S-0079.1

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

**SENATE BILL 5760**

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

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Ranker, Cleveland, Wellman, Frockt, Darneille, Keiser, Kuderer, Hasegawa, Mullet, Walsh, McCoy, Takko, Billig, Liias, Hobbs, Hunt, Carlyle, Rolfes, Pedersen, and Conway

AN ACT Relating to declaring that it is an unfair practice for any employer who provides health insurance to its employees as part of an employee's benefit package to not include contraceptive coverage as part of the benefit package, to fail to comply with federal rules adopted under the affordable care act relating to the provision of contraceptive coverage, or to discriminate against any employee based on that employee's use of any reproductive health care service, drug, or device; adding new sections to chapter 49.60 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  This act may be known and cited as the employee reproductive choice act.

NEW SECTION. **Sec.**  The legislature finds that the people of the state of Washington have long supported privacy rights of individuals and have repeatedly stated that discrimination based on sex or interference with a woman's fundamental right to choose or refuse birth control is against the public policy of the state. These policies began with adoption of the state Constitution and Article I, section 7 of the state Constitution, which provides that no one is to be disturbed in their private affairs without authority of law. In 1972, Washington voters went further by approving Article XXXI of the state Constitution, which provides that legal rights and responsibilities shall not be abridged or denied on the basis of sex. In 1991, Washington voters approved Initiative Measure No. 120, the reproductive privacy act. That act clearly states that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions and that every individual has the fundamental right to choose or refuse birth control.

The legislature further finds that access to contraceptive services provides economic and social benefits to women and their families. Women with reliable access to contraceptive services have forty percent higher earnings than those who lack such access, and access to contraception can significantly increase a woman's earning power and narrow the gender pay gap. Women who use contraception to plan pregnancies tend to have healthier pregnancies and, by spacing births, have healthier outcomes for themselves as well as their babies.

The legislature also finds that the affordable care act requires health plans to offer a comprehensive package of items and services, known as essential health benefits. These benefits include the provision of preventative and wellness services, with specific services to be made available to women such as breast and cervical cancer screening, sexually transmitted disease screening, and access to all food and drug administration-approved contraceptive drugs and devices. Because certain religious employers objected to providing contraceptive coverage, an accommodation was developed through federal rule, under which the religious employer's health insurance carrier must provide separate payments for contraceptive coverage at no cost to the employee or the employer.

The legislature further finds that while this contraceptive coverage accommodation was originally available only to those religious employers organized and operated as nonprofit entities, the supreme court, in its June 30, 2014, decision in the matter of *Burwell, Secretary of Health and Human Services, et al. v. Hobby Lobby Stores, Inc.*, held that closely held for-profit corporations whose owners have sincerely held religious beliefs are not required to purchase contraceptive coverage for their employees under federal law and may avail themselves of the federal contraceptive coverage accommodation. As of August 2014, the federal government has issued proposed rules on expanding the availability of the accommodation to include closely held for-profit entities with a religious objection to some or all contraceptive services.

The legislature also finds that only those employers that qualify as a religious or sectarian organization not organized for private profit may claim an exemption to Washington's law against discrimination.

Therefore, the legislature intends to clarify that, in Washington, barrier free access to birth control remains a fundamental right and that discriminating against women through limitations on access to essential health benefits is against the public policy of this state and subject to the jurisdiction of the human rights commission and the state's law against discrimination.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

Except as provided in section 4 of this act, it is an unfair practice for any employer who provides health insurance to its employees as part of an employee's benefit package to fail to provide contraceptive coverage at no cost to the employee.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

Employers for which state regulation under section 3 of this act is preempted must, pursuant to the affordable care act, comply with affordable care act requirements and rules on barrier free access to contraceptive coverage. Failure to comply with affordable care act requirements and rules constitutes an unfair practice, subject to the jurisdiction of the human rights commission and the state's law against discrimination.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

It is an unfair practice for any employer to discharge, expel, or otherwise discriminate with respect to compensation, terms, conditions, or privileges of employment against any employee based on that employee’s use of any food and drug administration-approved reproductive health care service, drug, or device.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

(1) Any employee injured by an act in violation of section 3, 4, or 5 of this act:

(a) May file a complaint with the commission and the commission must investigate the complaint if the commission determines that the complaint is subject to the jurisdiction of this chapter; and

(b) May pursue a civil action in a court of competent jurisdiction to either enjoin further violations, or recover actual damages sustained by the employee, or both, together with the cost of suit including reasonable attorneys' fees.

(2) For the purposes of this section and sections 3 and 4 of this act, "contraceptive coverage" means all food and drug administration-approved contraceptive drugs and devices.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**