
**Labor & Workplace Standards
Committee**

HB 1286

Brief Description: Protecting and assisting Washington employers that provide access to, or benefits for, reproductive health care services.

Sponsors: Representatives Berry, Bateman, Mena, Alvarado, Street, Ortiz-Self, Tharinger, Lekanoff, Ramel, Macri, Reeves, Doglio, Gregerson, Santos, Reed, Goodman, Pollet, Fosse and Ormsby.

Brief Summary of Bill

- Establishes a cause of action for a Washington-based employer to recover damages and costs incurred from a judgement entered in another state based on the employer providing, or providing assistance or material support for, reproductive health care services, with some limitations and exceptions.
- Establishes a cause of action for a Washington-based employer to recover damages and costs incurred from retaliatory actions taken against the employer for providing access to, or benefits for, reproductive health care services, or for making charitable donations to certain organizations providing access to, or benefits for, reproductive health care services.
- Establishes a credit on the business and occupation tax and public utility tax for charitable contributions made to certain organizations providing reproductive health care services.

Hearing Date: 1/24/23

Staff: Kelly Leonard (786-7147).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Abortion and Reproductive Health Care Services.

In 2022 the United States Supreme Court issued a decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. ____ (2022), finding that the United States Constitution does not confer a right to abortion, and therefore, individual states can regulate any aspect of abortion not otherwise protected by federal law. Regulations must rationally relate to a legitimate state interest. Some states prohibit or limit access to abortion, while other states maintain legalized access to abortion.

Washington law prohibits the interference with a pregnant woman's right to choose to have an abortion prior to viability or to protect the woman's life or health. Certain types of health care providers are authorized to terminate a pregnancy in these circumstances.

Health carriers are required to offer health plans including certain benefits mandated by state and federal law. State law requires certain health plans to provide contraceptive services and other reproductive health related services. If a health plan provides maternity care coverage, it must also provide abortion coverage, with some exceptions. If an employer objects to providing these services to their employees, the insurer must provide the services at no cost to the employees.

State law defines "reproductive health care services" as any medical services or treatments, including pharmaceutical and preventive care service or treatments, directly involved in the reproductive system and its processes, functions, and organs involved in reproduction, in all stages of life. The term does not include infertility treatment.

Taxes.

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. The B&O tax rate varies based on business classification.

A public or privately owned utility pays a public utility tax, in lieu of the B&O tax. The tax applies only on sales to consumers. Other income of the utility, such as retail sale of tangible personal property, is subject to the B&O tax.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary of Bill:

"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 Washington that employs at least one employee.

Recovery for Out-of-State Judgments.

A cause of action is established allowing an employer to recover losses incurred in certain types of out-of-state judgments. 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 Washington law, the employer may recover damages from any person who brought the action leading to the judgment or has sought to enforce the judgment. This includes, without limitation:

- 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
- costs, expenses, and reasonable attorneys' fees incurred due to bringing an action in Washington.

However, the cause of action does not apply if none of the acts upon which the liability for the out-of-state judgment arose occurred in Washington. Further, it does not apply if the out-of-state judgment:

- was 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; or
- was 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.

Unlawful Retaliation.

"Retaliate" means taking an adverse action, which includes, without limitation, prohibiting business operations, prohibiting or limiting tax preferences, or other actions intended to penalize. It is unlawful for a person to retaliate against an employer for:

- providing access to, or benefits for, reproductive health care services to its employees, whether through a health insurance plan, travel benefits, or otherwise; or
- contributing to a domestic nonprofit corporation or charitable corporation providing access to, or benefits for, reproductive health care services in this state or elsewhere.

An employer may file a civil action against a retaliating person in a court of competent

jurisdiction to recover damages based on the retaliation. Recoverable damages include, without limitation:

- actual or compensatory damages;
- costs, expenses, and reasonable attorneys' fees incurred due to bringing an action under this section as may be allowed by the court; and
- equitable relief, and other damages the court deems reasonable.

Tax Preferences.

An employer is allowed a credit on its B&O tax and/or public utility tax for charitable donations made to a domestic nonprofit corporation or charitable corporation providing reproductive health care services. The credit is equal to the amount of charitable contributions made each calendar year.

The credit may not exceed the tax in the reporting period, but unused credit may be carried over and used in subsequent tax reporting periods, for up to 12 months. No refunds may be granted for credits.

The tax credits expire January 1, 2033.

Appropriation: None.

Fiscal Note: Requested on January 19, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.