured by any act in
18 violation of this chapter shall have a civil action in a court of
19 competent jurisdiction to enjoin further violations, or to recover
20 the actual damages sustained by the person, or both, together with
21 the cost of suit including reasonable attorneys' fees or any other
22 appropriate remedy authorized by this chapter or the United States
23 Civil Rights Act of 1964 as amended, or the Federal Fair Housing
24 Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

25 (3) Except for any unfair practice committed by an employer
26 against an employee or a prospective employee, or any unfair practice
27 in a real estate transaction which is the basis for relief specified
28 in the amendments to RCW 49.60.225 contained in chapter 69, Laws of
29 1993, any unfair practice prohibited by this chapter which is
30 committed in the course of trade or commerce as defined in the
31 Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of
32 applying that chapter, a matter affecting the public interest, is not
33 reasonable in relation to the development and preservation of
34 business, and is an unfair or deceptive act in trade or commerce.

35 **Sec. 8.** RCW 49.60.040 and 2009 c 187 s 3 are each reenacted and
36 amended to read as follows:

37 The definitions in this section apply throughout this chapter
38 unless the context clearly requires otherwise.

1 (1) "Aggrieved person" means any person who: (a) Claims to have
2 been injured by an unfair practice in a real estate transaction; or
3 (b) believes that he or she will be injured by an unfair practice in
4 a real estate transaction that is about to occur.

5 (2) "Any place of public resort, accommodation, assemblage, or
6 amusement" includes, but is not limited to, any place, licensed or
7 unlicensed, kept for gain, hire, or reward, or where charges are made
8 for admission, service, occupancy, or use of any property or
9 facilities, whether conducted for the entertainment, housing, or
10 lodging of transient guests, or for the benefit, use, or
11 accommodation of those seeking health, recreation, or rest, or for
12 the burial or other disposition of human remains, or for the sale of
13 goods, merchandise, services, or personal property, or for the
14 rendering of personal services, or for public conveyance or
15 transportation on land, water, or in the air, including the stations
16 and terminals thereof and the garaging of vehicles, or where food or
17 beverages of any kind are sold for consumption on the premises, or
18 where public amusement, entertainment, sports, or recreation of any
19 kind is offered with or without charge, or where medical service or
20 care is made available, or where the public gathers, congregates, or
21 assembles for amusement, recreation, or public purposes, or public
22 halls, public elevators, and public washrooms of buildings and
23 structures occupied by two or more tenants, or by the owner and one
24 or more tenants, or any public library or educational institution, or
25 schools of special instruction, or nursery schools, or day care
26 centers or children's camps: PROVIDED, That nothing contained in this
27 definition shall be construed to include or apply to any institute,
28 bona fide club, or place of accommodation, which is by its nature
29 distinctly private, including fraternal organizations, though where
30 public use is permitted that use shall be covered by this chapter;
31 nor shall anything contained in this definition apply to any
32 educational facility, columbarium, crematory, mausoleum, or cemetery
33 operated or maintained by a bona fide religious or sectarian
34 institution.

35 (3) "Commission" means the Washington state human rights
36 commission.

37 (4) "Complainant" means the person who files a complaint in a
38 real estate transaction.

39 (5) "Contraceptive coverage" includes all food and drug
40 administration-approved contraceptive drugs, devices, and

1 prescription barrier methods, and medical services associated with
2 the prescribing, dispensing, delivery, distribution, administration
3 and removal of a prescription contraceptive to the same extent, and
4 on the same terms, as other outpatient services.

5 (6) "Covered multifamily dwelling" means: (a) Buildings
6 consisting of four or more dwelling units if such buildings have one
7 or more elevators; and (b) ground floor dwelling units in other
8 buildings consisting of four or more dwelling units.

9 ((+6)) (7) "Credit transaction" includes any open or closed end
10 credit transaction, whether in the nature of a loan, retail
11 installment transaction, credit card issue or charge, or otherwise,
12 and whether for personal or for business purposes, in which a
13 service, finance, or interest charge is imposed, or which provides
14 for repayment in scheduled payments, when such credit is extended in
15 the regular course of any trade or commerce, including but not
16 limited to transactions by banks, savings and loan associations or
17 other financial lending institutions of whatever nature, stock
18 brokers, or by a merchant or mercantile establishment which as part
19 of its ordinary business permits or provides that payment for
20 purchases of property or service therefrom may be deferred.

21 ((+7)) (8)(a) "Disability" means the presence of a sensory,
22 mental, or physical impairment that:

- 23 (i) Is medically cognizable or diagnosable; or
24 (ii) Exists as a record or history; or
25 (iii) Is perceived to exist whether or not it exists in fact.

26 (b) A disability exists whether it is temporary or permanent,
27 common or uncommon, mitigated or unmitigated, or whether or not it
28 limits the ability to work generally or work at a particular job or
29 whether or not it limits any other activity within the scope of this
30 chapter.

31 (c) For purposes of this definition, "impairment" includes, but
32 is not limited to:

33 (i) Any physiological disorder, or condition, cosmetic
34 disfigurement, or anatomical loss affecting one or more of the
35 following body systems: Neurological, musculoskeletal, special sense
36 organs, respiratory, including speech organs, cardiovascular,
37 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
38 and endocrine; or

39 (ii) Any mental, developmental, traumatic, or psychological
40 disorder, including but not limited to cognitive limitation, organic

1 brain syndrome, emotional or mental illness, and specific learning
2 disabilities.

3 (d) Only for the purposes of qualifying for reasonable
4 accommodation in employment, an impairment must be known or shown
5 through an interactive process to exist in fact and:

6 (i) The impairment must have a substantially limiting effect upon
7 the individual's ability to perform his or her job, the individual's
8 ability to apply or be considered for a job, or the individual's
9 access to equal benefits, privileges, or terms or conditions of
10 employment; or

11 (ii) The employee must have put the employer on notice of the
12 existence of an impairment, and medical documentation must establish
13 a reasonable likelihood that engaging in job functions without an
14 accommodation would aggravate the impairment to the extent that it
15 would create a substantially limiting effect.

16 (e) For purposes of (d) of this subsection, a limitation is not
17 substantial if it has only a trivial effect.

18 ~~((+8))~~ (9) "Dog guide" means a dog that is trained for the
19 purpose of guiding blind persons or a dog that is trained for the
20 purpose of assisting hearing impaired persons.

21 ~~((+9))~~ (10) "Dwelling" means any building, structure, or portion
22 thereof that is occupied as, or designed or intended for occupancy
23 as, a residence by one or more families, and any vacant land that is
24 offered for sale or lease for the construction or location thereon of
25 any such building, structure, or portion thereof.

26 ~~((+10))~~ (11) "Employee" does not include any individual employed
27 by his or her parents, spouse, or child, or in the domestic service
28 of any person.

29 ~~((+11))~~ (12) "Employer" includes any person acting in the
30 interest of an employer, directly or indirectly, who employs eight or
31 more persons, and does not include any religious or sectarian
32 organization not organized for private profit.

33 ~~((+12))~~ (13) "Employment agency" includes any person undertaking
34 with or without compensation to recruit, procure, refer, or place
35 employees for an employer.

36 ~~((+13))~~ (14) "Families with children status" means one or more
37 individuals who have not attained the age of eighteen years being
38 domiciled with a parent or another person having legal custody of
39 such individual or individuals, or with the designee of such parent
40 or other person having such legal custody, with the written

1 permission of such parent or other person. Families with children
2 status also applies to any person who is pregnant or is in the
3 process of securing legal custody of any individual who has not
4 attained the age of eighteen years.

5 ~~((14))~~ (15) "Full enjoyment of" includes the right to purchase
6 any service, commodity, or article of personal property offered or
7 sold on, or by, any establishment to the public, and the admission of
8 any person to accommodations, advantages, facilities, or privileges
9 of any place of public resort, accommodation, assemblage, or
10 amusement, without acts directly or indirectly causing persons of any
11 particular race, creed, color, sex, sexual orientation, national
12 origin, or with any sensory, mental, or physical disability, or the
13 use of a trained dog guide or service animal by a person with a
14 disability, to be treated as not welcome, accepted, desired, or
15 solicited.

16 ~~((15))~~ (16) "Honorably discharged veteran or military status"
17 means a person who is:

- 18 (a) A veteran, as defined in RCW 41.04.007; or
- 19 (b) An active or reserve member in any branch of the armed forces
20 of the United States, including the national guard, coast guard, and
21 armed forces reserves.

22 ~~((16))~~ (17) "Labor organization" includes any organization
23 which exists for the purpose, in whole or in part, of dealing with
24 employers concerning grievances or terms or conditions of employment,
25 or for other mutual aid or protection in connection with employment.

26 ~~((17))~~ (18) "Marital status" means the legal status of being
27 married, single, separated, divorced, or widowed.

28 ~~((18))~~ (19) "National origin" includes "ancestry."

29 ~~((19))~~ (20) "Person" includes one or more individuals,
30 partnerships, associations, organizations, corporations,
31 cooperatives, legal representatives, trustees and receivers, or any
32 group of persons; it includes any owner, lessee, proprietor, manager,
33 agent, or employee, whether one or more natural persons; and further
34 includes any political or civil subdivisions of the state and any
35 agency or instrumentality of the state or of any political or civil
36 subdivision thereof.

37 ~~((20))~~ (21) "Premises" means the interior or exterior spaces,
38 parts, components, or elements of a building, including individual
39 dwelling units and the public and common use areas of a building.

1 ~~((+21+))~~ (22) "Real estate transaction" includes the sale,
2 appraisal, brokering, exchange, purchase, rental, or lease of real
3 property, transacting or applying for a real estate loan, or the
4 provision of brokerage services.

5 ~~((+22+))~~ (23) "Real property" includes buildings, structures,
6 dwellings, real estate, lands, tenements, leaseholds, interests in
7 real estate cooperatives, condominiums, and hereditaments, corporeal
8 and incorporeal, or any interest therein.

9 ~~((+23+))~~ (24) "Respondent" means any person accused in a
10 complaint or amended complaint of an unfair practice in a real estate
11 transaction.

12 ~~((+24+))~~ (25) "Service animal" means an animal that is trained
13 for the purpose of assisting or accommodating a sensory, mental, or
14 physical disability of a person with a disability.

15 ~~((+25+))~~ (26) "Sex" means gender.

16 ~~((+26+))~~ (27) "Sexual orientation" means heterosexuality,
17 homosexuality, bisexuality, and gender expression or identity. As
18 used in this definition, "gender expression or identity" means having
19 or being perceived as having a gender identity, self-image,
20 appearance, behavior, or expression, whether or not that gender
21 identity, self-image, appearance, behavior, or expression is
22 different from that traditionally associated with the sex assigned to
23 that person at birth.

24 NEW SECTION. **Sec. 9.** A new section is added to chapter 48.43
25 RCW to read as follows:

26 (1) A health plan issued on or after January 1, 2019, that
27 includes coverage for contraceptive coverage shall not impose a
28 deductible, coinsurance, copayment or any other cost-sharing
29 requirement on the contraceptive coverage provided.

30 (2) Health plans may limit coverage to a closed formulary for
31 prescription contraceptives if they otherwise use a closed formulary,
32 but the formulary must cover each of the types of prescription
33 contraception.

34 (3) For the purposes of this section, "contraceptive coverage"
35 includes all food and drug administration-approved contraceptive
36 drugs, devices, and prescription barrier methods, and medical
37 services associated with the prescribing, dispensing, delivery,
38 distribution, administration and removal of a prescription

1 contraceptive to the same extent, and on the same terms, as other
2 outpatient services.

3 (4) For purposes of this section, "prescription contraceptives"
4 include food and drug administration-approved contraceptive drugs,
5 devices, and prescription barrier methods, including contraceptive
6 products declared safe and effective for use as emergency
7 contraception.

8 NEW SECTION. **Sec. 10.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

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