
HOUSE BILL 2822

State of Washington

65th Legislature

2018 Regular Session

By Representatives Steele, McBride, Muri, Johnson, Caldier, Valdez, Eslick, and Gregerson

Read first time 01/17/18. Referred to Committee on Judiciary.

1 AN ACT Relating to the definition and misrepresentation of
2 service animals; amending RCW 49.60.218 and 7.80.120; reenacting and
3 amending RCW 49.60.040; adding a new section to chapter 49.60 RCW;
4 creating a new section; prescribing penalties; and providing an
5 effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature declares that service
8 animals that are properly trained to assist persons with disabilities
9 play a vital role in establishing independence for such persons.
10 There are an increasing number of occurrences where people
11 intentionally or mistakenly represent their pet, therapy animal, or
12 emotional support animal to be a service animal and attempt to bring
13 the animal into a place that it would otherwise not be allowed to
14 enter. Federal and state laws require places of public accommodation,
15 including food establishments, to allow an animal that is presented
16 as a service animal into a place of public accommodation; these same
17 places of public accommodation face a dilemma when someone enters the
18 premises and intentionally misrepresents his or her animal as a
19 service animal. The legislature finds that the misrepresentation of
20 an animal as a service animal trained to perform specific work or
21 tasks constitutes a disservice both to persons who rely on the use of

1 legitimate service animals, as well as places of public accommodation
2 and their patrons. The purpose of this act is to penalize the
3 intentional misrepresentation of a service animal, which
4 delegitimizes the genuine need for the use of service animals and
5 makes it harder for persons with disabilities to gain unquestioned
6 acceptance of their legitimate, properly trained, and essential
7 service animals.

8 **Sec. 2.** RCW 49.60.040 and 2009 c 187 s 3 are each reenacted and
9 amended to read as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

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

16 (2) "Any place of public resort, accommodation, assemblage, or
17 amusement" includes, but is not limited to, any place, licensed or
18 unlicensed, kept for gain, hire, or reward, or where charges are made
19 for admission, service, occupancy, or use of any property or
20 facilities, whether conducted for the entertainment, housing, or
21 lodging of transient guests, or for the benefit, use, or
22 accommodation of those seeking health, recreation, or rest, or for
23 the burial or other disposition of human remains, or for the sale of
24 goods, merchandise, services, or personal property, or for the
25 rendering of personal services, or for public conveyance or
26 transportation on land, water, or in the air, including the stations
27 and terminals thereof and the garaging of vehicles, or where food or
28 beverages of any kind are sold for consumption on the premises, or
29 where public amusement, entertainment, sports, or recreation of any
30 kind is offered with or without charge, or where medical service or
31 care is made available, or where the public gathers, congregates, or
32 assembles for amusement, recreation, or public purposes, or public
33 halls, public elevators, and public washrooms of buildings and
34 structures occupied by two or more tenants, or by the owner and one
35 or more tenants, or any public library or educational institution, or
36 schools of special instruction, or nursery schools, or day care
37 centers or children's camps: PROVIDED, That nothing contained in this
38 definition shall be construed to include or apply to any institute,
39 bona fide club, or place of accommodation, which is by its nature

1 distinctly private, including fraternal organizations, though where
2 public use is permitted that use shall be covered by this chapter;
3 nor shall anything contained in this definition apply to any
4 educational facility, columbarium, crematory, mausoleum, or cemetery
5 operated or maintained by a bona fide religious or sectarian
6 institution.

7 (3) "Commission" means the Washington state human rights
8 commission.

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

11 (5) "Covered multifamily dwelling" means: (a) Buildings
12 consisting of four or more dwelling units if such buildings have one
13 or more elevators; and (b) ground floor dwelling units in other
14 buildings consisting of four or more dwelling units.

15 (6) "Credit transaction" includes any open or closed end credit
16 transaction, whether in the nature of a loan, retail installment
17 transaction, credit card issue or charge, or otherwise, and whether
18 for personal or for business purposes, in which a service, finance,
19 or interest charge is imposed, or which provides for repayment in
20 scheduled payments, when such credit is extended in the regular
21 course of any trade or commerce, including but not limited to
22 transactions by banks, savings and loan associations or other
23 financial lending institutions of whatever nature, stock brokers, or
24 by a merchant or mercantile establishment which as part of its
25 ordinary business permits or provides that payment for purchases of
26 property or service therefrom may be deferred.

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

29 (i) Is medically cognizable or diagnosable; or

30 (ii) Exists as a record or history; or

31 (iii) Is perceived to exist whether or not it exists in fact.

32 (b) A disability exists whether it is temporary or permanent,
33 common or uncommon, mitigated or unmitigated, or whether or not it
34 limits the ability to work generally or work at a particular job or
35 whether or not it limits any other activity within the scope of this
36 chapter.

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

39 (i) Any physiological disorder, or condition, cosmetic
40 disfigurement, or anatomical loss affecting one or more of the

1 following body systems: Neurological, musculoskeletal, special sense
2 organs, respiratory, including speech organs, cardiovascular,
3 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
4 and endocrine; or

5 (ii) Any mental, developmental, traumatic, or psychological
6 disorder, including but not limited to cognitive limitation, organic
7 brain syndrome, emotional or mental illness, and specific learning
8 disabilities.

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

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

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

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

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

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

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

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

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

4 (13) "Families with children status" means one or more
5 individuals who have not attained the age of eighteen years being
6 domiciled with a parent or another person having legal custody of
7 such individual or individuals, or with the designee of such parent
8 or other person having such legal custody, with the written
9 permission of such parent or other person. Families with children
10 status also applies to any person who is pregnant or is in the
11 process of securing legal custody of any individual who has not
12 attained the age of eighteen years.

13 (14) "Full enjoyment of" includes the right to purchase any
14 service, commodity, or article of personal property offered or sold
15 on, or by, any establishment to the public, and the admission of any
16 person to accommodations, advantages, facilities, or privileges of
17 any place of public resort, accommodation, assemblage, or amusement,
18 without acts directly or indirectly causing persons of any particular
19 race, creed, color, sex, sexual orientation, national origin, or with
20 any sensory, mental, or physical disability, or the use of a trained
21 dog guide or service animal by a person with a disability, to be
22 treated as not welcome, accepted, desired, or solicited.

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

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

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

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

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

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

36 (19) "Person" includes one or more individuals, partnerships,
37 associations, organizations, corporations, cooperatives, legal
38 representatives, trustees and receivers, or any group of persons; it
39 includes any owner, lessee, proprietor, manager, agent, or employee,
40 whether one or more natural persons; and further includes any

1 political or civil subdivisions of the state and any agency or
2 instrumentality of the state or of any political or civil subdivision
3 thereof.

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

7 (21) "Real estate transaction" includes the sale, appraisal,
8 brokering, exchange, purchase, rental, or lease of real property,
9 transacting or applying for a real estate loan, or the provision of
10 brokerage services.

11 (22) "Real property" includes buildings, structures, dwellings,
12 real estate, lands, tenements, leaseholds, interests in real estate
13 cooperatives, condominiums, and hereditaments, corporeal and
14 incorporeal, or any interest therein.

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

17 (24) "Service animal" means (~~(an animal)~~) any dog that is
18 individually trained ((for the purpose of assisting or accommodating
19 a sensory, mental, or physical disability of a person with a
20 disability)) to do work or perform tasks for the benefit of an
21 individual with a disability, including a physical, sensory,
22 psychiatric, intellectual, or other mental disability. The work or
23 tasks performed by the service animal must be directly related to the
24 individual's disability. Examples of work or tasks include, but are
25 not limited to, assisting individuals who are blind or have low
26 vision with navigation and other tasks, alerting individuals who are
27 deaf or hard of hearing to the presence of people or sounds,
28 providing nonviolent protection or rescue work, pulling a wheelchair,
29 assisting an individual during a seizure, alerting individuals to the
30 presence of allergens, retrieving items such as medicine or the
31 telephone, providing physical support and assistance with balance and
32 stability to individuals with mobility disabilities, and helping
33 persons with psychiatric and neurological disabilities by preventing
34 or interrupting impulsive or destructive behaviors. The crime
35 deterrent effects of an animal's presence and the provision of
36 emotional support, well-being, comfort, or companionship do not
37 constitute work or tasks.

38 (25) "Sex" means gender.

39 (26) "Sexual orientation" means heterosexuality, homosexuality,
40 bisexuality, and gender expression or identity. As used in this

1 definition, "gender expression or identity" means having or being
2 perceived as having a gender identity, self-image, appearance,
3 behavior, or expression, whether or not that gender identity, self-
4 image, appearance, behavior, or expression is different from that
5 traditionally associated with the sex assigned to that person at
6 birth.

7 **Sec. 3.** RCW 49.60.218 and 2011 c 237 s 2 are each amended to
8 read as follows:

9 (1) It shall be an unfair practice for any person or the person's
10 agent or employee to commit an act which directly or indirectly
11 results in any distinction, restriction, or discrimination, or the
12 requiring of any person to pay a larger sum than the uniform rates
13 charged other persons, or the refusing or withholding from any person
14 the admission, patronage, custom, presence, frequenting, dwelling,
15 staying, or lodging in any food establishment, except for conditions
16 and limitations established by law and applicable to all persons, on
17 the basis of the use of a dog guide or service animal by a person
18 with a disability: PROVIDED, That this section shall not be construed
19 to require structural changes, modifications, or additions to make
20 any place accessible to a person with a disability except as
21 otherwise required by law: PROVIDED, That behavior or actions
22 constituting a risk to property or other persons can be grounds for
23 refusal and shall not constitute an unfair practice.

24 (2) A food establishment shall make reasonable modifications in
25 policies, practices, or procedures to permit the use of a miniature
26 horse by an individual with a disability in accordance with
27 subsection (1) of this section if the miniature horse has been
28 individually trained to do work or perform tasks for the benefit of
29 the individual with a disability. In determining whether reasonable
30 modifications in policies, practices, or procedures can be made to
31 allow a miniature horse into a facility, a food establishment shall
32 act in accordance with all applicable laws and regulations.

33 (3) For the purposes of this section(÷

34 ~~(a) "Service animal" means any dog that is individually trained~~
35 ~~to do work or perform tasks for the benefit of an individual with a~~
36 ~~disability, including a physical, sensory, psychiatric, intellectual,~~
37 ~~or other mental disability. Except as provided in subsection (2) of~~
38 ~~this section, other species of animals, whether wild or domestic,~~
39 ~~trained or untrained, are not service animals. The work or tasks~~

1 performed by a service animal must be directly related to the
2 individual's disability. Examples of work or tasks include, but are
3 not limited to, assisting individuals who are blind or have low
4 vision with navigation and other tasks, alerting individuals who are
5 deaf or hard of hearing to the presence of people or sounds,
6 providing nonviolent protection or rescue work, pulling a wheelchair,
7 assisting an individual during a seizure, alerting individuals to the
8 presence of allergens, retrieving items such as medicine or the
9 telephone, providing physical support and assistance with balance and
10 stability to individuals with mobility disabilities, and helping
11 persons with psychiatric and neurological disabilities by preventing
12 or interrupting impulsive or destructive behaviors. The crime
13 deterrent effects of an animal's presence and the provision of
14 emotional support, well-being, comfort, or companionship do not
15 constitute work or tasks.

16 (b))_ "food establishment" means a place of business that sells
17 or serves food for human consumption with a North American industry
18 classification system code within "445110," "445120," "445210,"
19 "445220," "445230," "445291," "445292," "445299," "452910," "722110,"
20 "722211," "722212," "722213," or "722410."

21 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.60
22 RCW to read as follows:

23 (1) It shall be a civil infraction under chapter 7.80 RCW for any
24 person to misrepresent a dog as a service animal. A violation of this
25 section occurs when a person:

26 (a) Expressly or impliedly represents that a dog is a service
27 animal as defined in RCW 49.60.040 for the purpose of securing the
28 rights or privileges afforded disabled persons accompanied by service
29 animals set forth in state or federal law; and

30 (b) Knew or should have known that the dog in question did not
31 meet the definition of a service animal.

32 (2) An enforcement officer as defined under RCW 7.80.040 may
33 investigate and enforce this section by making an inquiry of the
34 person accompanied by the dog in question and issuing a civil
35 infraction. Refusal to answer the questions allowable under 28 C.F.R.
36 Sec. 35.136(f) shall create a presumption that the dog is not a
37 service animal and the enforcement officer may issue the civil
38 infraction and require the person to remove the dog from the place of
39 public accommodation.

1 **Sec. 5.** RCW 7.80.120 and 2013 c 278 s 3 are each amended to read
2 as follows:

3 (1) A person found to have committed a civil infraction shall be
4 assessed a monetary penalty.

5 (a) The maximum penalty and the default amount for a class 1
6 civil infraction shall be two hundred fifty dollars, not including
7 statutory assessments, except for an infraction of state law
8 involving (i) potentially dangerous litter as specified in RCW
9 70.93.060(4) or violent video or computer games under RCW 9.91.180,
10 in which case the maximum penalty and default amount is five hundred
11 dollars; or (ii) a person's refusal to submit to a test or tests
12 pursuant to RCW 79A.60.040 and 79A.60.700, in which case the maximum
13 penalty and default amount is one thousand dollars; or (iii) the
14 misrepresentation of service animals under section 4 of this act, in
15 which case the maximum penalty and default amount is five hundred
16 dollars;

17 (b) The maximum penalty and the default amount for a class 2
18 civil infraction shall be one hundred twenty-five dollars, not
19 including statutory assessments;

20 (c) The maximum penalty and the default amount for a class 3
21 civil infraction shall be fifty dollars, not including statutory
22 assessments; and

23 (d) The maximum penalty and the default amount for a class 4
24 civil infraction shall be twenty-five dollars, not including
25 statutory assessments.

26 (2) The supreme court shall prescribe by rule the conditions
27 under which local courts may exercise discretion in assessing fines
28 for civil infractions.

29 (3) Whenever a monetary penalty is imposed by a court under this
30 chapter it is immediately payable. If the person is unable to pay at
31 that time the court may grant an extension of the period in which the
32 penalty may be paid. If the penalty is not paid on or before the time
33 established for payment, the court may proceed to collect the penalty
34 in the same manner as other civil judgments and may notify the
35 prosecuting authority of the failure to pay.

36 (4) The court may also order a person found to have committed a
37 civil infraction to make restitution.

1 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2019.

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