

HOUSE BILL REPORT

HB 2602

As Passed House:
February 12, 2020

Title: An act relating to hair discrimination.

Brief Description: Concerning hair discrimination.

Sponsors: Representatives Morgan, Thai, Pettigrew, Entenman, Lovick, Slatter, Santos, Ryu, Duerr, Appleton, Bergquist, Stonier, Ramos, Leavitt, Corry, Orwall, Dolan, Frame, Valdez, Gregerson, Ortiz-Self, Peterson, Davis, Riccelli, Callan, J. Johnson, Fey, Ramel, Hudgins, Kilduff, Robinson, Irwin, Doglio, Ormsby, Pollet and Macri.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/28/20, 1/31/20 [DP].

Floor Activity:

Passed House: 2/12/20, 87-10.

Brief Summary of Bill

- Amends the Washington Law Against Discrimination so the term "race" includes traits historically associated or perceived to be associated with race.
- Prohibits discrimination on the basis of hairstyle or texture.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kirby, Orwall, Peterson, Rude, Valdez and Walen.

Minority Report: Do not pass. Signed by 3 members: Representatives Dufault, Assistant Ranking Minority Member; Klippert and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Graham.

Staff: Ingrid Lewis (786-7289).

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.

Background:

The Washington Law Against Discrimination (WLAD) establishes that it is a civil right to be free from discrimination based on race; creed; color; national origin; families with children; sex; marital status; sexual orientation; age; the presence of any sensory, mental, or physical disability; or the use of a trained guide dog or service animal by a disabled person. This right applies to employment; places of public accommodation; commerce; and real estate, credit, and insurance transactions.

Race is currently not defined in statute.

The Washington State Human Rights Commission (HRC) is responsible, in part, for administering and enforcing the WLAD. The HRC receives and investigates complaints made by persons alleging unfair practices in violation of the law. If the HRC finds that there is reasonable cause to believe that discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If this process fails, the matter will be referred to an administrative law judge, who may, after a hearing on the matter, issue an order providing relief to the complainant.

In addition, rather than go through the HRC complaint process, a complainant may instead file a civil suit in superior court against the alleged wrongdoer. Available relief includes an injunction against further violations, the recovery of actual damages, and reasonable attorneys' fees.

Hair Discrimination in the Federal Courts.

The primary federal law that prohibits employment discrimination is Title VII of the Civil Rights Act of 1964 (Title VII), 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 courts have generally held that protections against racial discrimination cover only those aspects of racial identity that are immutable. As it relates to hair, Title VII protection only extends to immutable traits of race such as hair texture. Mutable characteristics, such as hairstyles, have not been considered protected characteristics.

Afros are considered an "immutable racial characteristic" by the federal courts and are protected under Title VII on the basis of race.

Summary of Bill:

Discrimination on the basis of hair style or texture under the Washington Law Against Discrimination (WLAD) is discrimination based on race and is prohibited. The WLAD is amended so the term "race" includes traits historically associated or perceived to be

associated with race. This would include, but would not be limited to, hair texture and protective hairstyles such as afros, braids, locks, and twists.

Appropriation: None.

Fiscal Note: Available.

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 amends the Washington Law Against Discrimination so the term "race" will include traits historically associated or perceived to be associated with race and prohibits discrimination on the basis of hairstyle or texture. The more a civil rights law can be defined, the better. People who are violating the law may not know that a practice is illegal.

It is currently legal to discriminate against a person in the workplace or in schools because of their natural hair in all states except three. California, New York, and New Jersey have passed hair discrimination laws. Hair discrimination remains a source of racial injustice with serious emotional and economic consequences for Black people. This bill will help to correct these racial injustices by making hair discrimination illegal in Washington.

Federal law has determined that afros are protected under Title VII of the Civil Rights Act, but hair discrimination still exists mainly because the courts consider Black hair to be a characteristic that can be changed. There is a long history of people in positions of power trying to erase identity and make entire classes of people less than equal. Equal treatment and protection under the law needs to include these protections for hair. Hair discrimination is racial discrimination, and it does not belong at work, schools, and other places of public accommodation.

Black hair is the most legislated hair in America. Historically, some Black people were required to wrap their hair because it was too attractive. Black hair was used as a tool to help set people free from slavery. Slaves would braid maps into their hair as a method of communication.

During the Reconstruction Era, Black Codes were put into place to retain control over freed slaves and to maintain white supremacy. The codes continued to limit the freedom of identity and cultural expression that had been stifled through enslavement. The Black Codes and present-day mandated appearance codes are connected.

In order to gain employment, Black women have had to assimilate into white culture. Black women must go from naturally curly hair to straight hair by using harmful chemicals that can cause severe scalp burns, and they are told that they need to straighten their hair to be considered more professional. Black hair is professional even though it does not follow Eurocentric values of how professional hair looks. Washingtonians should not have to be forced to cut their hair or told that their traditional or protective hairstyles are not appropriate for the workplace. Eighty percent of Black women feel the need to change their hair from its

natural state to fit in at the office; they are one and a half times more likely to be sent home from the workplace because of their hair; they are 83 percent more likely to report being judged harshly on their looks than other women; and, their hair is 3.4 times more likely to be perceived as unprofessional. Natural hair styles that are inherent to Black women's identity such as locks, braids, bantu knots, and afros are ranked the lowest for job readiness. White women can come to work with purple hair or locks, and they are not threatened with losing employment or shamed. This legislation is the systematic change required to acknowledge that hairstyles associated with Blackness are not a threat.

Students are being suspended and precluded from participating in graduation ceremonies because of their hair. Foster parents have cut the hair of Native children, and a judge has referred to a defendant's hair as being "nappy."

The world should be a place where everyone is valued for who they are, where everyone can be free to express their individuality without concern of being judged or held back by their appearance.

(Opposed) None.

(Other) This bill will also make big impacts in other communities of color, like Native Americans and Samoans, where it is an honor to have long hair. To cut long hair means a person has been dishonored. Native American children were pulled out of their homes and taken to boarding schools. They were not allowed to speak their language and their braids were cut. This has left trauma that is still with Native people today.

Persons Testifying: (In support) Representative Morgan, prime sponsor; RaShelle Davis, Office of the Governor; T'wina Nobles, Tacoma Urban League; Leslie Cushman, Racial Justice Team for the Pacific Northwest Conference of the United Church of Christ; Michelle Merriweather, Seattle Urban League; Andrea Jarmon; Angel Swanson, How To Talk To Your Racist Uncle; Peter Manning, Black Excellence in Cannabis; Lily Swanson; Jenna Hanchard, The Riveter; Cinnamon Brown; and Serwa Ashford, Pretty In Purpose Hair + Etc.

(Other) Sharon Ortiz, Washington State Human Rights Commission.

Persons Signed In To Testify But Not Testifying: Anzhane Slaughter.