

SHB 2602 - S COMM AMD

By Committee on Labor, Commerce, Research & Development

ADOPTED 03/04/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) It is in the public interest to reduce
4 domestic violence, sexual assault, and stalking by enabling victims to
5 maintain the financial independence necessary to leave abusive
6 situations, achieve safety, and minimize physical and emotional
7 injuries, and to reduce the devastating economic consequences of
8 domestic violence, sexual assault, and stalking to employers and
9 employees. Victims of domestic violence, sexual assault, and stalking
10 should be able to recover from and cope with the effects of such
11 violence and participate in criminal and civil justice processes
12 without fear of adverse economic consequences.

13 (2) One of the best predictors of whether a victim of domestic
14 violence, sexual assault, or stalking will be able to stay away from an
15 abuser is his or her degree of economic independence. However,
16 domestic violence, sexual assault, and stalking often negatively impact
17 victims' ability to maintain employment.

18 (3) An employee who is a victim of domestic violence, sexual
19 assault, or stalking, or an employee whose family member is a victim,
20 must often take leave from work due to injuries, court proceedings, or
21 safety concerns requiring legal protection.

22 (4) Thus, it is in the public interest to provide reasonable leave
23 from employment for employees who are victims of domestic violence,
24 sexual assault, or stalking, or for employees whose family members are
25 victims, to participate in legal proceedings, receive medical
26 treatment, or obtain other necessary services.

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

1 (1) "Child," "spouse," "parent," "parent-in-law," "grandparent,"
2 and "sick leave and other paid time off" have the same meanings as in
3 RCW 49.12.265.

4 (2) "Dating relationship" has the same meaning as in RCW 26.50.010.

5 (3) "Department," "director," "employer," and "employee" have the
6 same meanings as in RCW 49.12.005.

7 (4) "Domestic violence" has the same meaning as in RCW 26.50.010.

8 (5) "Family member" means any individual whose relationship to the
9 employee can be classified as a child, spouse, parent, parent-in-law,
10 grandparent, or person with whom the employee has a dating
11 relationship.

12 (6) "Intermittent leave" and "reduced leave schedule" have the same
13 meanings as in RCW 49.78.020.

14 (7) "Sexual assault" has the same meaning as in RCW 70.125.030.

15 (8) "Stalking" has the same meaning as in RCW 9A.46.110.

16 NEW SECTION. **Sec. 3.** An employee may take reasonable leave from
17 work, intermittent leave, or leave on a reduced leave schedule, with
18 or without pay, to:

19 (1) Seek legal or law enforcement assistance or remedies to ensure
20 the health and safety of the employee or employee's family members
21 including, but not limited to, preparing for, or participating in, any
22 civil or criminal legal proceeding related to or derived from domestic
23 violence, sexual assault, or stalking;

24 (2) Seek treatment by a health care provider for physical or mental
25 injuries caused by domestic violence, sexual assault, or stalking, or
26 to attend to health care treatment for a victim who is the employee's
27 family member;

28 (3) Obtain, or assist a family member in obtaining, services from
29 a domestic violence shelter, rape crisis center, or other social
30 services program for relief from domestic violence, sexual assault, or
31 stalking;

32 (4) Obtain, or assist a family member in obtaining, mental health
33 counseling related to an incident of domestic violence, sexual assault,
34 or stalking, in which the employee or the employee's family member was
35 a victim of domestic violence, sexual assault, or stalking; or

36 (5) Participate in safety planning, temporarily or permanently

1 relocate, or take other actions to increase the safety of the employee
2 or employee's family members from future domestic violence, sexual
3 assault, or stalking.

4 NEW SECTION. **Sec. 4.** (1) As a condition of taking leave for any
5 purpose described in section 3 of this act, an employee shall give an
6 employer advance notice of the employee's intention to take leave. The
7 timing of the notice shall be consistent with the employer's stated
8 policy for requesting such leave, if the employer has such a policy.
9 When advance notice cannot be given because of an emergency or
10 unforeseen circumstances due to domestic violence, sexual assault, or
11 stalking, the employee or his or her designee must give notice to the
12 employer no later than the end of the first day that the employee takes
13 such leave.

14 (2) When an employee requests leave under section 3 of this act the
15 employer may require that the request be supported by verification
16 that:

17 (a) The employee or employee's family member is a victim of
18 domestic violence, sexual assault, or stalking; and

19 (b) The leave taken was for one of the purposes described in
20 section 3 of this act.

21 (3) If an employer requires verification, verification must be
22 provided in a timely manner. In the event that advance notice of the
23 leave cannot be given because of an emergency or unforeseen
24 circumstances due to domestic violence, sexual assault, or stalking,
25 and the employer requires verification, verification must be provided
26 to the employer within a reasonable time period during or after the
27 leave.

28 (4) An employee may satisfy the verification requirement of this
29 section by providing the employer with one or more of the following:

30 (a) A police report indicating that the employee or employee's
31 family member was a victim of domestic violence, sexual assault, or
32 stalking;

33 (b) A court order protecting or separating the employee or
34 employee's family member from the perpetrator of the act of domestic
35 violence, sexual assault, or stalking, or other evidence from the court
36 or the prosecuting attorney that the employee or employee's family

1 member appeared, or is scheduled to appear, in court in connection with
2 an incident of domestic violence, sexual assault, or stalking;

3 (c) Documentation that the employee or the employee's family member
4 is a victim of domestic violence, sexual assault, or stalking, from any
5 of the following persons from whom the employee or employee's family
6 member sought assistance in addressing the domestic violence, sexual
7 assault, or stalking: An advocate for victims of domestic violence,
8 sexual assault, or stalking; an attorney; a member of the clergy; or a
9 medical or other professional. The provision of documentation under
10 this section does not waive or diminish the confidential or privileged
11 nature of communications between a victim of domestic violence, sexual
12 assault, or stalking with one or more of the individuals named in this
13 subsection (4)(c) pursuant to RCW 5.60.060, 70.123.075, 70.123.076, or
14 70.125.065; or

15 (d) An employee's written statement that the employee or the
16 employee's family member is a victim of domestic violence, sexual
17 assault, or stalking and that the leave taken was for one of the
18 purposes described in section 3 of this act.

19 (5) If the victim of domestic violence, sexual assault, or stalking
20 is the employee's family member, verification of the familial
21 relationship between the employee and the victim may include, but is
22 not limited to, a statement from the employee, a birth certificate, a
23 court document, or other similar documentation.

24 (6) An employee who is absent from work pursuant to section 3 of
25 this act may elect to use the employee's sick leave and other paid time
26 off, compensatory time, or unpaid leave time.

27 (7) An employee is required to provide only the information
28 enumerated in subsection (2) of this section to establish that the
29 employee's leave is protected under this chapter. An employee is not
30 required to produce or discuss any information with the employer that
31 is beyond the scope of subsection (2) of this section, or that would
32 compromise the employee's safety or the safety of the employee's family
33 member in any way, and an employer is prohibited from requiring any
34 such disclosure.

35 (8)(a) Except as provided in (b) of this subsection, an employer
36 shall maintain the confidentiality of all information provided by the
37 employee under this section, including the fact that the employee or
38 employee's family member is a victim of domestic violence, sexual

1 assault, or stalking, that the employee has requested or obtained leave
2 under this chapter, and any written or oral statement, documentation,
3 record, or corroborating evidence provided by the employee.

4 (b) Information given by an employee may be disclosed by an
5 employer only if:

- 6 (i) Requested or consented to by the employee;
- 7 (ii) Ordered by a court or administrative agency; or
- 8 (iii) Otherwise required by applicable federal or state law.

9 NEW SECTION. **Sec. 5.** (1) The taking of leave under section 3 of
10 this act may not result in the loss of any pay or benefits to the
11 employee that accrued before the date on which the leave commenced.

12 (2) Upon an employee's return, an employer shall either:

13 (a) Restore the employee to the position of employment held by the
14 employee when the leave commenced; or

15 (b) Restore the employee to an equivalent position with equivalent
16 employment benefits, pay, and other terms and conditions of employment.

17 (3)(a) This section does not apply if the employment from which the
18 individual takes leave is with a staffing company and the individual is
19 assigned on a temporary basis to perform work at or services for
20 another organization to support or supplement the other organization's
21 workforces, or to provide assistance in special work situations such
22 as, but not limited to, employee absences, skill shortages, seasonal
23 workloads, or to perform special assignments or projects, all under the
24 direction and supervision of the organization to which the individual
25 is assigned.

26 (b) This section does not apply if an employee was hired for a
27 specific term or only to perform work on a discrete project, the
28 employment term or project is over, and the employer would not
29 otherwise have continued to employ the employee.

30 (4) To the extent allowed by law, an employer shall maintain
31 coverage under any health insurance plan for an employee who takes
32 leave under section 3 of this act. The coverage must be maintained for
33 the duration of the leave at the level and under the conditions
34 coverage would have been provided if the employee had not taken the
35 leave.

1 NEW SECTION. **Sec. 6.** (1) The rights provided in this act are in
2 addition to any other rights provided by state and federal law.

3 (2) Nothing in this chapter shall be construed to discourage
4 employers from adopting policies that provide greater leave rights to
5 employees who are victims of domestic violence, sexual assault, or
6 stalking than those required by this act.

7 (3) Nothing in this act shall be construed to diminish an
8 employer's obligation to comply with any collective bargaining
9 agreement, or any employment benefit program or plan, that provides
10 greater leave rights to employees than the rights provided by this act.

11 NEW SECTION. **Sec. 7.** Upon complaint by an employee, the director
12 shall investigate to determine if there has been compliance with this
13 chapter and the rules adopted under this chapter. If the investigation
14 indicates that a violation has occurred, the director shall issue a
15 notice of infraction. Appeal from the director's decision is governed
16 by chapter 34.05 RCW.

17 NEW SECTION. **Sec. 8.** Any finding, determination, conclusion,
18 declaration, or notice of infraction made for the purposes of enforcing
19 this chapter by the director or by an appeal tribunal, administrative
20 law judge, or reviewing officer is neither conclusive nor binding in
21 any civil action filed pursuant to section 12 of this act or in any
22 other common law or civil action, regardless of whether the prior
23 action was between the same or related parties or involved the same
24 facts.

25 NEW SECTION. **Sec. 9.** (1) If an employer is found to have
26 committed an infraction under section 7 of this act, the director may
27 impose upon the employer a fine of up to five hundred dollars for the
28 first infraction and a fine of up to one thousand dollars for each
29 subsequent infraction committed within three years of a previous
30 infraction.

31 (2) The director may also order an employer found to have committed
32 an infraction under section 7 of this act to comply with section 5(2)
33 of this act.

1 NEW SECTION. **Sec. 10.** (1) Except as provided in subsection (2) of
2 this section, information contained in the department's complaint files
3 and records of employees under this chapter is confidential and shall
4 not be open to public inspection.

5 (2) Except as limited by state or federal statute or regulations:

6 (a) The information in subsection (1) of this section may be
7 provided to public employees in the performance of their official
8 duties; and

9 (b) A complainant or a representative of a complainant, be it an
10 individual or an organization, may review a complaint file or receive
11 specific information therefrom upon the presentation of the signed
12 authorization of the complainant.

13 NEW SECTION. **Sec. 11.** No employer may discharge, threaten to
14 discharge, demote, deny a promotion to, sanction, discipline, retaliate
15 against, harass, or otherwise discriminate against an employee with
16 respect to compensation, terms, conditions, or privileges of employment
17 because the employee:

18 (1) Exercised rights under section 3 of this act;

19 (2) Filed or communicated to the employer an intent to file a
20 complaint under section 7 or 12 of this act; or

21 (3) Participated or assisted, as a witness or otherwise, in another
22 employee's attempt to exercise rights under section 3, 7, or 12 of this
23 act.

24 NEW SECTION. **Sec. 12.** (1) Any employee deeming herself or himself
25 injured by any act in violation of this chapter shall have a civil
26 action in a court of competent jurisdiction to enjoin further
27 violations, or to recover the actual damages sustained by the person,
28 or both, together with the cost of suit including reasonable attorneys'
29 fees.

30 (2) The remedy provided by this section is in addition to any
31 common law remedy or other remedy that may be available to an employee.

32 (3) An employee is not required to exhaust administrative remedies
33 before filing a civil action to enforce this chapter.

34 NEW SECTION. **Sec. 13.** The department shall include notice of the

1 provisions of this chapter in the next reprinting of employment posters
2 printed under RCW 49.78.340. Employers shall post this notice as
3 required in RCW 49.78.340.

4 NEW SECTION. **Sec. 14.** Prosecuting attorney and victim/witness
5 offices are encouraged to make information regarding this chapter
6 available for distribution at their offices.

7 NEW SECTION. **Sec. 15.** The director shall adopt rules as necessary
8 to implement this chapter.

9 **Sec. 16.** RCW 7.69.030 and 2004 c 120 s 8 are each amended to read
10 as follows:

11 There shall be a reasonable effort made to ensure that victims,
12 survivors of victims, and witnesses of crimes have the following
13 rights, which apply to any criminal court and/or juvenile court
14 proceeding:

15 (1) With respect to victims of violent or sex crimes, to receive,
16 at the time of reporting the crime to law enforcement officials, a
17 written statement of the rights of crime victims as provided in this
18 chapter. The written statement shall include the name, address, and
19 telephone number of a county or local crime victim/witness program, if
20 such a crime victim/witness program exists in the county;

21 (2) To be informed by local law enforcement agencies or the
22 prosecuting attorney of the final disposition of the case in which the
23 victim, survivor, or witness is involved;

24 (3) To be notified by the party who issued the subpoena that a
25 court proceeding to which they have been subpoenaed will not occur as
26 scheduled, in order to save the person an unnecessary trip to court;

27 (4) To receive protection from harm and threats of harm arising out
28 of cooperation with law enforcement and prosecution efforts, and to be
29 provided with information as to the level of protection available;

30 (5) To be informed of the procedure to be followed to apply for and
31 receive any witness fees to which they are entitled;

32 (6) To be provided, whenever practical, a secure waiting area
33 during court proceedings that does not require them to be in close
34 proximity to defendants and families or friends of defendants;

1 (7) To have any stolen or other personal property expeditiously
2 returned by law enforcement agencies or the superior court when no
3 longer needed as evidence. When feasible, all such property, except
4 weapons, currency, contraband, property subject to evidentiary
5 analysis, and property of which ownership is disputed, shall be
6 photographed and returned to the owner within ten days of being taken;

7 (8) To be provided with appropriate employer intercession services
8 to ensure that employers of victims, survivors of victims, and
9 witnesses of crime will cooperate with the criminal justice process in
10 order to minimize an employee's loss of pay and other benefits
11 resulting from court appearance;

12 (9) To access to immediate medical assistance and not to be
13 detained for an unreasonable length of time by a law enforcement agency
14 before having such assistance administered. However, an employee of
15 the law enforcement agency may, if necessary, accompany the person to
16 a medical facility to question the person about the criminal incident
17 if the questioning does not hinder the administration of medical
18 assistance. Victims of domestic violence, sexual assault, or stalking,
19 as defined in section 2 of this act, shall be notified of their right
20 to reasonable leave from employment under chapter 49. . . . RCW
21 (sections 1 through 15 of this act);

22 (10) With respect to victims of violent and sex crimes, to have a
23 crime victim advocate from a crime victim/witness program, or any other
24 support person of the victim's choosing, present at any prosecutorial
25 or defense interviews with the victim, and at any judicial proceedings
26 related to criminal acts committed against the victim. This subsection
27 applies if practical and if the presence of the crime victim advocate
28 or support person does not cause any unnecessary delay in the
29 investigation or prosecution of the case. The role of the crime victim
30 advocate is to provide emotional support to the crime victim;

31 (11) With respect to victims and survivors of victims, to be
32 physically present in court during trial, or if subpoenaed to testify,
33 to be scheduled as early as practical in the proceedings in order to be
34 physically present during trial after testifying and not to be excluded
35 solely because they have testified;

36 (12) With respect to victims and survivors of victims, to be
37 informed by the prosecuting attorney of the date, time, and place of

1 the trial and of the sentencing hearing for felony convictions upon
2 request by a victim or survivor;

3 (13) To submit a victim impact statement or report to the court,
4 with the assistance of the prosecuting attorney if requested, which
5 shall be included in all presentence reports and permanently included
6 in the files and records accompanying the offender committed to the
7 custody of a state agency or institution;

8 (14) With respect to victims and survivors of victims, to present
9 a statement personally or by representation, at the sentencing hearing
10 for felony convictions;

11 (15) With respect to victims and survivors of victims, to entry of
12 an order of restitution by the court in all felony cases, even when the
13 offender is sentenced to confinement, unless extraordinary
14 circumstances exist which make restitution inappropriate in the court's
15 judgment; and

16 (16) With respect to victims and survivors of victims, to present
17 a statement in person, via audio or videotape, in writing or by
18 representation at any hearing conducted regarding an application for
19 pardon or commutation of sentence.

20 NEW SECTION. **Sec. 17.** Sections 1 through 15 of this act
21 constitute a new chapter in Title 49 RCW.

22 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 immediately."

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26 On page 1, line 2 of the title, after "stalking;" strike the
27 remainder of the title and insert "amending RCW 7.69.030; adding a new
28 chapter to Title 49 RCW; and declaring an emergency."

--- END ---