

AN ACT Relating to diversity, equity, and inclusion; 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, color, ethnicity, national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military 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.

**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, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status 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, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status.

(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 the director of the office of financial management, in consultation with the attorney general and the governor's commission on diversity, equity, and inclusion, determines that ineligibility (would) will result in a material 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, disadvantaged groups as documented in a valid disparity study or proven in a court of law.

(9) Nothing in this section prohibits the state 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) Nothing in this section prohibits the state from implementing affirmative action laws, regulations, policies, or procedures which are not in violation of a state or federal statute, final regulation, or court order.

11 For the purposes of this section(~~(:)~~):

(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 policy in which an individual's race, sex, ethnicity, national origin, age, the presence of any sensory, mental, or physical disability, and honorably discharged veteran or military status are factors considered in the selection of qualified women, honorably discharged military veterans, persons in protected age categories, persons with disabilities, and minorities for opportunities 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 race, sex, color, ethnicity, national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, and honorably discharged veteran or military 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))~~ (12) 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.

~~((+0))~~ (13) 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 policy or procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, honorably discharged military veterans, and ((disabled)) veterans with disabilities are provided with increased employment opportunities. It shall not mean any ~~((ort))~~ form 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. The commission is responsible for planning, directing, monitoring, and enforcing each state agency's compliance with this act. The commission may propose and oppose legislation and shall publish 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 shall be staffed and funded within the governor's biennial budget. The executive commission members shall be appointed by the governor and serve four-year terms:

(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, officer, or director of a state agency or nonprofit organization representing the legal immigrant and refugee community;

(y) Chair, officer, or director of a state agency or nonprofit organization representing the lesbian, gay, bisexual, transgender, and queer community;

(z) Any other agencies or community representatives the governor deems necessary to carry out the objectives of the commission.

(3)(a) The commission shall also consist of the following legislatively appointed members:

(i) Two state senators, one from each of the two largest caucuses, appointed by the president of the senate;

(ii) Two members of the state house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives.

(b) Legislative members shall serve two-year terms, from the date of their appointment.

(4) Each commission member shall serve for the term of his or her appointment and until his or her successor is appointed. Any commission member listed in subsection (2) of this section, who serves by virtue of his or her office, shall be immediately replaced by his or her duly elected or appointed successor.

(5) A vacancy on the commission shall be filled within thirty days of the vacancy in the same manner as the original appointment.

**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 regarding any necessary changes to the Revised Code of Washington to bring nomenclature and processes in line with this act so as to fully effectuate and not interfere in any way with 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 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 "Diversity, Equity, and Inclusion."

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