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SENATE BILL 5760

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State of Washington

65th Legislature

2017 Regular Session

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

Read first time 02/08/17. Referred to Committee on Commerce, Labor & Sports.

1 AN ACT Relating to declaring that it is an unfair practice for  
2 any employer who provides health insurance to its employees as part  
3 of an employee's benefit package to not include contraceptive  
4 coverage as part of the benefit package, to fail to comply with  
5 federal rules adopted under the affordable care act relating to the  
6 provision of contraceptive coverage, or to discriminate against any  
7 employee based on that employee's use of any reproductive health care  
8 service, drug, or device; adding new sections to chapter 49.60 RCW;  
9 and creating new sections.

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

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

13 NEW SECTION. **Sec. 2.** The legislature finds that the people of  
14 the state of Washington have long supported privacy rights of  
15 individuals and have repeatedly stated that discrimination based on  
16 sex or interference with a woman's fundamental right to choose or  
17 refuse birth control is against the public policy of the state. These  
18 policies began with adoption of the state Constitution and Article I,  
19 section 7 of the state Constitution, which provides that no one is to  
20 be disturbed in their private affairs without authority of law. In

1 1972, Washington voters went further by approving Article XXXI of the  
2 state Constitution, which provides that legal rights and  
3 responsibilities shall not be abridged or denied on the basis of sex.  
4 In 1991, Washington voters approved Initiative Measure No. 120, the  
5 reproductive privacy act. That act clearly states that every  
6 individual possesses a fundamental right of privacy with respect to  
7 personal reproductive decisions and that every individual has the  
8 fundamental right to choose or refuse birth control.

9 The legislature further finds that access to contraceptive  
10 services provides economic and social benefits to women and their  
11 families. Women with reliable access to contraceptive services have  
12 forty percent higher earnings than those who lack such access, and  
13 access to contraception can significantly increase a woman's earning  
14 power and narrow the gender pay gap. Women who use contraception to  
15 plan pregnancies tend to have healthier pregnancies and, by spacing  
16 births, have healthier outcomes for themselves as well as their  
17 babies.

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

30 The legislature further finds that while this contraceptive  
31 coverage accommodation was originally available only to those  
32 religious employers organized and operated as nonprofit entities, the  
33 supreme court, in its June 30, 2014, decision in the matter of  
34 *Burwell, Secretary of Health and Human Services, et al. v. Hobby*  
35 *Lobby Stores, Inc.*, held that closely held for-profit corporations  
36 whose owners have sincerely held religious beliefs are not required  
37 to purchase contraceptive coverage for their employees under federal  
38 law and may avail themselves of the federal contraceptive coverage  
39 accommodation. As of August 2014, the federal government has issued  
40 proposed rules on expanding the availability of the accommodation to

1 include closely held for-profit entities with a religious objection  
2 to some or all contraceptive services.

3 The legislature also finds that only those employers that qualify  
4 as a religious or sectarian organization not organized for private  
5 profit may claim an exemption to Washington's law against  
6 discrimination.

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

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

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

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

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

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

30 It is an unfair practice for any employer to discharge, expel, or  
31 otherwise discriminate with respect to compensation, terms,  
32 conditions, or privileges of employment against any employee based on  
33 that employee's use of any food and drug administration-approved  
34 reproductive health care service, drug, or device.

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

1 (1) Any employee injured by an act in violation of section 3, 4,  
2 or 5 of this act:

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

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

10 (2) For the purposes of this section and sections 3 and 4 of this  
11 act, "contraceptive coverage" means all food and drug administration-  
12 approved contraceptive drugs and devices.

13 NEW SECTION. **Sec. 7.** If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

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