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**SUBSTITUTE SENATE BILL 6102**

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**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Ranker, Cleveland, Saldaña, Darneille, Palumbo, Nelson, Wellman, Dhingra, Keiser, Billig, Kuderer, Rolfes, Frockt, Takko, McCoy, Carlyle, Hasegawa, Mullet, Pedersen, Conway, Chase, Lias, Van De Wege, and Hunt)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to enacting the employee reproductive choice act;  
2 amending RCW 49.60.030 and 48.43.065; reenacting and amending RCW  
3 49.60.040; adding new sections to chapter 49.60 RCW; and creating new  
4 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        **Sec. 9.** RCW 48.43.065 and 1995 c 265 s 25 are each amended to  
25 read as follows:

26        (1) The legislature recognizes that every individual possesses a  
27 fundamental right to exercise their religious beliefs and conscience.  
28 The legislature further recognizes that in developing public policy,  
29 conflicting religious and moral beliefs must be respected. Therefore,  
30 while recognizing the right of conscientious objection to  
31 participating in specific health services, the state shall also  
32 recognize the right of individuals (~~enrolled with plans containing~~  
33 ~~the basic health plan services~~) to receive the full range of  
34 services (~~covered under the plan~~) required by law to be covered.

35        (2)(a) No individual health care provider, religiously sponsored  
36 health carrier, or health care facility may be required by law or  
37 contract in any circumstances to participate in the provision of or  
38 payment for a specific service if they object to so doing for reason

1 of conscience or religion. No person may be discriminated against in  
2 employment or professional privileges because of such objection.

3 (b) The provisions of this section are not intended to result in  
4 an enrollee being denied timely access to any service (~~(included in~~  
5 ~~the basic health plan services)) required by law to be covered. Each  
6 health carrier shall:~~

7 (i) Provide written notice to enrollees, upon enrollment with the  
8 plan, listing services that the carrier refuses to cover for reason  
9 of conscience or religion;

10 (ii) Provide written information describing how an enrollee may  
11 directly access services in an expeditious manner; and

12 (iii) Ensure that enrollees refused services under this section  
13 have prompt access to the information developed pursuant to (b)(ii)  
14 of this subsection.

15 (c) The insurance commissioner shall establish by rule a  
16 mechanism or mechanisms to recognize the right to exercise conscience  
17 while ensuring enrollees timely access to services and to assure  
18 prompt payment to service providers.

19 (3)(a) No individual or organization with a religious or moral  
20 tenet opposed to a specific service may be required to purchase  
21 coverage for that service or services if they object to doing so for  
22 reason of conscience or religion.

23 (b) The provisions of this section shall not result in an  
24 enrollee being denied coverage of, and timely access to, any service  
25 or services excluded from their benefits package as a result of their  
26 employer's or another individual's exercise of the conscience clause  
27 in (a) of this subsection.

28 ~~((c) The insurance commissioner shall define by rule the process~~  
29 ~~through which health carriers may offer the basic health plan~~  
30 ~~services to individuals and organizations identified in (a) and (b)~~  
31 ~~of this subsection in accordance with the provisions of subsection~~  
32 ~~(2)(c) of this section.))~~

33 (4) Nothing in this section requires a health carrier, health  
34 care facility, or health care provider to provide any health care  
35 services without appropriate payment of premium or fee.

36 NEW SECTION. **Sec. 10.** If any provision of this act or its  
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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