

Initiative Measure No. 1644, filed May 23, 2018

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-3559.1/18

ATTY/TYPIST: CL:akl

BRIEF DESCRIPTION:

Initiative Measure No. 1644, filed May 23, 2018

AN ACT Relating to affirmative action; amending RCW 49.60.400 and 43.43.015; adding a new section to chapter 43.06 RCW; and creating new sections.

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

PART I

TITLE AND INTENT

NEW SECTION. **Sec. 1.** This act may be known and cited as the Washington state diversity, equity, and inclusion act.

NEW SECTION. **Sec. 2.** The intent of the people in enacting this act is to guarantee every resident of Washington state equal opportunity and access to public education, public employment, and public contracting without discrimination based on their race, sex, age, nationality, physical or mental disabilities, or military veteran status. This is accomplished by: Restoring affirmative action into state law without the use of quotas or preferential treatment; defining the meaning of preferential treatment and its exceptions; and establishing a governor's commission on diversity, equity, and inclusion. The intent of this act is also to enable public agencies in the state of Washington to use race, sex, age, nationality, physical or mental disabilities, or military veteran status as positive factors in educational admissions, employment hiring, and public contracting to the extent it is permitted under state and federal law.

PART II

PROHIBITION OF DISCRIMINATION AND PREFERENTIAL TREATMENT

Sec. 3. RCW 49.60.400 and 2013 c 242 s 7 are each amended to read as follows:

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(2) This section applies only to action taken after December 3, 1998.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(7) Nothing in this section prohibits schools established under chapter 28A.715 RCW from:

(a) Implementing a policy of Indian preference in employment; or

(b) Prioritizing the admission of tribal members where capacity of the school's programs or facilities is not as large as demand.

(8) Nothing in this section prohibits the state from remedying discrimination against or underrepresentation of historically disadvantaged groups as documented in a valid disparity study or proven in a court of law.

(9) Nothing in this section prohibits any state agency from implementing affirmative action laws, regulations, policies, or procedures such as participation goals or outreach efforts that do

not utilize quotas and that do not constitute preferential treatment as defined in this section.

(10) For the purposes of this section((7)):

(a) "State" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state;

(b) "State agency" means the same as defined in RCW 42.56.010;

(c) "Affirmative action" means a law that provides equal opportunity for the selection of qualified women, honorably discharged military veterans, persons in protected age categories, persons with disabilities, and minorities in public education, public employment, and public contracting. Affirmative action includes, but shall not be limited to, recruitment, hiring, training, promotion, outreach, setting and achieving goals and timetables, and other measures designed to increase Washington's diversity in public education, public employment, and public contracting; and

(d) "Preferential treatment" means the act of using either race, sex, color, ethnicity, national origin, disability, or military veteran status as the sole qualifying factor to select a lesser qualified candidate over a more qualified candidate for a public education, public employment, or public contracting opportunity.

((9)) (11) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

((10)) (12) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington

state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

Sec. 4. RCW 43.43.015 and 1985 c 365 s 4 are each amended to read as follows:

For the purposes of this chapter, "affirmative action" means, in addition to and consistent with the definition in section 3 of this act, a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, honorably discharged veterans, and ~~((disabled))~~ veterans with disabilities are provided with increased employment opportunities. It shall not mean any sort of quota system.

PART III

CREATION OF THE GOVERNOR'S COMMISSION ON DIVERSITY, EQUITY, AND INCLUSION

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.06 RCW to read as follows:

(1) There is created the governor's commission on diversity, equity, and inclusion, which must be staffed and funded within the governor's biennial budget request. The commission shall meet at least quarterly and is responsible for developing policies to ensure each state agency's compliance with this act and is responsible for issuing an annual report on the progress of all state agencies in achieving diversity, equity, and inclusion in public education, public employment, and public contracting.

(2) The governor's commission on diversity, equity, and inclusion is chaired by the governor and consists of the following commission members:

- (a) Lieutenant governor;
- (b) Attorney general;
- (c) Superintendent of public instruction;
- (d) Commissioner of the department of employment security;
- (e) Secretary of the department of transportation;

- (f) Director of the department of enterprise services;
- (g) Director of the office of minority and women's business enterprises;
- (h) Director of the department of commerce;
- (i) Director of the department of veterans affairs;
- (j) Executive director of the human rights commission;
- (k) Director of the office of financial management;
- (l) Director of the department of labor and industries;
- (m) Executive director of the governor's office of Indian affairs;
- (n) Executive director of the Washington state women's commission;
- (o) Executive director of the commission on African-American affairs;
- (p) Executive director of the commission on Asian Pacific American affairs;
- (q) Executive director of the commission on Hispanic affairs;
- (r) Chair of the governor's committee on disability issues and employment;
- (s) Chair of the council of presidents;
- (t) Chair of the board for community and technical colleges;
- (u) Chair of the workforce training and education coordinating board;
- (v) Executive director of the board of education;
- (w) Chair of the board of Washington STEM;
- (x) Chair or director of a state agency or nonprofit advocacy organization representing the legal immigrant and refugee community;
- (y) Any other agencies or community representatives the governor deems necessary to carry out the objectives of the commission.

PART IV

MISCELLANEOUS

NEW SECTION. **Sec. 6.** Within three months following the effective date of this section, the office of program research and

senate committee services shall prepare a joint memorandum and draft legislation to present to the appropriate committees of the legislature recommending changes to the Revised Code of Washington to bring nomenclature and processes in line with this act so as to fully effectuate its intent. In preparing the memorandum and draft legislation, the office of program research and senate committee services shall consult with the sponsors of this initiative, the governor's committee on diversity, equity, and inclusion and with the state human rights commission.

NEW SECTION. **Sec. 7.** 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. 8.** For constitutional purposes, the subject of this act is "Affirmative Action."

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