

SENATE BILL REPORT

EHB 2020

As Reported by Senate Committee On:
State Government, Tribal Relations & Elections, March 29, 2019

Title: An act relating to exempting the disclosure of names in employment investigation records.

Brief Description: Exempting the disclosure of names in employment investigation records.

Sponsors: Representatives Dolan, Kretz, Doglio, Stanford, Slatter, Klippert, Davis, Hudgins, Macri, Jinkins, Morgan, Frame and Ormsby.

Brief History: Passed House: 3/05/19, 97-1.

Committee Activity: State Government, Tribal Relations & Elections: 3/22/19, 3/29/19 [DPA].

Brief Summary of Amended Bill

- Exempts the names of complainants, other accusers, and witnesses in an investigation of employment discrimination from public disclosure requirements until after the investigation is complete, unless the person consents to disclose their name.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Zeiger, Ranking Member; Hasegawa and Takko.

Staff: Samuel Brown (786-7470)

Background: The Washington Law Against Discrimination. The Washington Law Against Discrimination (WLAD) prohibits discrimination based on a protected characteristic in employment, public accommodations, and real estate, credit, or insurance transactions. Protected characteristics under WLAD are race, creed, color, national origin, sex, veteran or military status, sexual orientation, and disability.

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.

The following employment decisions, when due to a person's protected characteristics, constitute unfair practices under WLAD:

- refusal to hire;
- discharge or bar from employment;
- discrimination in compensation or other terms or conditions of employment; and
- limitations in employment advertisements or inquiries.

Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure are interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Investigative records compiled by a state or local agency, acting as an employer, in connection with an active and ongoing investigation of an unfair employment practice or a violation of laws prohibiting employment discrimination are exempt from the PRA's disclosure requirements. This exemption terminates once the investigation is complete.

Summary of Amended Bill: The names of complainants, other accusers, and witnesses in an investigation of employment discrimination are exempt from public disclosure requirements after the investigation is complete unless:

- the agency has notified the complainant of the investigation's outcome; and
- the person named in the record has consented to disclose their name.

The agency must inform each complaint, other accuser, or witness that their name will be redacted from investigation records unless the person consents to disclosure.

EFFECT OF STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS COMMITTEE AMENDMENT(S): The names of complainants, other accusers, and witnesses to an investigation of a possible violation of an employing agency's internal policies prohibiting discrimination or harassment are also exempt from public disclosure requirements after the investigation is complete unless:

- the agency has notified the complainant of the investigation's outcome; and
- the person named in the record has consented to disclose their name.

Appropriation: None.

Fiscal Note: Not requested.

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 Engrossed House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Sexual assault and

harassment flourish if hidden. This bill will allow people to determine if they want to remain anonymous in a sexual harassment investigation or want the catharsis of coming forward. The PRA is just one investigatory tool; nothing in this bill prevents discovery during litigation or other investigatory methods. Public employees have different rights than private employees and are worried if names or emotionally traumatizing experiences will be released at any point in our careers. Consent is a critical thing that victims are not afforded throughout the process. The Equal Employment Opportunity Commission found that 90 percent of the harassment that could have been reported was not, and 75 percent of the time when harassment was reported there was retaliation. This is necessary to create a culture of civility in state agencies.

The sexual harassment investigation into a co-worker that followed a criminal investigation for sexual assault did not protect my confidentiality, revictimized me, and subjected me to additional humiliation. In another instance, I was repeatedly threatened and in constant fear of retaliation. Others were afraid to come forward on my behalf. Courage and bravery should not be a prerequisite to exposing sexual harassment in the workplace - there needs to be a safer reporting process in place to protect future victims. Victim-shaming must stop.

This removes key disincentives to coming forward and helps our agency create a more welcoming culture for employees. We had an instance where a private investigator harassed employees at work, asking them to recount their traumatic experiences, using information from a public records request. This bill does not impact collective bargaining rights or civil service rules. It will help agencies address bad acts and clean up the public sector by increasing reporting.

CON: The bill is drafted to every workplace complaint that could come up, not just sexual harassment. In cases with multiple accusers or victims, this bill would make it impossible to determine the extent an agency was mismanaged to allow that to happen. This tramples on basic civil rights to confront an accuser and gather exonerating evidence. Employers will default to termination of employees accused of misconduct because of the potential liability if there is a second complaint against the employee.

Persons Testifying: PRO: Representative Laurie Dolan, Prime Sponsor; Seamus Petrie, Washington Public Employees Association; Lauren Burnes, Ann Larson, citizens; Amy Windrope, Department of Fish and Wildlife; Charles Malone, Department of Natural Resources.

CON: Rowland Thompson, Allied Daily Newspapers of Washington; Steve Majerick, citizen.

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