S-3707.1

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

**SENATE BILL 5894**

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

**State of Washington 68th Legislature 2024 Regular Session**

**By** Senators Nobles, Keiser, Frame, Hasegawa, Kuderer, Liias, Lovelett, Nguyen, Randall, Saldaña, Stanford, Trudeau, Valdez, and C. Wilson

AN ACT Relating to including protected classes in the Washington equal pay and opportunities act; and amending RCW 49.58.005, 49.58.010, 49.58.020, and 49.58.030.

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

**Sec.**  RCW 49.58.005 and 2019 c 345 s 1 are each amended to read as follows:

(1) The legislature finds that despite existing equal pay laws, there continues to be a gap in wages and advancement opportunities among workers in Washington, especially women and workers in other protected classes. Income disparities limit the ability of ((~~women~~)) these workers to provide for their families, leading to higher rates of poverty among women and children and workers in other protected classes. The legislature finds that in order to promote fairness among workers, employees must be compensated equitably. Further, policies that encourage retaliation or discipline towards workers who discuss or inquire about compensation prevent workers from moving forward.

(2) The legislature intends to update the existing Washington state equal pay act, not modified since 1943, to address income disparities, employer discrimination, and retaliation practices, and to reflect the equal status of all workers in Washington state.

(3) The legislature finds that:

(a) The long-held business practice of inquiring about salary history has contributed to persistent earning inequalities;

(b) Historically, women have been offered lower initial pay than men for the same jobs even where their levels of education and experience are the same or comparable; and

(c) Lower starting salaries translate into lower pay, less family income, and more children and families in poverty.

(4) The legislature therefore intends to follow multiple other states and take the additional step towards gender equality by prohibiting an employer from seeking the wage or salary history of an applicant for employment in certain circumstances. Further, the legislature intends to require an employer to provide wage and salary information to applicants and employees.

**Sec.**  RCW 49.58.010 and 2018 c 116 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Compensation" means discretionary and nondiscretionary wages and benefits provided by an employer to an employee as a result of the employment relationship.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries, or the director's designated representative.

(4) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

(5) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(6) "Protected class" means a person's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, as those terms are defined in RCW 49.60.040.

**Sec.**  RCW 49.58.020 and 2018 c 116 s 3 are each amended to read as follows:

(1) Any employer in this state who discriminates in any way in providing compensation based on a person's gender or membership in a protected class between similarly employed employees of the employer is guilty of a misdemeanor. If any employee receives less compensation because of discrimination on account of the person's gender or membership in a protected class in violation of this section, that employee is entitled to the remedies in RCW 49.58.060 and 49.58.070. In such action, however, the employer shall be credited with any compensation which has been paid to the employee upon account.

(2) For purposes of this section, employees are similarly employed if the individuals work for the same employer, the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

(3)(a) Discrimination within the meaning of this section does not include a differential in compensation based in good faith on a bona fide job-related factor or factors that:

(i) Are consistent with business necessity;

(ii) Are not based on or derived from a gender-based differential and are not based on or derived from the employee being a member of a protected class; and

(iii) Account for the entire differential. More than one factor may account for the differential.

(b) Such bona fide factors include, but are not limited to:

(i) Education, training, or experience;

(ii) A seniority system;

(iii) A merit system;

(iv) A system that measures earnings by quantity or quality of production; or

(v) A bona fide regional difference in compensation levels.

(c) A differential in compensation based in good faith on a local government ordinance providing for a minimum wage different from state law does not constitute discrimination under this section.

(d) An individual's previous wage or salary history is not a defense under this section.

(e) The employer carries the burden of proof on these defenses.

**Sec.**  RCW 49.58.030 and 2018 c 116 s 4 are each amended to read as follows:

(1) The legislature finds that equality of opportunity for advancement is key to reducing income disparities based on gender and memberships in protected classes. The legislature further finds that using gender or membership in a protected class as a factor in advancement contributes to pay inequity.

(2) An employer may not, on the basis of a person's gender or other membership in a protected class, limit or deprive an employee of career advancement opportunities that would otherwise be available.

(3) A differential in career advancement based on a bona fide job-related factor or factors that meet the criteria in RCW 49.58.020(3)(a) (i) through (iii) does not constitute discrimination within the meaning of this section. Such bona fide factors include, but are not limited to, the factors specified in RCW 49.58.020(3)(b) (i) through (iv).

(4)(a) If it is determined that an employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the employee is entitled to the remedies in this section and in RCW 49.58.070.

(b) Upon complaint by an employee, the director must investigate to determine if there has been compliance with this section and the rules adopted to implement this section. The director, upon complaint, may also initiate an investigation on behalf of one or more employees for a violation of this section and the rules adopted to implement this section. The director may require the testimony of witnesses and production of documents as part of an investigation.

(c) If the director determines that a violation occurred, the director shall attempt to resolve the violation by conference and conciliation.

(d) If no agreement is reached to resolve the violation and the director determines that the employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the director may issue a citation and notice of assessment and order:

(i) The employer to pay to the employee actual damages, statutory damages equal to the actual damages or ((~~five thousand dollars~~)) $5,000, whichever is greater, and interest of one percent per month on all compensation owed;

(ii) The employer to pay to the department the costs of investigation and enforcement; and

(iii) Any other appropriate relief.

(e) In addition to the citation and notice of assessment, if the director determines that the employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the director may order payment to the department of a civil penalty. The violation as to each affected employee constitutes a separate violation.

(i) For a first violation, the civil penalty may not exceed ((~~five hundred dollars~~)) $500.

(ii) For a repeat violation, the civil penalty may not exceed ((~~one thousand dollars~~)) $1,000 or ((~~ten~~)) 10 percent of the damages, whichever is greater.

(f) RCW 49.58.060 (3), (4), and (5) applies to this section.

**--- END ---**