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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6205

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State of Washington

66th Legislature

2020 Regular Session

**By** Senate Ways & Means (originally sponsored by Senators Cleveland, Conway, Randall, Keiser, Mullet, Frockt, Billig, Saldaña, Dhingra, Van De Wege, Hunt, Kuderer, Lovelett, Stanford, and Wilson, C.)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to preventing harassment, abuse, and  
2 discrimination experienced by long-term care workers; adding a new  
3 chapter to Title 49 RCW; creating a new section; and prescribing  
4 penalties.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that, as the  
7 citizens of Washington state age and their life expectancy increases,  
8 demand for long-term care is also on the rise. Like many Americans,  
9 Washingtonians prefer to stay in their own homes and communities as  
10 they age, fueling an increased demand for home-based long-term  
11 services and supports. Nationally, the direct care workforce is  
12 expected to increase by more than one million jobs, making this one  
13 of the fastest growing occupations in the country.

14 (2) As the state of Washington is a national leader in supporting  
15 individuals to receive services in their own homes where self-  
16 direction, autonomy, choice, and dignity is valued. The average needs  
17 and acuity levels of people served in their homes has increased and  
18 become more diverse. The prevalence of individuals with complex  
19 behaviors due to their disabilities is a growing issue experienced by  
20 individuals who need assistance with personal care tasks in their own  
21 homes and to be able to fully integrate in community living.

1 (3) The lack of workplace safety, including incidents of verbal  
2 and physical aggression, as well as sexual harassment, is an  
3 occupational hazard for many long-term care workers, including those  
4 who work in the homes of the person to whom they provide care. The  
5 risk may be outside the control of the individual receiving care due  
6 to the conduct of others in the home. The risk may be due to symptoms  
7 or conditions that can manifest with individuals communicating their  
8 needs in ways that an individual caring for the person may experience  
9 or interpret as harassment, abuse, or violence. In any event,  
10 caregivers should not have to experience discrimination, abusive  
11 conduct, and challenging behaviors without assistance or redress.

12 (4) Workers who have adverse experiences at work can manifest  
13 negative physical and mental health outcomes. These workers often  
14 leave the field of direct caregiving, resulting in fewer available  
15 caregivers in the workforce, increased turnover, and lower quality of  
16 care received by individuals in their own homes.

17 (5) Adequate preparation of caregivers helps both the caregiver  
18 and person receiving care. Caregivers should be equipped with  
19 information, including relevant care plans and behavioral support  
20 interventions, existing problem-solving tools, and strategies to  
21 improve safe care delivery.

22 (6) The legislature further finds that caregivers are the  
23 backbone of long-term services and supports in Washington. Therefore,  
24 the intent of this act is to reduce the instances of harassment,  
25 discrimination, and abuse experienced by caregivers, and ensure that  
26 they feel safe while providing care while also prioritizing the  
27 continuity of care for individuals who rely on their assistance. This  
28 will improve the quality of care provided to Washingtonians and build  
29 a strong workforce to meet future care needs in the state.

30 NEW SECTION. **Sec. 2.** The definitions in this section apply  
31 throughout this chapter unless the context clearly requires  
32 otherwise.

33 (1) "Abusive conduct" means conduct in a work setting that  
34 qualifies as workplace aggression, workplace violence, aggravated  
35 workplace violence, physical sexual aggression, rape, attempted rape,  
36 sexual contact, sexual harassment, workplace physical aggression,  
37 workplace verbal aggression, or inappropriate sexual behavior. For  
38 service recipients, behavior that meets the definition of subsection  
39 (3) of this section is not considered abusive conduct for the

1 purposes of this chapter if expressly exempted from the applicable  
2 definition.

3 (2) "Aggravated workplace violence," "aggravated violence," or  
4 "aggravated violent act" means assault or physically threatening  
5 behavior involving the use of a lethal weapon or a common object used  
6 as a lethal weapon, regardless of whether the use of a lethal weapon  
7 resulted in injury.

8 (3) "Challenging behavior" means behavior by a service recipient  
9 that is specifically caused by or related to a disability that might  
10 be experienced by a long-term care worker as offensive or presenting  
11 a safety risk.

12 (4) "Covered employer" means:

13 (a) A consumer directed employer as defined in RCW 74.39A.009;  
14 and

15 (b) A home care agency as defined in RCW 70.127.010.

16 (5) "Department" means the department of labor and industries.

17 (6) "Disability" has the same meaning as in RCW 49.60.040.

18 (7) "Discrimination" means employment discrimination prohibited  
19 by chapter 49.60 RCW, including discriminatory harassment. It shall  
20 not constitute discrimination for a recipient of personal care  
21 services as defined in RCW 74.39A.009 to refuse to hire or terminate  
22 an employment relationship with an employee based on gender  
23 preferences.

24 (8) "Discriminatory harassment" is unwelcome conduct that is  
25 based on a protected class listed in RCW 49.60.030(1) where the  
26 conduct is enough to create a work environment that a reasonable  
27 person would consider intimidating, hostile, or abusive.  
28 "Discriminatory harassment" includes sexual harassment. For service  
29 recipients, behavior that meets the definition of subsection (3) of  
30 this section is not considered discriminatory harassment for purposes  
31 of this chapter.

32 (9) "Employee" means a long-term care worker as defined in RCW  
33 74.39A.009 that is employed by a covered employer.

34 (10) "Inappropriate sexual behavior" means nonphysical acts of a  
35 sexual nature that a reasonable person would consider offensive or  
36 intimidating, such as sexual comments, unwanted requests for dates or  
37 sexual favors, or leaving sexually explicit material in view. An act  
38 may be considered inappropriate sexual behavior independent of  
39 whether the act is severe or pervasive enough to be considered sexual  
40 harassment. For service recipients, behavior that meets the

1 definition of subsection (3) of this section is not considered  
2 inappropriate sexual behavior for purposes of this chapter.

3 (11) "Long-term care workers" means all persons who provide paid,  
4 hands-on personal care services for the elderly or persons with  
5 disabilities, including individual providers of home care services,  
6 direct care workers employed by home care agencies or a consumer  
7 directed employer, and providers of home care services to persons  
8 with developmental disabilities under Title 71A RCW.

9 (12) "Physical sexual aggression" means any type of sexual  
10 contact or behavior, other than rape or attempted rape, that occurs  
11 without the explicit consent of the recipient. For service  
12 recipients, behavior that meets the definition of subsection (3) of  
13 this section is not considered physical sexual aggression for the  
14 purposes of this chapter.

15 (13) "Rape" or "attempted rape" have the same meanings as in RCW  
16 9A.44.040, 9A.44.050, and 9A.44.060.

17 (14) "Sexual contact" has the same meaning as in RCW 9A.44.010.  
18 For service recipients, behavior that meets the definition of  
19 subsection (3) of this section is not considered sexual contact for  
20 the purposes of this chapter.

21 (15) "Sexual harassment" has the same meaning as in RCW  
22 28A.640.020. For service recipients, behavior that meets the  
23 definition of subsection (3) of this section is not considered sexual  
24 harassment for purposes of this chapter.

25 (16) "Trauma-informed care" means a strength-based service  
26 delivery approach that:

27 (a) Is grounded in the understanding of and responsiveness to the  
28 impact of trauma;

29 (b) Emphasizes physical, psychological, and emotional safety for  
30 both providers and survivors; and

31 (c) Creates opportunities for survivors to rebuild a sense of  
32 control and empowerment.

33 (17) "Workplace physical aggression" means an occurrence of  
34 physically threatening behavior in a work setting, including threats  
35 of physical harm, or an occurrence of slapping, biting, or  
36 intentionally bumping. For service recipients, behavior that meets  
37 the definition of subsection (3) of this section is not considered  
38 workplace physical aggression for purposes of this chapter.

39 (18) "Workplace verbal aggression" means acts of nonphysical  
40 hostility or threats of violence in the work setting. "Workplace

1 verbal aggression" includes verbal aggression such as insulting or  
2 belittling an individual. For service recipients, behavior that meets  
3 the definition of subsection (3) of this section is not considered  
4 workplace verbal aggression for purposes of this chapter.

5 (19) "Workplace violence," "violence," or "violent act" means the  
6 occurrence of physical assault, such as hitting or kicking, including  
7 using a nonlethal weapon. For service recipients, behavior that meets  
8 the definition of subsection (3) of this section is not considered  
9 workplace violence for purposes of this chapter.

10 NEW SECTION. **Sec. 3.** (1) Beginning July 1, 2021, each covered  
11 employer must adopt and maintain a comprehensive written policy  
12 concerning how the covered employer shall address instances of  
13 discrimination, abusive conduct, and challenging behavior and work to  
14 resolve issues impacting the provision of personal care. The covered  
15 employer must:

16 (a) Disseminate the comprehensive written policy to each employee  
17 at the beginning of employment, annually, and on the issuance of any  
18 substantive update to the comprehensive written policy;

19 (b) Post the comprehensive written policy in prominent locations  
20 at its place of business and in a prominent location on its web site,  
21 such as an online payroll portal, if applicable. The covered employer  
22 must provide employees with a copy of the current policy within  
23 thirty days of the employee's date of hire, and at least once a year  
24 thereafter;

25 (c) Make the policy available in plain English and in each of the  
26 three languages spoken most by long-term care workers in the state;

27 (d) Review and update the adopted policy annually; and

28 (e) Ensure that all employees are aware of the current policy and  
29 the changes from the previous policy.

30 (2) At a minimum, the comprehensive written policy must include:

31 (a) A definition of discrimination, harassment, abusive conduct,  
32 and challenging behavior;

33 (b) A description of the types of discrimination and abusive  
34 conduct covered by the policy, with examples relevant to the long-  
35 term care workforce;

36 (c) The identification of multiple persons to whom an employee  
37 may report discrimination, abusive conduct, and challenging behavior;

38 (d) Stated permission and a process for allowing workers to leave  
39 situations where they feel their safety is at immediate risk. This

1 process must include a requirement to notify the employer and  
2 applicable third parties such as department of social and health  
3 services case managers, emergency services, or service recipient  
4 decision makers as soon as possible. The process must not authorize  
5 abandonment as defined in RCW 74.34.020 unless the worker has called  
6 the phone number provided by the employer for emergency assistance  
7 and has a reasonable fear of imminent bodily harm;

8 (e) A stated prohibition against retaliation for actions related  
9 to disclosing, challenging, reporting, testifying, or assisting in an  
10 investigation regarding allegations of discrimination, abusive  
11 conduct, or challenging behavior, and a description of how the  
12 employer will protect employees against retaliation;

13 (f) A list of resources about discrimination and harassment for  
14 long-term care workers to utilize. At a minimum, the resources must  
15 include contact information of the equal employment opportunity  
16 commission, the Washington state human rights commission, and local  
17 advocacy groups focused on preventing harassment and discrimination  
18 and providing support for survivors; and

19 (g) Any additional components recommended by the work group  
20 established in section 7 of this act for the purpose of preventing  
21 discrimination and abusive conduct and responding to challenging  
22 behavior.

23 NEW SECTION. **Sec. 4.** (1) Beginning July 1, 2021, each covered  
24 employer shall implement a plan to prevent and protect employees from  
25 abusive conduct, to assist employees working in environments with  
26 challenging behavior, and work to resolve issues impacting the  
27 provision of personal care. This plan should be reviewed and updated  
28 as necessary and at least once every three years. The plan shall be  
29 developed and monitored by a workplace safety committee. The members  
30 of the workplace safety committee shall consist of individuals that  
31 are employee-elected, employer-selected, and include at least one  
32 service recipient representative. The number of employee-elected  
33 members shall equal or exceed the number of employer-selected  
34 members. A labor management committee established by a collective  
35 bargaining agreement that receives formal input from representatives  
36 of service recipients who wish to participate in the committee's  
37 deliberations shall be sufficient to fulfill the requirement for a  
38 workplace safety committee in this chapter.

1 (2) The plan developed under subsection (1) of this section, at a  
2 minimum, must include:

3 (a) Processes for intervening and providing assistance to an  
4 employee directly affected by challenging behavior including  
5 accessing technical assistance or similar resources, if available, to  
6 assist employees when challenging behavior occurs;

7 (b) Processes that covered employers may follow to engage  
8 appropriate members of the care team, such as case managers or health  
9 professionals when allegations of discrimination, abusive conduct, or  
10 challenging behaviors occur;

11 (c) The development of processes for reporting, intervening, and  
12 providing assistance to an employee directly affected by abusive  
13 conduct; and

14 (d) Processes covered employers may follow to engage the service  
15 recipient in problem resolution with the goal of ending abusive or  
16 discriminatory conduct while working to address issues impacting the  
17 provision of personal care.

18 (3) Each covered employer and workplace safety committee must  
19 annually review the frequency of incidents of discrimination and  
20 abusive conduct in the home care setting, including identification of  
21 the causes for, and consequences of, abusive conduct and any emerging  
22 issues that contribute to abusive conduct. As part of its annual  
23 review, the workplace safety committee must also review the number of  
24 miscategorizations in aggregate. The covered employer must adjust the  
25 plan developed under subsection (1) of this section as necessary  
26 based on this annual review.

27 (4) In developing the plan required by subsection (1) of this  
28 section, the covered employer shall consider any guidelines on  
29 violence in the workplace or in health care settings issued by the  
30 department of health, the department of social and health services,  
31 the department of labor and industries, the federal occupational  
32 safety and health administration, and the work group created in  
33 section 7 of this act.

34 (5) Nothing in this chapter requires an individual recipient of  
35 services to develop or implement the plan required by this section.

36 NEW SECTION. **Sec. 5.** (1)(a) Covered employers must inform an  
37 employee of instances of discrimination and abusive conduct occurring  
38 in or around the service recipient's home care setting prior to

1 assigning the employee to that service recipient, and throughout the  
2 duration of service, if those instances are:

3 (i) Documented by the covered employer; or

4 (ii) Documented by the department of social and health services  
5 and communicated to the covered employer.

6 (b) Covered employers must inform an employee, prior to assigning  
7 the employee to a service recipient, of a service recipient's  
8 challenging behavior that is documented:

9 (i) In the service recipient's care plan;

10 (ii) By the covered employer; or

11 (iii) By the department of social and health services and  
12 communicated to the covered employer.

13 (2) (a) Communication of the information in subsection (1) of this  
14 section must be tailored to respect the privacy of service recipients  
15 in accordance with the federal health insurance portability and  
16 accountability act of 1996.

17 (b) Upon request of the service recipient, a covered employer  
18 must provide a copy of the information the covered employer  
19 communicated to the employee under subsection (1) of this section.

20 (3) If a covered employer miscategorizes an instance as  
21 discrimination or abusive conduct that should have been categorized  
22 as challenging behavior, or if a covered employer miscategorizes an  
23 instance as challenging behavior that should have been categorized as  
24 discrimination or abusive conduct, the covered employer must correct  
25 the categorization, correct how the instance was reported under  
26 section 6 of this act, and comply with any provisions under this  
27 chapter applicable to addressing the behavior or conduct.

28 (4) A covered employer may not terminate an employee, reduce the  
29 pay of an employee, or not offer future assignments to an employee  
30 for requesting reassignment due to alleged discrimination, abusive  
31 conduct, or challenging behavior.

32 (5) Nothing in this section prevents a covered employer from:

33 (a) Disciplining or terminating an employee if an allegation or  
34 request for reassignment was reasonably determined to be false or not  
35 made in good faith;

36 (b) Terminating an employee or reducing hours due to lack of  
37 suitable work; or

38 (c) Disciplining or terminating an employee for lawful reasons  
39 unrelated to their request for reassignment.

1 (6) Nothing in this section requires an individual recipient of  
2 services to provide information required by this section to an  
3 employee. Nothing in this chapter shall limit the rights of a  
4 recipient of services under chapter 74.39A RCW to select, dismiss,  
5 assign hours, and supervise the work of individual providers as in  
6 RCW 74.39A.500(1)(b).

7 NEW SECTION. **Sec. 6.** (1) Covered employers are required to keep  
8 a record of any reported incidents of discrimination or abusive  
9 conduct experienced by an employee during the provision of paid  
10 personal care services. The records must be kept for at least five  
11 years following the reported act and must be made available for  
12 inspection by the department or its agents upon request. If the  
13 covered employer makes its records available to the exclusive  
14 bargaining representative representing the employer's employees, the  
15 exclusive bargaining representative may assess whether the employer  
16 is meeting the data collection requirements in this section. The  
17 department must take into consideration the exclusive bargaining  
18 representative's assessment when determining whether an employer is  
19 in compliance with this section. Covered employers must make  
20 anonymized aggregate data of reported incidents available to the work  
21 group created under section 7 of this act.

22 (2) The retained records must include:

23 (a) The covered employer's name and address;

24 (b) The date, time, and location of where the act occurred;

25 (c) The reporting method;

26 (d) The name of the person who experienced the act;

27 (e) A description of the person committing the act as:

28 (i) A service recipient;

29 (ii) Another resident of the home care setting;

30 (iii) A visitor to the home care setting;

31 (iv) Another employee;

32 (v) A manager or supervisor; or

33 (vi) Other;

34 (f) A description of the type of act as one or more of the  
35 following:

36 (i) Discrimination, including discriminatory harassment;

37 (ii) Sexual harassment, inappropriate sexual behavior, or sexual  
38 contact;

39 (iii) Physical sexual aggression;

- 1 (iv) Rape or attempted rape;
- 2 (v) Workplace verbal aggression;
- 3 (vi) Workplace violence;
- 4 (vii) Workplace physical aggression; or
- 5 (viii) Aggravated workplace violence;

6 (g) A description of the actions taken by the employee and the  
7 covered employer in response to the act; and

8 (h) A description of how the incident was resolved.

9 (3) Nothing in this section requires an individual recipient of  
10 services to keep, collect, or provide any data required by this  
11 section to the department.

12 (4) Communication of the information in this section must be  
13 tailored to respect the privacy of service recipients in accordance  
14 with the federal health insurance portability and accountability act  
15 of 1996.

16 NEW SECTION. **Sec. 7.** (1) The department of social and health  
17 services must convene a stakeholder work group to recommend policy  
18 changes and best practices for training employers, long-term care  
19 workers, and service recipients to keep home care settings free from  
20 discrimination and abusive conduct while maintaining the ability for  
21 individuals who need services to access needed services while  
22 maintaining the ability to provide services.

23 (2) To the extent practicable, the following groups should be  
24 represented in the work group, each group may have one  
25 representative, unless otherwise specified:

26 (a) The department of social and health services;

27 (b) The department of labor and industries;

28 (c) The Washington state human rights commission;

29 (d) Two representatives of covered employers, one of which is  
30 chosen by the association which represents home care agencies which  
31 contract with area agencies on aging for medicaid home care services,  
32 and one of which is representative of the consumer-directed employer;

33 (e) Two representatives from labor organizations representing  
34 employees;

35 (f) Two long-term care workers that work for a covered employer;

36 (g) Organizations with at least five years of experience  
37 providing training to at least ten thousand long-term care workers;

1 (h) Two representatives of disability advocacy organizations, at  
2 least one of whom represents individuals with developmental  
3 disabilities;

4 (i) Three service recipients, at least one of whom lives with a  
5 developmental disability and one of whom is over age sixty-five;

6 (j) A family member or guardian of a service recipient;

7 (k) Area agencies on aging; and

8 (l) No more than three subject matter experts determined to be  
9 necessary by the work group.

10 (3) In developing the report required by subsection (4) of this  
11 section, the work group shall consider:

12 (a) Using new employee orientation to emphasize the prevention of  
13 discrimination and abusive conduct;

14 (b) The extent to which current training content could be  
15 modified to cover content within existing hours of required training  
16 such as basic, modified basic, and/or continuing education;

17 (c) Requiring training about discrimination and abusive conduct  
18 for all employees;

19 (d) Interactive teaching strategies that engage across multiple  
20 literacy levels;

21 (e) Factors that are predictive of discrimination and abusive  
22 conduct;

23 (f) The violence escalation cycle;

24 (g) De-escalation techniques to minimize abusive conduct or  
25 challenging behavior;

26 (h) Strategies to prevent physical harm with hands-on practice or  
27 role play;

28 (i) How incorporating information on trauma-informed care could  
29 improve the effectiveness of training and reduce interruptions to the  
30 provision of personal care;

31 (j) How incorporating person-centered planning practices could  
32 minimize challenging behaviors and reduce interruptions to the  
33 provision of personal care;

34 (k) Best practices for documenting and reporting incidents;

35 (l) The debriefing process for affected employees following  
36 violent acts;

37 (m) Resources available to employees for coping with the effects  
38 of violence;

39 (n) Culturally competent peer-to-peer training for the prevention  
40 of discrimination and abusive conduct;

1 (o) Best practices for training service recipients on preventing  
2 discrimination and abusive conduct in the home care setting;

3 (p) Best practices for training direct supervisors on preventing  
4 and responding to reports of discrimination and abusive conduct in  
5 the home care setting;

6 (q) Recommended best practices for workplace safety committees  
7 referenced in section 4 of this act and recommended topics to be  
8 included in prevention plans required in section 4 of this act;

9 (r) Other policy changes that will reduce discrimination and  
10 abusive conduct in the workplace and best prepare employees to work  
11 in environments where challenging behavior occurs; and

12 (s) Other best practices from trainings developed in other states  
13 or for other industries to prevent discrimination and abusive conduct  
14 in home care settings or the workplace.

15 (4) By December 1, 2021, the work group must submit to the  
16 legislature a report with recommendations for training long-term care  
17 workers, agency supervisors, and service recipients in order to  
18 prevent discrimination and abusive conduct in the workplace, minimize  
19 challenging behaviors, and reduce interruptions to the provision of  
20 personal care. The report must also address issues regarding the  
21 continuation of collecting and reviewing data, the future role of the  
22 work group, and how the work group is measuring the efficacy of its  
23 recommendations. The report may inform the prevention plans required  
24 in section 4 of this act.

25 NEW SECTION. **Sec. 8.** (1) The department may conduct  
26 investigations to ensure compliance when information is obtained that  
27 a covered employer may be committing a violation under this chapter  
28 or in response to complaints from employees or employee  
29 representatives for the following requirements of this chapter:

30 (a) A written policy as required by section 3 of this act that  
31 includes the minimum elements under section 3(2) of this act and is  
32 updated annually;

33 (b) The written policy is provided to employees in accordance  
34 with section 3(1) (a) through (c) and (e) of this act;

35 (c) A current plan as required by section 4 of this act that  
36 includes the minimum elements under section 4(2) of this act;

37 (d) The prior notice requirement under section 5(1) of this act;

38 (e) The recordkeeping and retention requirements under section 6  
39 of this act; and

1 (f) The retaliation prohibition under section 5(4) of this act  
2 upon receipt of a complaint by an employee who believes that he or  
3 she was subject to retaliation.

4 (2) The department may prioritize investigations as needed to  
5 allow for timely resolution.

6 (3) Nothing in this chapter limits the department's ability to  
7 investigate under any other authority.

8 (4) Nothing in this chapter limits a worker's right to pursue  
9 private legal action.

10 (5) Nothing in this chapter authorizes the department to  
11 investigate individual allegations of harassment, abuse, or  
12 discrimination made by employees against recipients of care or other  
13 individuals.

14 (6) The department of social and health services and its agents  
15 shall not be liable for the acts or omissions of a covered employer  
16 that are in violation of this chapter.

17 (7) Covered employers shall not be liable for the acts or  
18 omissions of the department of social and health services or agents  
19 thereof that are in violation of this chapter.

20 (8) Failure of a covered employer to comply with the requirements  
21 under subsection (1)(a) through (e) of this section shall subject the  
22 covered employer to citation under chapter 49.17 RCW. Claims of  
23 retaliation under subsection (1)(f) of this section are subject to  
24 the provisions of RCW 49.17.160.

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

29 NEW SECTION. **Sec. 10.** Sections 1 through 6 and 8 of this act  
30 constitute a new chapter in Title 49 RCW.

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