H-3597.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2661**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Doglio, Appleton, Orwall, Gregerson, Frame, Sells, Jinkins, Wylie, Macri, Tarleton, Hudgins, McBride, Pollet, Goodman, Santos, and Stanford

AN ACT Relating to protecting survivors of domestic violence, sexual assault, and stalking from employment discrimination; amending RCW 49.76.010, 49.76.040, 49.76.060, 49.76.100, and 49.76.120; and adding a new section to chapter 49.76 RCW.

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

**Sec.**  RCW 49.76.010 and 2008 c 286 s 1 are each amended to read as follows:

(1) It is in the public interest to reduce domestic violence, sexual assault, and stalking by enabling victims to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries, and to reduce the devastating economic consequences of domestic violence, sexual assault, and stalking to employers and employees. Victims of domestic violence, sexual assault, and stalking should be able to recover from and cope with the effects of such violence and participate in criminal and civil justice processes without fear of adverse economic consequences. Victims of domestic violence, sexual assault, or stalking should also be able to seek and maintain employment without fear that they will face discrimination.

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

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

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

(5) It is also in the public interest to ensure that victims of domestic violence, sexual assault, or stalking are able to seek and maintain employment without fear of discrimination and to have reasonable safety accommodations in the workplace.

NEW SECTION. **Sec.**  A new section is added to chapter 49.76 RCW to read as follows:

An employer may not:

(1) Refuse to hire an otherwise qualified individual because the individual is an actual or perceived victim of domestic violence, sexual assault, or stalking;

(2) Discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an individual with regard to promotion, compensation, or other terms, conditions, or privileges of employment because the individual is an actual or perceived victim of domestic violence, sexual assault, or stalking;

(3) Refuse to make a reasonable safety accommodation requested by an individual who is a victim of domestic violence, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer. For the purposes of this section, an "undue hardship" means an action requiring significant difficulty or expense. A reasonable safety accommodation may include, but is not limited to, a transfer, reassignment, modified schedule, changed work telephone number, changed work email address, changed workstation, installed lock, implemented safety procedure, or any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault, or stalking.

**Sec.**  RCW 49.76.040 and 2008 c 286 s 4 are each amended to read as follows:

(1) As a condition of taking leave for any purpose described in RCW 49.76.030, an employee shall give an employer advance notice of the employee's intention to take leave. The timing of the notice shall be consistent with the employer's stated policy for requesting such leave, if the employer has such a policy. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or his or her designee must give notice to the employer no later than the end of the first day that the employee takes such leave.

(2) When an employee requests leave under RCW 49.76.030 or requests a reasonable safety accommodation under section 2 of this act the employer may require that the request be supported by verification that:

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

(b) The leave taken was for one of the purposes described in RCW 49.76.030 or that the safety accommodation requested under section 2 of this act is for the purpose of protecting the employee from domestic violence, sexual assault, or stalking.

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

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

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

(b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

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

(d) An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes described in RCW 49.76.030 or the safety accommodation requested pursuant to section 2 of this act is to protect the employee from domestic violence, sexual assault, or stalking.

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

(6) An employee who is absent from work pursuant to RCW 49.76.030 may elect to use the employee's sick leave and other paid time off, compensatory time, or unpaid leave time.

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

(8)(a) Except as provided in (b) of this subsection, an employer shall maintain the confidentiality of all information provided by the employee under this section, including the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this chapter, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

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

(i) Requested or consented to by the employee;

(ii) Ordered by a court or administrative agency; or

(iii) Otherwise required by applicable federal or state law.

**Sec.**  RCW 49.76.060 and 2008 c 286 s 6 are each amended to read as follows:

(1) The rights provided in this chapter ((~~286, Laws of 2008~~)) are in addition to any other rights provided by state and federal law.

(2) Nothing in this chapter shall be construed to discourage employers from adopting policies that provide greater leave rights or greater safety accommodations to employees who are victims of domestic violence, sexual assault, or stalking than those required by this chapter ((~~286, Laws of 2008~~)).

(3) Nothing in this chapter ((~~286, Laws of 2008~~)) shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement, or any employment benefit program or plan, that provides greater leave rights or greater safety accommodations to employees than the rights provided by this chapter ((~~286, Laws of 2008~~)).

**Sec.**  RCW 49.76.100 and 2008 c 286 s 12 are each amended to read as follows:

(1) Any employee or applicant for employment deeming herself or himself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees.

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

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

**Sec.**  RCW 49.76.120 and 2008 c 286 s 11 are each amended to read as follows:

No employer may discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee:

(1) Exercised rights under RCW 49.76.030 or section 2 of this act;

(2) Filed or communicated to the employer an intent to file a complaint under RCW 49.76.070 or 49.76.100; or

(3) Participated or assisted, as a witness or otherwise, in another employee's attempt to exercise rights under RCW 49.76.030, section 2 of this act, 49.76.070, or 49.76.100.

**--- END ---**