

SENATE BILL REPORT

SB 5487

As Reported by Senate Committee On:
Law & Justice, February 21, 2019

Title: An act relating to providing personal caregiver access in places of public resort, accommodation, assemblage, or amusement.

Brief Description: Providing personal caregiver access in places of public resort, accommodation, assemblage, or amusement.

Sponsors: Senators Padden, Kuderer and Saldaña.

Brief History:

Committee Activity: Law & Justice: 2/12/19, 2/21/19 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Requires the caregiver's level of assistance to the person with a disability as the basic activities of daily living as defined in the law.
- Requires that if complimentary standing space is provided to the caregiver, it must be in reasonable proximity to the person with a disability and may or may not have a view of the event.
- Prohibits the caregiver's complementary ticket from being resold and limits the ticket's use to the caregiver only.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5487 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Kuderer, Salomon and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Holy.

Staff: Melissa Burke-Cain (786-7755)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Washington's Law Against Discrimination. Federal and state laws prohibit discrimination in places of public accommodation. Washington's law against discrimination (WLAD) prohibits discrimination based on the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. Under the WLAD, public accommodations are any place of public resort, accommodation, assemblage, or amusement. Public accommodations generally include restaurants, hotels, stores, shopping malls, movie theaters, concert halls, arenas, parks, fairs, arcades, libraries, schools, government offices, and hospitals. The WLAD does not address admission tickets for events at venues that are open to the public.

Ticket Sales Requirements Under the Americans with Disabilities Act. Title II of the Americans with Disabilities Act (ADA) prohibits discrimination based on disability status in state and local government services. Title III of the ADA prohibits disability discrimination in public accommodations and commercial facilities. In 2011, the federal Department of Justice issued nondiscrimination guidance when tickets are sold for assigned seats at events such as concerts, plays, and sporting events. The guidance describes the number and type of accessible seats a venue must provide, and requires venues to sell tickets for accessible seats in the same manner and under the same conditions as all other tickets. The guidance does not address specific needs for persons who have severe disabilities and need a caregiver to assist them with the activities of daily living.

The *Anderson v. Franklin Institute* Case. In 2016, a federal district court in Pennsylvania ruled Title III of the ADA required the Franklin Institute, a nonprofit museum, to offer complimentary admission to the personal care attendant of a person with a severe disability, Mr. Anderson. Because of his severe disability, Mr. Anderson needed an around-the-clock personal care attendant to assist him with eating, bathing, and performing other activities of daily living. The court reasoned the sole purpose of the personal care attendant was to assist Mr. Anderson with a disability while he enjoyed the museum. The museum argued the admission fee waiver was equivalent to a fundamental alteration to its operations and beyond the accessibility requirements of the ADA. The court reasoned Mr. Anderson's requests were manifestly reasonable and would impose minimal costs on the museum. The case is a single trial judge's interpretation of the ADA. The museum did not seek further review of the ruling.

Summary of Bill (First Substitute): A place of public accommodation commits an unfair practice under the WLAD when it denies complimentary admission and an adjacent seat, removable chair, or standing space in reasonable proximity for a caregiver's use when accompanying a person with a disability who pays admission. The caregiver must supply essential help with the basic activities of daily living. The caregiver or person with a disability must affirmatively request the complimentary admission. The place of public accommodation may ask about the nature of the caregiver's services, but may not ask about the nature of the disability. The venue may not place additional purchase restrictions unnecessarily burdening the enjoyment of the person with a disability or the caregiver's access to the venue. The caregiver's complementary ticket may not be resold and only the caregiver may use the complementary ticket.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Requires the caregiver to provide assistance with the basic activities of daily living.
- Requires standing space provided with a complementary ticket must be in reasonable proximity to the person receiving the caregiver's assistance.
- Prohibits resale of the caregiver's ticket or use of the ticket by anyone other than the caregiver.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is an issue that could be addressed through the courts, like it was in Pennsylvania, but it is more business-friendly when addressed legislatively. A number of businesses already have this policy in place; for example the Seattle Aquarium, Seattle Science Center, Seahawks games, and Paramount and Neptune theaters allow a caregiver accompanying a person with a disability to waive the admission fee. This bill would help give persons who have severe disabilities full access to community activities and the opportunity to fully participate in activities and events as community members. Due to low incomes, many persons living with disabilities cannot afford the cost of an admission ticket for themselves and for their caregiver. They are asked to pay two times what a person who does not need a caregiver pays because they must buy two tickets. The bill permits a venue to use a removable chair for the caregiver so that the venue does not have reduced capacity. The chair can be placed in an otherwise empty space. If there is a concern about fraudulent claims, that could be address in a similar way to last year's guide dog bill with a penalty. However, the number of people who might lie to get in free may be low because they would have to know about the admission waiver and request it. It may also provide a business benefit because the person with a disability would purchase their admission like anyone else when they might not otherwise attend because they cannot go without assistance. There is data supporting the need for the bill. Persons with a disability are twice as likely to be unemployed and in poverty. In a 2009 study on poverty and disability, on an annual basis, 47 percent of persons in poverty are persons who have a disability. On a longer term basis, of those who are unemployed for 36 out of 48 months, 65 percent are persons with a disability. The numbers of persons with a disability are high, in part, because of the excess medical expenses they have, the adaptive equipment they may need to provide mobility and other assistance. It is harder to live and harder to have a decent income for persons who have a disability. There are people who might take advantage of the system, like those who use a disabled parking permit when they do not need it, or those who claim their pet is a trained service animal. The fraud potential can be mitigated, but weigh that against the good that this bill would do for others who cannot enjoy events or fully participate in the community. Let us not make it more difficult for those with such an important need.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Conrad Reynoldson, Attorney at Law, Washington Civil and Disability Advocate; Jack Brummel, Senior Advisor, Northwest Access Fund; David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: No one.