
HOUSE BILL 2438

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By Representatives Moeller and Cody

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Judiciary.

1 AN ACT Relating to the definition of service animal; and amending
2 RCW 49.60.040, 49.60.222, 49.60.223, 49.60.224, and 49.60.225.

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

4 **Sec. 1.** RCW 49.60.040 and 2009 c 187 s 3 are each amended to read
5 as follows:

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

8 (1) "Aggrieved person" means any person who: (a) Claims to have
9 been injured by an unfair practice in a real estate transaction; or (b)
10 believes that he or she will be injured by an unfair practice in a real
11 estate transaction that is about to occur.

12 (2) "Any place of public resort, accommodation, assemblage, or
13 amusement" includes, but is not limited to, any place, licensed or
14 unlicensed, kept for gain, hire, or reward, or where charges are made
15 for admission, service, occupancy, or use of any property or
16 facilities, whether conducted for the entertainment, housing, or
17 lodging of transient guests, or for the benefit, use, or accommodation
18 of those seeking health, recreation, or rest, or for the burial or
19 other disposition of human remains, or for the sale of goods,

1 merchandise, services, or personal property, or for the rendering of
2 personal services, or for public conveyance or transportation on land,
3 water, or in the air, including the stations and terminals thereof and
4 the garaging of vehicles, or where food or beverages of any kind are
5 sold for consumption on the premises, or where public amusement,
6 entertainment, sports, or recreation of any kind is offered with or
7 without charge, or where medical service or care is made available, or
8 where the public gathers, congregates, or assembles for amusement,
9 recreation, or public purposes, or public halls, public elevators, and
10 public washrooms of buildings and structures occupied by two or more
11 tenants, or by the owner and one or more tenants, or any public library
12 or educational institution, or schools of special instruction, or
13 nursery schools, or day care centers or children's camps: PROVIDED,
14 That nothing contained in this definition shall be construed to include
15 or apply to any institute, bona fide club, or place of accommodation,
16 which is by its nature distinctly private, including fraternal
17 organizations, though where public use is permitted that use shall be
18 covered by this chapter; nor shall anything contained in this
19 definition apply to any educational facility, columbarium, crematory,
20 mausoleum, or cemetery operated or maintained by a bona fide religious
21 or sectarian institution.

22 (3) "Commission" means the Washington state human rights
23 commission.

24 (4) "Complainant" means the person who files a complaint in a real
25 estate transaction.

26 (5) "Covered multifamily dwelling" means: (a) Buildings consisting
27 of four or more dwelling units if such buildings have one or more
28 elevators; and (b) ground floor dwelling units in other buildings
29 consisting of four or more dwelling units.

30 (6) "Credit transaction" includes any open or closed end credit
31 transaction, whether in the nature of a loan, retail installment
32 transaction, credit card issue or charge, or otherwise, and whether for
33 personal or for business purposes, in which a service, finance, or
34 interest charge is imposed, or which provides for repayment in
35 scheduled payments, when such credit is extended in the regular course
36 of any trade or commerce, including but not limited to transactions by
37 banks, savings and loan associations or other financial lending
38 institutions of whatever nature, stock brokers, or by a merchant or

1 mercantile establishment which as part of its ordinary business permits
2 or provides that payment for purchases of property or service therefrom
3 may be deferred.

4 (7)(a) "Disability" means the presence of a sensory, mental, or
5 physical impairment that:

- 6 (i) Is medically cognizable or diagnosable; or
- 7 (ii) Exists as a record or history; or
- 8 (iii) Is perceived to exist whether or not it exists in fact.

9 (b) A disability exists whether it is temporary or permanent,
10 common or uncommon, mitigated or unmitigated, or whether or not it
11 limits the ability to work generally or work at a particular job or
12 whether or not it limits any other activity within the scope of this
13 chapter.

14 (c) For purposes of this definition, "impairment" includes, but is
15 not limited to:

16 (i) Any physiological disorder, or condition, cosmetic
17 disfigurement, or anatomical loss affecting one or more of the
18 following body systems: Neurological, musculoskeletal, special sense
19 organs, respiratory, including speech organs, cardiovascular,
20 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
21 and endocrine; or

22 (ii) Any mental, developmental, traumatic, or psychological
23 disorder, including but not limited to cognitive limitation, organic
24 brain syndrome, emotional or mental illness, and specific learning
25 disabilities.

26 (d) Only for the purposes of qualifying for reasonable
27 accommodation in employment, an impairment must be known or shown
28 through an interactive process to exist in fact and:

29 (i) The impairment must have a substantially limiting effect upon
30 the individual's ability to perform his or her job, the individual's
31 ability to apply or be considered for a job, or the individual's access
32 to equal benefits, privileges, or terms or conditions of employment; or

33 (ii) The employee must have put the employer on notice of the
34 existence of an impairment, and medical documentation must establish a
35 reasonable likelihood that engaging in job functions without an
36 accommodation would aggravate the impairment to the extent that it
37 would create a substantially limiting effect.

1 (e) For purposes of (d) of this subsection, a limitation is not
2 substantial if it has only a trivial effect.

3 (8) "Dog guide" means a dog that is trained for the purpose of
4 guiding blind persons or a dog that is trained for the purpose of
5 assisting hearing impaired persons.

6 (9) "Dwelling" means any building, structure, or portion thereof
7 that is occupied as, or designed or intended for occupancy as, a
8 residence by one or more families, and any vacant land that is offered
9 for sale or lease for the construction or location thereon of any such
10 building, structure, or portion thereof.

11 (10) "Employee" does not include any individual employed by his or
12 her parents, spouse, or child, or in the domestic service of any
13 person.

14 (11) "Employer" includes any person acting in the interest of an
15 employer, directly or indirectly, who employs eight or more persons,
16 and does not include any religious or sectarian organization not
17 organized for private profit.

18 (12) "Employment agency" includes any person undertaking with or
19 without compensation to recruit, procure, refer, or place employees for
20 an employer.

21 (13) "Families with children status" means one or more individuals
22 who have not attained the age of eighteen years being domiciled with a
23 parent or another person having legal custody of such individual or
24 individuals, or with the designee of such parent or other person having
25 such legal custody, with the written permission of such parent or other
26 person. Families with children status also applies to any person who
27 is pregnant or is in the process of securing legal custody of any
28 individual who has not attained the age of eighteen years.

29 (14) "Full enjoyment of" includes the right to purchase any
30 service, commodity, or article of personal property offered or sold on,
31 or by, any establishment to the public, and the admission of any person
32 to accommodations, advantages, facilities, or privileges of any place
33 of public resort, accommodation, assemblage, or amusement, without acts
34 directly or indirectly causing persons of any particular race, creed,
35 color, sex, sexual orientation, national origin, or with any sensory,
36 mental, or physical disability, or the use of a service animal or
37 trained dog guide (~~(or service animal)~~) by a person with a disability,
38 to be treated as not welcome, accepted, desired, or solicited.

1 (15) "Honorably discharged veteran or military status" means a
2 person who is:

3 (a) A veteran, as defined in RCW 41.04.007; or

4 (b) An active or reserve member in any branch of the armed forces
5 of the United States, including the national guard, coast guard, and
6 armed forces reserves.

7 (16) "Labor organization" includes any organization which exists
8 for the purpose, in whole or in part, of dealing with employers
9 concerning grievances or terms or conditions of employment, or for
10 other mutual aid or protection in connection with employment.

11 (17) "Marital status" means the legal status of being married,
12 single, separated, divorced, or widowed.

13 (18) "National origin" includes "ancestry."

14 (19) "Person" includes one or more individuals, partnerships,
15 associations, organizations, corporations, cooperatives, legal
16 representatives, trustees and receivers, or any group of persons; it
17 includes any owner, lessee, proprietor, manager, agent, or employee,
18 whether one or more natural persons; and further includes any political
19 or civil subdivisions of the state and any agency or instrumentality of
20 the state or of any political or civil subdivision thereof.

21 (20) "Premises" means the interior or exterior spaces, parts,
22 components, or elements of a building, including individual dwelling
23 units and the public and common use areas of a building.

24 (21) "Real estate transaction" includes the sale, appraisal,
25 brokering, exchange, purchase, rental, or lease of real property,
26 transacting or applying for a real estate loan, or the provision of
27 brokerage services.

28 (22) "Real property" includes buildings, structures, dwellings,
29 real estate, lands, tenements, leaseholds, interests in real estate
30 cooperatives, condominiums, and hereditaments, corporeal and
31 incorporeal, or any interest therein.

32 (23) "Respondent" means any person accused in a complaint or
33 amended complaint of an unfair practice in a real estate transaction.

34 (24)(a) "Service animal" means an animal that is trained for the
35 purpose of assisting or accommodating a sensory, mental, or physical
36 disability of a person with a disability. This definition of "service
37 animal" does not apply to unfair practices in real estate transactions
38 under RCW 49.60.222, 49.60.223, 49.60.224, and 49.60.225.

1 (b) For real estate transactions under RCW 49.60.222, 49.60.223,
2 49.60.224, and 49.60.225, a "service animal" means any animal that
3 provides a person with a disability with the equal opportunity to use
4 and enjoy the dwelling.

5 (25) "Sex" means gender.

6 (26) "Sexual orientation" means heterosexuality, homosexuality,
7 bisexuality, and gender expression or identity. As used in this
8 definition, "gender expression or identity" means having or being
9 perceived as having a gender identity, self-image, appearance,
10 behavior, or expression, whether or not that gender identity, self-
11 image, appearance, behavior, or expression is different from that
12 traditionally associated with the sex assigned to that person at birth.

13 **Sec. 2.** RCW 49.60.222 and 2007 c 187 s 13 are each amended to read
14 as follows:

15 (1) It is an unfair practice for any person, whether acting for
16 himself, herself, or another, because of sex, marital status, sexual
17 orientation, race, creed, color, national origin, families with
18 children status, honorably discharged veteran or military status, the
19 presence of any sensory, mental, or physical disability, or the use of
20 a service animal or trained dog guide (~~((or service animal))~~) by a person
21 with a disability:

22 (a) To refuse to engage in a real estate transaction with a person;

23 (b) To discriminate against a person in the terms, conditions, or
24 privileges of a real estate transaction or in the furnishing of
25 facilities or services in connection therewith;

26 (c) To refuse to receive or to fail to transmit a bona fide offer
27 to engage in a real estate transaction from a person;

28 (d) To refuse to negotiate for a real estate transaction with a
29 person;

30 (e) To represent to a person that real property is not available
31 for inspection, sale, rental, or lease when in fact it is so available,
32 or to fail to bring a property listing to his or her attention, or to
33 refuse to permit the person to inspect real property;

34 (f) To discriminate in the sale or rental, or to otherwise make
35 unavailable or deny a dwelling, to any person; or to a person residing
36 in or intending to reside in that dwelling after it is sold, rented, or

1 made available; or to any person associated with the person buying or
2 renting;

3 (g) To make, print, circulate, post, or mail, or cause to be so
4 made or published a statement, advertisement, or sign, or to use a form
5 of application for a real estate transaction, or to make a record or
6 inquiry in connection with a prospective real estate transaction, which
7 indicates, directly or indirectly, an intent to make a limitation,
8 specification, or discrimination with respect thereto;

9 (h) To offer, solicit, accept, use, or retain a listing of real
10 property with the understanding that a person may be discriminated
11 against in a real estate transaction or in the furnishing of facilities
12 or services in connection therewith;

13 (i) To expel a person from occupancy of real property;

14 (j) To discriminate in the course of negotiating, executing, or
15 financing a real estate transaction whether by mortgage, deed of trust,
16 contract, or other instrument imposing a lien or other security in real
17 property, or in negotiating or executing any item or service related
18 thereto including issuance of title insurance, mortgage insurance, loan
19 guarantee, or other aspect of the transaction. Nothing in this section
20 shall limit the effect of RCW 49.60.176 relating to unfair practices in
21 credit transactions; or

22 (k) To attempt to do any of the unfair practices defined in this
23 section.

24 (2)(a) For the purposes of this chapter discrimination based on the
25 presence of any sensory, mental, or physical disability or the use of
26 a service animal or trained dog guide (~~(or service animal)~~) by a person
27 (~~(who is blind, deaf, or physically disabled)~~) with a disability
28 includes:

29 ~~((a))~~ (i) A refusal to permit, at the expense of the person with
30 a disability, reasonable modifications of existing premises occupied or
31 to be occupied by such person if such modifications may be necessary to
32 afford such person full enjoyment of the dwelling, except that, in the
33 case of a rental, the landlord may, where it is reasonable to do so,
34 condition permission for a modification on the renter agreeing to
35 restore the interior of the dwelling to the condition that existed
36 before the modification, reasonable wear and tear excepted;

37 ~~((b))~~ (ii) To refuse to make reasonable accommodation in rules,
38 policies, practices, or services when such accommodations may be

1 necessary to afford a person with the presence of any sensory, mental,
2 or physical disability and/or the use of a service animal or trained
3 dog guide (~~((or service animal))~~) by a person (~~((who is blind, deaf, or~~
4 ~~physically disabled))~~) with a disability equal opportunity to use and
5 enjoy a dwelling; or

6 ~~((e))~~ (iii) To fail to design and construct covered multifamily
7 dwellings and premises in conformance with the federal fair housing
8 amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other
9 applicable laws or regulations pertaining to access by persons with any
10 sensory, mental, or physical disability or use of a service animal or
11 trained dog guide (~~((or service animal))~~). Whenever the requirements of
12 applicable laws or regulations differ, the requirements which require
13 greater accessibility for persons with any sensory, mental, or physical
14 disability shall govern.

15 (b) For real estate transactions under this section and RCW
16 49.60.223, 49.60.224, and 49.60.225, a "service animal" means any
17 animal that will provide a person with a disability with the equal
18 opportunity to use and enjoy the dwelling.

19 (c) Nothing in (a)(i) or (~~((b))~~) (ii) of this subsection shall
20 apply to: (i) A single-family house rented or leased by the owner if
21 the owner does not own or have an interest in the proceeds of the
22 rental or lease of more than three such single-family houses at one
23 time, the rental or lease occurred without the use of a real estate
24 broker or salesperson, as defined in RCW 18.85.010, and the rental or
25 lease occurred without the publication, posting, or mailing of any
26 advertisement, sign, or statement in violation of subsection (1)(g) of
27 this section; or (ii) rooms or units in dwellings containing living
28 quarters occupied or intended to be occupied by no more than four
29 families living independently of each other if the owner maintains and
30 occupies one of the rooms or units as his or her residence.

31 (3) Notwithstanding any other provision of this chapter, it shall
32 not be an unfair practice or a denial of civil rights for any public or
33 private educational institution to separate the sexes or give
34 preference to or limit use of dormitories, residence halls, or other
35 student housing to persons of one sex or to make distinctions on the
36 basis of marital or families with children status.

37 (4) Except pursuant to subsection (2)(a)(i) of this section, this
38 section shall not be construed to require structural changes,

1 modifications, or additions to make facilities accessible to a person
2 with a disability except as otherwise required by law. Nothing in this
3 section affects the rights, responsibilities, and remedies of landlords
4 and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right
5 to post and enforce reasonable rules of conduct and safety for all
6 tenants and their guests, provided that chapters 59.18 and 59.20 RCW
7 are only affected to the extent they are inconsistent with the
8 nondiscrimination requirements of this chapter. Nothing in this
9 section limits the applicability of any reasonable federal, state, or
10 local restrictions regarding the maximum number of occupants permitted
11 to occupy a dwelling.

12 (5) Notwithstanding any other provision of this chapter, it shall
13 not be an unfair practice for any public establishment providing for
14 accommodations offered for the full enjoyment of transient guests as
15 defined by RCW 9.91.010(1)(c) to make distinctions on the basis of
16 families with children status. Nothing in this section shall limit the
17 effect of RCW 49.60.215 relating to unfair practices in places of
18 public accommodation.

19 (6) Nothing in this chapter prohibiting discrimination based on
20 families with children status applies to housing for older persons as
21 defined by the federal fair housing amendments act of 1988, 42 U.S.C.
22 Sec. 3607(b)(1) through (3), as amended by the housing for older
23 persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.
24 Nothing in this chapter authorizes requirements for housing for older
25 persons different than the requirements in the federal fair housing
26 amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as
27 amended by the housing for older persons act of 1995, P.L. 104-76, as
28 enacted on December 28, 1995.

29 (7) Nothing in this chapter shall apply to real estate transactions
30 involving the sharing of a dwelling unit, or rental or sublease of a
31 portion of a dwelling unit, when the dwelling unit is to be occupied by
32 the owner or sublessor. For purposes of this section, "dwelling unit"
33 has the same meaning as in RCW 59.18.030.

34 **Sec. 3.** RCW 49.60.223 and 2007 c 187 s 14 are each amended to read
35 as follows:

36 It is an unfair practice for any person, for profit, to induce or
37 attempt to induce any person to sell or rent any real property by

1 representations regarding the entry or prospective entry into the
2 neighborhood of a person or persons of a particular race, creed, color,
3 sex, national origin, sexual orientation, families with children
4 status, honorably discharged veteran or military status, or with any
5 sensory, mental, or physical disability and/or the use of a service
6 animal or trained dog guide (~~((or service animal))~~) by a person (~~((who is~~
7 ~~blind, deaf, or physically disabled))~~) with a disability.

8 **Sec. 4.** RCW 49.60.224 and 2007 c 187 s 15 are each amended to read
9 as follows:

10 (1) Every provision in a written instrument relating to real
11 property which purports to forbid or restrict the conveyance,
12 encumbrance, occupancy, or lease thereof to individuals of a specified
13 race, creed, color, sex, national origin, sexual orientation, families
14 with children status, honorably discharged veteran or military status,
15 or with any sensory, mental, or physical disability or the use of a
16 service animal or trained dog guide (~~((or service animal))~~) by a person
17 (~~((who is blind, deaf, or physically disabled))~~) with a disability, and
18 every condition, restriction, or prohibition, including a right of
19 entry or possibility of reverter, which directly or indirectly limits
20 the use or occupancy of real property on the basis of race, creed,
21 color, sex, national origin, sexual orientation, families with children
22 status, honorably discharged veteran or military status, or the
23 presence of any sensory, mental, or physical disability or the use of
24 a service animal or trained dog guide (~~((or service animal))~~) by a person
25 (~~((who is blind, deaf, or physically disabled))~~) with a disability is
26 void.

27 (2) It is an unfair practice to insert in a written instrument
28 relating to real property a provision that is void under this section
29 or to honor or attempt to honor such a provision in the chain of title.

30 **Sec. 5.** RCW 49.60.225 and 2007 c 187 s 16 are each amended to read
31 as follows:

32 (1) When a reasonable cause determination has been made under RCW
33 49.60.240 that an unfair practice in a real estate transaction has been
34 committed and a finding has been made that the respondent has engaged
35 in any unfair practice under RCW 49.60.250, the administrative law
36 judge shall promptly issue an order for such relief suffered by the

1 aggrieved person as may be appropriate, which may include actual
2 damages as provided by the federal fair housing amendments act of 1988
3 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable
4 relief. Such order may, to further the public interest, assess a civil
5 penalty against the respondent:

6 (a) In an amount up to ten thousand dollars if the respondent has
7 not been determined to have committed any prior unfair practice in a
8 real estate transaction;

9 (b) In an amount up to twenty-five thousand dollars if the
10 respondent has been determined to have committed one other unfair
11 practice in a real estate transaction during the five-year period
12 ending on the date of the filing of this charge; or

13 (c) In an amount up to fifty thousand dollars if the respondent has
14 been determined to have committed two or more unfair practices in a
15 real estate transaction during the seven-year period ending on the date
16 of the filing of this charge, for loss of the right secured by RCW
17 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as
18 now or hereafter amended, to be free from discrimination in real
19 property transactions because of sex, marital status, race, creed,
20 color, national origin, sexual orientation, families with children
21 status, honorably discharged veteran or military status, or the
22 presence of any sensory, mental, or physical disability or the use of
23 a service animal or trained dog guide (~~((or service animal))~~) by a person
24 (~~((who is blind, deaf, or physically disabled))~~) with a disability.
25 Enforcement of the order and appeal therefrom by the complainant or
26 respondent may be made as provided in RCW 49.60.260 and 49.60.270. If
27 acts constituting the unfair practice in a real estate transaction that
28 is the object of the charge are determined to have been committed by
29 the same natural person who has been previously determined to have
30 committed acts constituting an unfair practice in a real estate
31 transaction, then the civil penalty of up to fifty thousand dollars may
32 be imposed without regard to the period of time within which any
33 subsequent unfair practice in a real estate transaction occurred. All
34 civil penalties assessed under this section shall be paid into the
35 state treasury and credited to the general fund.

36 (2) Such order shall not affect any contract, sale, conveyance,
37 encumbrance, or lease consummated before the issuance of an order that

1 involves a bona fide purchaser, encumbrancer, or tenant who does not
2 have actual notice of the charge filed under this chapter.

3 (3) Notwithstanding any other provision of this chapter, persons
4 awarded damages under this section may not receive additional damages
5 pursuant to RCW 49.60.250.

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