
SENATE BILL 5645

State of Washington

63rd Legislature

2013 Regular Session

By Senators Kohl-Welles and Kline

Read first time 02/06/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to service animals; amending RCW 49.60.222,
2 49.60.223, 49.60.224, and 49.60.225; reenacting and amending RCW
3 49.60.040; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that existing state
6 law is in conflict with the federal fair housing amendments act of 1988
7 (42 U.S.C. Sec. 3601 et seq.) in respect to animals that assist persons
8 with disabilities for purposes of reasonable accommodation in housing.
9 The legislature intends to provide that the requirements of the federal
10 fair housing amendments act of 1988 and implementing regulations govern
11 these animals for purposes of reasonable accommodation in regard to
12 housing.

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

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

17 (1) "Aggrieved person" means any person who: (a) Claims to have

1 been injured by an unfair practice in a real estate transaction; or (b)
2 believes that he or she will be injured by an unfair practice in a real
3 estate transaction that is about to occur.

4 (2) "Any place of public resort, accommodation, assemblage, or
5 amusement" includes, but is not limited to, any place, licensed or
6 unlicensed, kept for gain, hire, or reward, or where charges are made
7 for admission, service, occupancy, or use of any property or
8 facilities, whether conducted for the entertainment, housing, or
9 lodging of transient guests, or for the benefit, use, or accommodation
10 of those seeking health, recreation, or rest, or for the burial or
11 other disposition of human remains, or for the sale of goods,
12 merchandise, services, or personal property, or for the rendering of
13 personal services, or for public conveyance or transportation on land,
14 water, or in the air, including the stations and terminals thereof and
15 the garaging of vehicles, or where food or beverages of any kind are
16 sold for consumption on the premises, or where public amusement,
17 entertainment, sports, or recreation of any kind is offered with or
18 without charge, or where medical service or care is made available, or
19 where the public gathers, congregates, or assembles for amusement,
20 recreation, or public purposes, or public halls, public elevators, and
21 public washrooms of buildings and structures occupied by two or more
22 tenants, or by the owner and one or more tenants, or any public library
23 or educational institution, or schools of special instruction, or
24 nursery schools, or day care centers or children's camps: PROVIDED,
25 That nothing contained in this definition shall be construed to include
26 or apply to any institute, bona fide club, or place of accommodation,
27 which is by its nature distinctly private, including fraternal
28 organizations, though where public use is permitted that use shall be
29 covered by this chapter; nor shall anything contained in this
30 definition apply to any educational facility, columbarium, crematory,
31 mausoleum, or cemetery operated or maintained by a bona fide religious
32 or sectarian institution.

33 (3) "Commission" means the Washington state human rights
34 commission.

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

37 (5) "Covered multifamily dwelling" means: (a) Buildings consisting

1 of four or more dwelling units if such buildings have one or more
2 elevators; and (b) ground floor dwelling units in other buildings
3 consisting of four or more dwelling units.

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

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

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

21 (b) A disability exists whether it is temporary or permanent,
22 common or uncommon, mitigated or unmitigated, or whether or not it
23 limits the ability to work generally or work at a particular job or
24 whether or not it limits any other activity within the scope of this
25 chapter.

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

28 (i) Any physiological disorder, or condition, cosmetic
29 disfigurement, or anatomical loss affecting one or more of the
30 following body systems: Neurological, musculoskeletal, special sense
31 organs, respiratory, including speech organs, cardiovascular,
32 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
33 and endocrine; or

34 (ii) Any mental, developmental, traumatic, or psychological
35 disorder, including but not limited to cognitive limitation, organic
36 brain syndrome, emotional or mental illness, and specific learning
37 disabilities.

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

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

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

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

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

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

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

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

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

33 (13) "Families with children status" means one or more individuals
34 who have not attained the age of eighteen years being domiciled with a
35 parent or another person having legal custody of such individual or
36 individuals, or with the designee of such parent or other person having
37 such legal custody, with the written permission of such parent or other

1 person. Families with children status also applies to any person who
2 is pregnant or is in the process of securing legal custody of any
3 individual who has not attained the age of eighteen years.

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

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

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

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

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

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

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

27 (19) "Person" includes one or more individuals, partnerships,
28 associations, organizations, corporations, cooperatives, legal
29 representatives, trustees and receivers, or any group of persons; it
30 includes any owner, lessee, proprietor, manager, agent, or employee,
31 whether one or more natural persons; and further includes any political
32 or civil subdivisions of the state and any agency or instrumentality of
33 the state or of any political or civil subdivision thereof.

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

37 (21) "Real estate transaction" includes the sale, appraisal,

1 brokering, exchange, purchase, rental, or lease of real property,
2 transacting or applying for a real estate loan, or the provision of
3 brokerage services.

4 (22) "Real property" includes buildings, structures, dwellings,
5 real estate, lands, tenements, leaseholds, interests in real estate
6 cooperatives, condominiums, and hereditaments, corporeal and
7 incorporeal, or any interest therein.

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

10 (24) "Service animal" means an animal that is trained for the
11 purpose of assisting or accommodating a sensory, mental, or physical
12 disability of a person with a disability. This subsection does not
13 apply as follows:

14 (a) RCW 49.60.222, 49.60.223, 49.60.224, and 49.60.225 apply to
15 unfair practices related to the use of an animal that is necessary as
16 a reasonable accommodation in real estate transactions.

17 (b) RCW 49.60.218(3)(a) applies to unfair practices in food
18 establishments.

19 (25) "Sex" means gender.

20 (26) "Sexual orientation" means heterosexuality, homosexuality,
21 bisexuality, and gender expression or identity. As used in this
22 definition, "gender expression or identity" means having or being
23 perceived as having a gender identity, self-image, appearance,
24 behavior, or expression, whether or not that gender identity, self-
25 image, appearance, behavior, or expression is different from that
26 traditionally associated with the sex assigned to that person at birth.

27 **Sec. 3.** RCW 49.60.222 and 2007 c 187 s 13 are each amended to read
28 as follows:

29 (1) It is an unfair practice for any person, whether acting for
30 himself, herself, or another, because of sex, marital status, sexual
31 orientation, race, creed, color, national origin, families with
32 children status, honorably discharged veteran or military status((~~τ~~));
33 the presence of any sensory, mental, or physical disability((~~τ~~));
34 the use of a trained dog guide or service animal by a person with a
35 disability; or the use of animals that are necessary as a reasonable
36 accommodation to assist, support, or provide services to persons with

1 disabilities as provided under the federal fair housing amendments act
2 of 1988 and implementing regulations:

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

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

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

9 (d) To refuse to negotiate for a real estate transaction with a
10 person;

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

15 (f) To discriminate in the sale or rental, or to otherwise make
16 unavailable or deny a dwelling, to any person; or to a person residing
17 in or intending to reside in that dwelling after it is sold, rented, or
18 made available; or to any person associated with the person buying or
19 renting;

20 (g) To make, print, circulate, post, or mail, or cause to be so
21 made or published a statement, advertisement, or sign, or to use a form
22 of application for a real estate transaction, or to make a record or
23 inquiry in connection with a prospective real estate transaction, which
24 indicates, directly or indirectly, an intent to make a limitation,
25 specification, or discrimination with respect thereto;

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

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

31 (j) To discriminate in the course of negotiating, executing, or
32 financing a real estate transaction whether by mortgage, deed of trust,
33 contract, or other instrument imposing a lien or other security in real
34 property, or in negotiating or executing any item or service related
35 thereto including issuance of title insurance, mortgage insurance, loan
36 guarantee, or other aspect of the transaction. Nothing in this section
37 shall limit the effect of RCW 49.60.176 relating to unfair practices in
38 credit transactions; or

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

3 (2) For the purposes of this chapter discrimination based on the
4 presence of any sensory, mental, or physical disability or the use of
5 a trained dog guide or service animal by a person (~~(who is blind, deaf,
6 or physically disabled)~~) with a disability or the use of animals that
7 are necessary as a reasonable accommodation to assist, support, or
8 provide services to persons with disabilities as provided under the
9 federal fair housing amendments act of 1988 and implementing
10 regulations includes:

11 (a) A refusal to permit, at the expense of the person with a
12 disability, reasonable modifications of existing premises occupied or
13 to be occupied by such person if such modifications may be necessary to
14 afford such person full enjoyment of the dwelling, except that, in the
15 case of a rental, the landlord may, where it is reasonable to do so,
16 condition permission for a modification on the renter agreeing to
17 restore the interior of the dwelling to the condition that existed
18 before the modification, reasonable wear and tear excepted;

19 (b) To refuse to make reasonable accommodation in rules, policies,
20 practices, or services when such accommodations may be necessary to
21 afford a person with the presence of any sensory, mental, or physical
22 disability and/or the use of a trained dog guide or service animal by
23 a person (~~(who is blind, deaf, or physically disabled)~~) with a
24 disability or the use of animals that are necessary as a reasonable
25 accommodation to assist, support, or provide services to persons with
26 disabilities as provided under the federal fair housing amendments act
27 of 1988 and implementing regulations equal opportunity to use and enjoy
28 a dwelling; or

29 (c) To fail to design and construct covered multifamily dwellings
30 and premises in conformance with the federal fair housing amendments
31 act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws
32 or regulations pertaining to access by persons with any sensory,
33 mental, or physical disability (~~(or use of a trained dog guide or~~
34 ~~service animal)~~). Whenever the requirements of applicable laws or
35 regulations differ, the requirements which require greater
36 accessibility for persons with any sensory, mental, or physical
37 disability shall govern.

1 Nothing in (a) or (b) of this subsection shall apply to: (i) A
2 single-family house rented or leased by the owner if the owner does not
3 own or have an interest in the proceeds of the rental or lease of more
4 than three such single-family houses at one time, the rental or lease
5 occurred without the use of a (~~real-estate~~) broker (~~or~~
6 ~~salesperson~~), as defined in RCW (~~18.85.010~~) 18.85.011, and the
7 rental or lease occurred without the publication, posting, or mailing
8 of any advertisement, sign, or statement in violation of subsection
9 (1)(g) of this section; or (ii) rooms or units in dwellings containing
10 living quarters occupied or intended to be occupied by no more than
11 four families living independently of each other if the owner maintains
12 and occupies one of the rooms or units as his or her residence.

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

19 (4) Except pursuant to subsection (2)(a) of this section, this
20 section shall not be construed to require structural changes,
21 modifications, or additions to make facilities accessible to a person
22 with a disability except as otherwise required by law. Nothing in this
23 section affects the rights, responsibilities, and remedies of landlords
24 and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right
25 to post and enforce reasonable rules of conduct and safety for all
26 tenants and their guests, provided that chapters 59.18 and 59.20 RCW
27 are only affected to the extent they are inconsistent with the
28 nondiscrimination requirements of this chapter. Nothing in this
29 section limits the applicability of any reasonable federal, state, or
30 local restrictions regarding the maximum number of occupants permitted
31 to occupy a dwelling.

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

1 (6) Nothing in this chapter prohibiting discrimination based on
2 families with children status applies to housing for older persons as
3 defined by the federal fair housing amendments act of 1988, 42 U.S.C.
4 Sec. 3607(b)(1) through (3), as amended by the housing for older
5 persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.
6 Nothing in this chapter authorizes requirements for housing for older
7 persons different than the requirements in the federal fair housing
8 amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as
9 amended by the housing for older persons act of 1995, P.L. 104-76, as
10 enacted on December 28, 1995.

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

16 **Sec. 4.** RCW 49.60.223 and 2007 c 187 s 14 are each amended to read
17 as follows:

18 It is an unfair practice for any person, for profit, to induce or
19 attempt to induce any person to sell or rent any real property by
20 representations regarding the entry or prospective entry into the
21 neighborhood of a person or persons of a particular race, creed, color,
22 sex, national origin, sexual orientation, families with children
23 status, honorably discharged veteran or military status, or with any
24 sensory, mental, or physical disability and/or the use of a trained dog
25 guide or service animal by a person (~~who is blind, deaf, or physically~~
26 ~~disabled~~) with a disability or the use of animals that are necessary
27 as a reasonable accommodation to assist, support, or provide services
28 to persons with disabilities as provided under the federal fair housing
29 amendments act of 1988 and implementing regulations.

30 **Sec. 5.** RCW 49.60.224 and 2007 c 187 s 15 are each amended to read
31 as follows:

32 (1) Every provision in a written instrument relating to real
33 property which purports to forbid or restrict the conveyance,
34 encumbrance, occupancy, or lease thereof to individuals of a specified
35 race, creed, color, sex, national origin, sexual orientation, families
36 with children status, honorably discharged veteran or military status,

1 or with any sensory, mental, or physical disability or the use of a
2 trained dog guide or service animal by a person (~~who is blind, deaf,
3 or physically disabled~~) with a disability or the use of animals that
4 are necessary as a reasonable accommodation to assist, support, or
5 provide services to persons with disabilities as provided under the
6 federal fair housing amendments act of 1988 and implementing
7 regulations, and every condition, restriction, or prohibition,
8 including a right of entry or possibility of reverter, which directly
9 or indirectly limits the use or occupancy of real property on the basis
10 of race, creed, color, sex, national origin, sexual orientation,
11 families with children status, honorably discharged veteran or military
12 status, or the presence of any sensory, mental, or physical disability
13 or the use of a trained dog guide or service animal by a person (~~who
14 is blind, deaf, or physically disabled~~) with a disability or the use
15 of animals that are necessary as a reasonable accommodation to assist,
16 support, or provide services to persons with disabilities as provided
17 under the federal fair housing amendments act of 1988 and implementing
18 regulations, is void.

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

22 **Sec. 6.** RCW 49.60.225 and 2007 c 187 s 16 are each amended to read
23 as follows:

24 (1) When a reasonable cause determination has been made under RCW
25 49.60.240 that an unfair practice in a real estate transaction has been
26 committed and a finding has been made that the respondent has engaged
27 in any unfair practice under RCW 49.60.250, the administrative law
28 judge shall promptly issue an order for such relief suffered by the
29 aggrieved person as may be appropriate, which may include actual
30 damages as provided by the federal fair housing amendments act of 1988
31 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable
32 relief. Such order may, to further the public interest, assess a civil
33 penalty against the respondent:

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

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

5 (c) In an amount up to fifty thousand dollars if the respondent has
6 been determined to have committed two or more unfair practices in a
7 real estate transaction during the seven-year period ending on the date
8 of the filing of this charge, for loss of the right secured by RCW
9 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as
10 now or hereafter amended, to be free from discrimination in real
11 property transactions because of sex, marital status, race, creed,
12 color, national origin, sexual orientation, families with children
13 status, honorably discharged veteran or military status, or the
14 presence of any sensory, mental, or physical disability or the use of
15 a trained dog guide or service animal by a person (~~who is blind, deaf,
16 or physically disabled~~) with a disability or the use of animals that
17 are necessary as a reasonable accommodation to assist, support, or
18 provide services to persons with disabilities as provided under the
19 federal fair housing amendments act of 1988 and implementing
20 regulations. Enforcement of the order and appeal therefrom by the
21 complainant or respondent may be made as provided in RCW 49.60.260 and
22 49.60.270. If acts constituting the unfair practice in a real estate
23 transaction that is the object of the charge are determined to have
24 been committed by the same natural person who has been previously
25 determined to have committed acts constituting an unfair practice in a
26 real estate transaction, then the civil penalty of up to fifty thousand
27 dollars may be imposed without regard to the period of time within
28 which any subsequent unfair practice in a real estate transaction
29 occurred. All civil penalties assessed under this section shall be
30 paid into the state treasury and credited to the general fund.

31 (2) Such order shall not affect any contract, sale, conveyance,
32 encumbrance, or lease consummated before the issuance of an order that
33 involves a bona fide purchaser, encumbrancer, or tenant who does not
34 have actual notice of the charge filed under this chapter.

35 (3) Notwithstanding any other provision of this chapter, persons
36 awarded damages under this section may not receive additional damages

1 pursuant to RCW 49.60.250.

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