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**HOUSE BILL 1217**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Klippert, Hargrove, Shea, Haler, Taylor, Holy, Young, McCaslin, Rodne, Smith, Van Werven, Dent, Hayes, and Short

AN ACT Relating to restricting the government from burdening a person's fundamental right to free exercise of religion and freedom of conscience; amending RCW 49.60.030; and adding new sections to chapter 49.60 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

The legislature finds and declares that free exercise of religion and freedom of conscience are fundamental rights, expressly recognized and protected by both the federal and state Constitutions. The legislature finds further that these fundamental rights apply in this state, and with rare exceptions, supersede laws, rules, and other government actions even if such laws, rules, or other government actions are facially neutral. The legislature intends that, in interpreting any right created by law or rule of a legislative or administrative body, the court always give deference to a right that is expressly recognized and protected in the Constitution over a law or rule that is not a right expressly recognized and protected in the Constitution.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, government must not substantially burden a person's free exercise of religion or freedom of conscience, even if the burden results from a law, rule, or action of general applicability.

(2) Government may not substantially burden a person's free exercise of religion or freedom of conscience unless it demonstrates that application of the law, rule, or other action imposing the burden on the person is both:

(a) Essential to further a compelling governmental interest implicating another express constitutional right; and

(b) The least restrictive means of furthering that compelling governmental interest.

(3) A law or rule may not be construed to apply in a manner that substantially burdens a person's free exercise of religion or freedom of conscience unless the legislative or administrative body enacting or adopting the law or rule has made specific findings documenting the reasons that such law or rule is essential to further a compelling governmental interest implicating another express constitutional right, and that the law or rule uses the least restrictive means of furthering that compelling governmental interest.

(4) A person whose free exercise of religion or freedom of conscience is burdened in violation of this section may assert that violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding.

(5) In this section, the term "substantially burden" is intended solely to ensure that this chapter is not triggered by trivial, technical, or de minimis infractions.

**Sec.**  RCW 49.60.030 and 2009 c 164 s 1 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, 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 is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, 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, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

(4) A person who asserts that the application of liability under this section substantially burdens the person's express constitutionally protected free exercise of religion or freedom of conscience, as demonstrated by the person's sincerely held religious beliefs, is immune from civil liability for any claim based upon an alleged violation of this section unless the plaintiff can demonstrate that the imposition of liability under this section is both essential to further a compelling governmental interest implicating another express constitutional right and is the least restrictive means of furthering that compelling governmental interest. In doing so, the plaintiff carries the burdens of both production and persuasion.

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