

HOUSE BILL REPORT

EHB 2020

As Amended by the Senate

Title: An act relating to exempting the disclosure of names in employment investigation records.

Brief Description: Exempting the disclosure of names in employment investigation records.

Sponsors: Representatives Dolan, Kretz, Doglio, Stanford, Slatter, Klippert, Davis, Hudgins, Macri, Jinkins, Morgan, Frame and Ormsby.

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/20/19, 2/22/19 [DP].

Floor Activity:

Passed House: 3/5/19, 97-1.

Senate Amended.

Passed Senate: 4/15/19, 45-1.

Brief Summary of Engrossed Bill

- Expands the public disclosure exemption for records compiled by an employer-agency in an ongoing and active investigation of employment discrimination to include the names of complainants, other accusers, and witnesses after the investigation is complete.
- Allows disclosure of those names if the person consents, and requires employer-agencies to inform those people that their name will be redacted unless they consent to disclosure.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 9 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins, Mosbrucker and Smith.

Staff: Jason Zolle (786-7124).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Washington Law Against Discrimination (WLAD) prohibits discrimination based on a protected characteristic in employment, public accommodations, and real estate, credit, or insurance transactions. With respect to employment, it is an "unfair practice" under the WLAD to:

- refuse to hire;
- discharge or bar from employment;
- discriminate in compensation or other terms or conditions of employment; or
- include limitations in employment advertisements or inquiries

because of a person's protected characteristics. Protected characteristics under the WLAD are race, creed, color, national origin, sex, veteran or military status, sexual orientation, and disability.

The primary federal law that prohibits employment discrimination is Title VII of the Civil Rights Act of 1964, which precludes employers from refusing to hire, discharging, or otherwise discriminating in compensation or other terms or conditions of employment because of an employee's protected characteristics. Title VII also prohibits employers from limiting, segregating, or classifying employees or applicants in a way that deprives an individual of employment opportunities or otherwise adversely affects an employee's status because of protected characteristics. Protected characteristics under Title VII are race, color, religion, sex, or national origin. Federal law also prohibits discrimination in employment under the Age Discrimination in Employment Act and the Americans With Disabilities Act.

In 1985 the Washington Supreme Court held in *Glasgow v. Georgia-Pacific Corporation* that sexual harassment in the workplace is an unfair practice prohibited by the WLAD when it affects the terms or conditions of employment and is imputed to the employer. Harassment is imputed to the employer when an owner, manager, partner, or corporate officer personally participates in it, or when the employer knew or should have known of the harassment and failed to take prompt and adequate corrective action. Similarly, the United States Supreme Court held in *Meritor Savings Bank v. Vinson* in 1986 that sexual harassment in the workplace is discrimination because of sex in violation of Title VII when it creates a hostile or abusive work environment.

State agencies in Washington are required to develop and disseminate their own policies to define and prohibit sexual harassment among their employees. Agencies must also include procedures that describe how the agency will address concerns, including appropriate sanctions and disciplinary action.

The Public Records Act (PRA) generally requires state and local agencies to make many government records available to the public upon request. There are, however, over 500 statutory exemptions for certain records or information contained in records.

One exemption to disclosure is for investigative records compiled by a state or local agency, acting as an employer, in connection with an investigation of an unfair employment practice or a violation of federal, state, or local laws prohibiting employment discrimination. This exemption is temporary, however; information is exempt from disclosure only while the investigation is active and ongoing.

Summary of Engrossed Bill:

After an employer-agency has notified the complaining employee of the outcome of the investigation, records of the investigation may be disclosed under the PRA only if the names of complainants, other accusers, and witnesses are redacted. Those names may be disclosed, however, if the person consents to disclosure. The employer-agencies must notify complainants, other accusers, and witnesses that their name will be redacted from the investigation records unless they consent to disclosure.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment exempts investigative records compiled in an agency's investigation of a violation of its internal policies prohibiting discrimination or harassment in employment. The Senate amendment also removes an exemption for salary and benefit information for maritime employees collected for the Marine Employees' Commission salary survey.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is long overdue. Releasing victims' and witnesses' names after an investigation harms their right to privacy and increases the risk they will face retaliation. This creates a chilling effect that deters people from reporting harassment. There is a huge social problem with the underreporting of sexual harassment. This bill strikes a common sense balance between disclosure and a victim's right to privacy. It will help make it safe to report sexual harassment and violence, which in turn will result in a more welcoming, diverse, and safe workplace. Cultures of harassment are allowed to remain in place because of fear.

(Opposed) This bill has an admirable intent, but it is not the appropriate vehicle to solve this problem. The bill concerns all types of discrimination investigations in all agencies, including discrimination based on race or creed. The level of professionalism and the thoroughness of the investigation differs between agencies. The investigation is not always in the interest of the agency performing the investigation, and human resources departments are interested in reducing risk. Keeping investigation records private is a way for them to hide. The person accused of discrimination or harassment may not know who made the complaint or testified against him. The PRA allows people to get evidence of malfeasance in investigations.

Persons Testifying: (In support) Representative Dolan, prime sponsor; Amy Windrope, Washington Department of Fish and Wildlife; Charles Malone, Washington Department of Natural Resources; Lauren Burnes; Ann Larson; and Shannon Madden, Washington State Employees Association.

(Opposed) Rowland Thompson, Allied Daily Newspapers of Washington; and Steve Majerick.

Persons Signed In To Testify But Not Testifying: None.