

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2602

Chapter 286, Laws of 2008

60th Legislature
2008 Regular Session

DOMESTIC VIOLENCE--VICTIMS--EMPLOYMENT LEAVE

EFFECTIVE DATE: 04/01/08

Passed by the House March 8, 2008
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2008
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved April 1, 2008, 2:08 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2602** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 2, 2008

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2602

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Kessler, Dickerson, Williams, O'Brien, Hurst, Lantz, Moeller, Hasegawa, Pedersen, Ormsby, VanDeWege, Conway, Goodman, Hudgins, Santos, Campbell, Upthegrove, Chase, Darneille, Barlow, Green, and Simpson)

READ FIRST TIME 02/06/08.

1 AN ACT Relating to increasing the safety and economic security of
2 victims of domestic violence, sexual assault, or stalking; amending RCW
3 7.69.030; adding a new chapter to Title 49 RCW; and declaring an
4 emergency.

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

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

16 (2) One of the best predictors of whether a victim of domestic
17 violence, sexual assault, or stalking will be able to stay away from an
18 abuser is his or her degree of economic independence. However,

1 domestic violence, sexual assault, and stalking often negatively impact
2 victims' ability to maintain employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (3) Obtain, or assist a family member in obtaining, services from
6 a domestic violence shelter, rape crisis center, or other social
7 services program for relief from domestic violence, sexual assault, or
8 stalking;

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

13 (5) Participate in safety planning, temporarily or permanently
14 relocate, or take other actions to increase the safety of the employee
15 or employee's family members from future domestic violence, sexual
16 assault, or stalking.

17 NEW SECTION. **Sec. 4.** (1) As a condition of taking leave for any
18 purpose described in section 3 of this act, an employee shall give an
19 employer advance notice of the employee's intention to take leave. The
20 timing of the notice shall be consistent with the employer's stated
21 policy for requesting such leave, if the employer has such a policy.
22 When advance notice cannot be given because of an emergency or
23 unforeseen circumstances due to domestic violence, sexual assault, or
24 stalking, the employee or his or her designee must give notice to the
25 employer no later than the end of the first day that the employee takes
26 such leave.

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

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

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

34 (3) If an employer requires verification, verification must be
35 provided in a timely manner. In the event that advance notice of the
36 leave cannot be given because of an emergency or unforeseen
37 circumstances due to domestic violence, sexual assault, or stalking,

1 and the employer requires verification, verification must be provided
2 to the employer within a reasonable time period during or after the
3 leave.

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

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

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

15 (c) Documentation that the employee or the employee's family member
16 is a victim of domestic violence, sexual assault, or stalking, from any
17 of the following persons from whom the employee or employee's family
18 member sought assistance in addressing the domestic violence, sexual
19 assault, or stalking: An advocate for victims of domestic violence,
20 sexual assault, or stalking; an attorney; a member of the clergy; or a
21 medical or other professional. The provision of documentation under
22 this section does not waive or diminish the confidential or privileged
23 nature of communications between a victim of domestic violence, sexual
24 assault, or stalking with one or more of the individuals named in this
25 subsection (4)(c) pursuant to RCW 5.60.060, 70.123.075, 70.123.076, or
26 70.125.065; or

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

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

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

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

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

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

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

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

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

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

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

29 (3)(a) This section does not apply if the employment from which the
30 individual takes leave is with a staffing company and the individual is
31 assigned on a temporary basis to perform work at or services for
32 another organization to support or supplement the other organization's
33 workforces, or to provide assistance in special work situations such
34 as, but not limited to, employee absences, skill shortages, seasonal
35 workloads, or to perform special assignments or projects, all under the
36 direction and supervision of the organization to which the individual
37 is assigned.

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

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

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

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

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

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

27 NEW SECTION. **Sec. 8.** Any finding, determination, conclusion,
28 declaration, or notice of infraction made for the purposes of enforcing
29 this chapter by the director or by an appeal tribunal, administrative
30 law judge, or reviewing officer is neither conclusive nor binding in
31 any civil action filed pursuant to section 12 of this act or in any
32 other common law or civil action, regardless of whether the prior
33 action was between the same or related parties or involved the same
34 facts.

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

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

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

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

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

18 (b) A complainant or a representative of a complainant, be it an
19 individual or an organization, may review a complaint file or receive
20 specific information therefrom upon the presentation of the signed
21 authorization of the complainant.

22 NEW SECTION. **Sec. 11.** No employer may discharge, threaten to
23 discharge, demote, deny a promotion to, sanction, discipline, retaliate
24 against, harass, or otherwise discriminate against an employee with
25 respect to compensation, terms, conditions, or privileges of employment
26 because the employee:

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

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

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

33 NEW SECTION. **Sec. 12.** (1) Any employee deeming herself or himself
34 injured by any act in violation of this chapter shall have a civil
35 action in a court of competent jurisdiction to enjoin further

1 violations, or to recover the actual damages sustained by the person,
2 or both, together with the cost of suit including reasonable attorneys'
3 fees.

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

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

8 NEW SECTION. **Sec. 13.** The department shall include notice of the
9 provisions of this chapter in the next reprinting of employment posters
10 printed under RCW 49.78.340. Employers shall post this notice as
11 required in RCW 49.78.340.

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

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

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

19 There shall be a reasonable effort made to ensure that victims,
20 survivors of victims, and witnesses of crimes have the following
21 rights, which apply to any criminal court and/or juvenile court
22 proceeding:

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

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

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

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

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

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

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

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

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

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

1 (11) With respect to victims and survivors of victims, to be
2 physically present in court during trial, or if subpoenaed to testify,
3 to be scheduled as early as practical in the proceedings in order to be
4 physically present during trial after testifying and not to be excluded
5 solely because they have testified;

6 (12) With respect to victims and survivors of victims, to be
7 informed by the prosecuting attorney of the date, time, and place of
8 the trial and of the sentencing hearing for felony convictions upon
9 request by a victim or survivor;

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

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

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

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

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

29 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately.

Passed by the House March 8, 2008.

Passed by the Senate March 4, 2008.

Approved by the Governor April 1, 2008.

Filed in Office of Secretary of State April 2, 2008.