

SENATE BILL REPORT

SSB 5996

As Passed Senate, February 8, 2018

Title: An act relating to encouraging the disclosure and discussion of sexual harassment and sexual assault in the workplace.

Brief Description: Encouraging the disclosure and discussion of sexual harassment and sexual assault in the workplace.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Darneille, Frockt, Van De Wege, Pedersen, Hunt, Chase, Saldaña, Kuderer and Hasegawa).

Brief History:

Committee Activity: Labor & Commerce: 1/24/18, 1/31/18 [DPS, w/oRec].

Floor Activity:

Passed Senate: 2/08/18, 48-0.

Brief Summary of First Substitute Bill

- Prohibits an employer from requiring an employee, as a condition of employment, to sign a nondisclosure agreement that prevents the employee from disclosing sexual harassment or sexual assault.
- Provides that any nondisclosure agreement that has the purpose or effect of preventing an employee from disclosing or discussing sexual harassment or sexual assault is void and unenforceable.
- Provides that it is an unfair practice under the Washington Law Against Discrimination (WLAD) for an employer to retaliate against an employee for disclosing or discussing sexual harassment or sexual assault.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5996 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Baumgartner, Ranking Member; Conway, Kuderer and Saldaña.

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Braun, King and Wilson.

Staff: Jarrett Sacks (786-7448)

Background: Under the WLAD, a person has the right to be free from discrimination related to a protected status, such as race, national origin, sex, veteran or military status, sexual orientation, and disability. An employer may not discriminate against a person because of one's protected status. Sexual harassment is a form of sex discrimination under WLAD and Title VII of the Civil Rights Act of 1964.

WLAD is administered by the Washington State Human Rights Commission (HRC). The HRC investigates complaints that allege unfair practices in violation of the WLAD. 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 the parties do not reach an agreement, the HRC must refer the matter to an administrative judge for a determination.

A nondisclosure agreement is a form of contract between two or more parties that restricts the disclosure of confidential material or information to third parties. In general, state contract law governs nondisclosure agreements, however, a nondisclosure agreement may contain a choice of law provision that controls which jurisdiction's law applies.

Summary of First Substitute Bill: Employers are prohibited from requiring an employee, as a condition of employment, to sign a nondisclosure agreement that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events, or between employees, or between an employer and an employee, off the employment premises. Any nondisclosure agreement signed by an employee as a condition of employment that prevents the disclosure or discussion of sexual harassment or sexual assault is against public policy and is void and unenforceable.

It is an unfair practice under WLAD for an employer to retaliate against an employee for disclosing or discussing sexual harassment or sexual assault.

Sexual assault means any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature if:

- submission to that conduct or communication is made a term or condition of obtaining an education or employment;
- submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or
- that conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

Human resources employees that are expected to maintain the confidentiality of an investigation as part of their official duties and employees requested to maintain confidentiality of an ongoing human resources investigation are not considered employees under the bill.

The bill does not apply to confidential settlements between an employee alleging sexual harassment and an employer.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: A survey conducted by the Equal Employment Opportunity Commission found that 68 percent of women have been sexually harassed. Sexual harassment hurts productivity and puts the burden on the victim to avoid situations at work. The bill takes away one of the tools employers use to limit a victim's ability to speak up against sexual harassment. By limiting employment agreements, it puts the power in the hands of the impacted employee with how to proceed. The bill advances worker's rights and makes worker's rights more specific. The bill does not apply to harassment of other protected classes, so it should be expanded to avoid confusing employers and employees.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Rebecca Johnson, Washington Coalition of Sexual Assault Programs; Katie Chamberlain, Washington Employment Lawyers Association; David Ward, Legal Voice; Terri Lindeke, Washington State NOW; Arthur West, citizen.

Persons Signed In To Testify But Not Testifying: No one.