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**SENATE BILL 5260**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Keiser, Robinson, Saldaña, Conway, Stanford, Kuderer, Randall, Billig, Cleveland, Hunt, Liias, Lovelett, Nguyen, Nobles, Valdez, Van De Wege, and C. Wilson

AN ACT Relating to protecting and assisting Washington employers that provide access to, or benefits for, reproductive health care services; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.16 RCW; adding a new chapter to Title 49 RCW; creating a new section; and providing expiration dates.

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

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

(1) "Charitable corporation" has the same meaning provided in RCW 24.03A.010.

(2) "Domestic nonprofit corporation" has the same meaning provided in RCW 24.03A.010.

(3) "Employee" means an individual employed by an employer.

(4) "Employer" means an individual, business, partnership, association, limited liability company, corporation, or other legal entity, whether public or private, with a principal place of business in the state of Washington that employs at least one employee.

(5)(a) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(b) "Person" includes the entities listed in (a) of this subsection whether the entity has a principal place of business in the state of Washington or not.

(6) "Reproductive health care services" has the meaning provided in RCW 48.43.072.

(7) "Retaliate" means taking an adverse action, which includes, without limitation, prohibiting business operations, prohibiting or limiting tax preferences, or other actions intended to penalize.

NEW SECTION. **Sec.**  (1)(a) When an employer has had a judgment entered against it, in any state, where liability, in whole or in part, is based on the alleged provision, assistance in provision, material support for, or any theory of vicarious, joint, several, or conspiracy liability derived from such allegation, for reproductive health care services that are permitted under the laws of this state, the employer may recover damages from any person who brought the action leading to the judgment or has sought to enforce the judgment.

(b) Recoverable damages include, without limitation:

(i) Monetary damages in the amount of the judgment in the other state, and costs, expenses, and reasonable attorneys' fees spent in defending the action that resulted in the entry of judgment in the other state; and

(ii) Costs, expenses, and reasonable attorneys' fees incurred due to bringing an action under this section as may be allowed by the court.

(2) This section does not apply to a judgment entered in another state based on an action:

(a) Founded in tort, contract, or statute, and for which a similar claim exists under the laws of this state, brought by the employee who received the reproductive health care services upon which the original lawsuit was based or the employee's authorized legal representative, for damages suffered by the employee or damages derived from an individual's loss of consortium of the employee;

(b) Founded in contract, and for which a similar claim exists under the laws of this state, brought, or sought to be enforced by a person with a contractual relationship with the employer that is the subject of the judgment entered in another state; or

(c) Where no part of the acts that formed the basis for liability occurred in this state.

NEW SECTION. **Sec.**  (1) It is unlawful for a person to retaliate against an employer for:

(a) Providing access to, or benefits for, reproductive health care services to its employees, whether through a health insurance plan, travel benefits, or otherwise; or

(b) Contributing to a domestic nonprofit corporation or charitable corporation providing access to, or benefits for, reproductive health care services in this state or elsewhere.

(2)(a) If a person violates this section, the employer may file a civil action against the retaliating person in a court of competent jurisdiction to recover damages based on the retaliation.

(b) Recoverable damages include, without limitation:

(i) Actual or compensatory damages;

(ii) Costs, expenses, and reasonable attorneys' fees incurred due to bringing an action under this section as may be allowed by the court; and

(iii) Equitable relief, and other damages the court deems reasonable.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in sections 5 and 6, chapter . . ., Laws of 2023 (sections 5 and 6 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to increase financial support to organizations providing reproductive health care services. The legislature intends with the tax incentives contained in section 5 or 6 of this act to encourage businesses to prioritize reproductive health care organizations when making charitable contributions.

(4) If a review finds that the number of businesses in this state making charitable contributions to reproductive health care organizations has increased, as compared to previous years and because of the tax credit under this act, then the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may access and use any relevant data collected by the state.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1)(a) In computing the tax imposed under this chapter, a credit is allowed for charitable contributions made to an organization providing reproductive health care services, as provided in this section.

(b) The credit is equal to the amount of charitable contributions made to a domestic nonprofit corporation or charitable corporation each calendar year.

(2)(a) Credit under this section is earned, and claimed against taxes due under this chapter, for the tax reporting period in which the charitable contribution to a domestic nonprofit corporation or charitable corporation was made, or subsequent tax reporting periods as provided in (c) of this subsection.

(b) The credit must not exceed the tax otherwise due under this chapter for the tax reporting period.

(c) Unused credit may be carried over and used in subsequent tax reporting periods, except that no credit may be claimed more than 12 months from the end of the tax reporting period in which the credit was earned.

(d) No refunds may be granted for credits under this section.

(3) A person may not receive credit under this section for amounts claimed as credits under chapter 82.16 RCW.

(4)(a) The department may require persons claiming a credit under this section to provide appropriate documentation, in a manner as determined by the department, for the purposes of determining eligibility under this section.

(b) Every person claiming a credit under this section must preserve, for a period of five years, any documentation to substantiate the amount of credit claimed.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Charitable corporation" has the same meaning as in RCW 24.03A.010.

(b) "Domestic nonprofit corporation" has the same meaning as in RCW 24.03A.010.

(c) "Reproductive health care services" has the same meaning as in RCW 48.43.072.

(6) Credits allowed under this section can be earned for tax reporting periods starting on or before December 31, 2032. No credits can be claimed on returns filed for tax periods starting on or after January 1, 2033.

(7) This section expires January 1, 2033.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1)(a) In computing the tax imposed under this chapter, a credit is allowed for charitable contributions made to an organization providing reproductive health care services, as provided in this section.

(b) The credit is equal to the amount of charitable contributions made to a domestic nonprofit corporation or charitable corporation each calendar year.

(2)(a) Credit under this section is earned, and claimed against taxes due under this chapter, for the tax reporting period in which the charitable contribution to a domestic nonprofit corporation or charitable corporation was made, or subsequent tax reporting periods as provided in (c) of this subsection.

(b) The credit must not exceed the tax otherwise due under this chapter for the tax reporting period.

(c) Unused credit may be carried over and used in subsequent tax reporting periods, except that no credit may be claimed more than 12 months from the end of the tax reporting period in which the credit was earned.

(d) No refunds may be granted for credits under this section.

(3) A person may not receive credit under this section for amounts claimed as credits under chapter 82.04 RCW.

(4)(a) The department may require persons claiming a credit under this section to provide appropriate documentation, in a manner as determined by the department, for the purposes of determining eligibility under this section.

(b) Every person claiming a credit under this section must preserve, for a period of five years, any documentation to substantiate the amount of credit claimed.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Charitable corporation" has the same meaning as in RCW 24.03A.010.

(b) "Domestic nonprofit corporation" has the same meaning as in RCW 24.03A.010.

(c) "Reproductive health care services" has the same meaning as in RCW 48.43.072.

(6) Credits allowed under this section can be earned for tax reporting periods starting on or before December 31, 2032. No credits can be claimed on returns filed for tax periods starting on or after January 1, 2033.

(7) This section expires January 1, 2033.

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.

NEW SECTION. **Sec.**  Sections 1 through 3 of this act constitute a new chapter in Title 49 RCW.

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