
SUBSTITUTE SENATE BILL 5487

State of Washington

66th Legislature

2019 Regular Session

By Senate Law & Justice (originally sponsored by Senators Padden, Kuderer, and Saldaña)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to providing personal caregiver access in places
2 of public resort, accommodation, assemblage, or amusement; amending
3 RCW 49.60.040, 49.60.215, and 49.60.214; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes there are
6 instances where individuals with disabilities are excluded from
7 participating in activities or events in places of public resort,
8 accommodation, assemblage, or amusement. The legislature further
9 recognizes that an individual with a disability may require the use
10 of a personal caregiver or personal care attendant. In recognition of
11 the merits of the United States District Court for the Eastern
12 District of Pennsylvania's ruling in *Anderson v. Franklin Institute*,
13 185 F. Supp. 3d 628 (E.D. Pa. 2016), the legislature intends to
14 provide individuals with disabilities who use a personal caregiver or
15 personal care attendant with full and equal access to places of
16 public resort, accommodation, assemblage, or amusement.

17 **Sec. 2.** RCW 49.60.040 and 2018 c 176 s 2 are each amended to
18 read as follows:

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

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

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

35 (3) "Basic activities of daily living" means self-care abilities
36 such as bathing, body care, eating, locomotion, use of the toilet,
37 personal hygiene, dressing, and transfer.

38 (4) "Caregiver" means a person who provides a person with
39 disability assistance with basic activities of daily living and whose
40 presence is required for a person with a disability to attend a

1 public event or patronize a place of public resort, accommodation,
2 assemblage, or amusement.

3 (5) "Commission" means the Washington state human rights
4 commission.

5 ((+4)) (6) "Complainant" means the person who files a complaint
6 in a real estate transaction.

7 ((+5)) (7) "Covered multifamily dwelling" means: (a) Buildings
8 consisting of four or more dwelling units if such buildings have one
9 or more elevators; and (b) ground floor dwelling units in other
10 buildings consisting of four or more dwelling units.

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

23 ((+7)) (9)(a) "Disability" means the presence of a sensory,
24 mental, or physical impairment that:

25 (i) Is medically cognizable or diagnosable; or

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

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

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

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

35 (i) Any physiological disorder, or condition, cosmetic
36 disfigurement, or anatomical loss affecting one or more of the
37 following body systems: Neurological, musculoskeletal, special sense
38 organs, respiratory, including speech organs, cardiovascular,
39 reproductive, digestive, (~~genitor-urinary~~) genitourinary, hemic and
40 lymphatic, skin, and endocrine; or

1 (ii) Any mental, developmental, traumatic, or psychological
2 disorder, including but not limited to cognitive limitation, organic
3 brain syndrome, emotional or mental illness, and specific learning
4 disabilities.

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

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

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

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

20 ~~((8))~~ (10) "Dog guide" means a dog that is trained for the
21 purpose of guiding blind persons or a dog that is trained for the
22 purpose of assisting hearing impaired persons.

23 ~~((9))~~ (11) "Dwelling" means any building, structure, or portion
24 thereof that is occupied as, or designed or intended for occupancy
25 as, a residence by one or more families, and any vacant land that is
26 offered for sale or lease for the construction or location thereon of
27 any such building, structure, or portion thereof.

28 ~~((10))~~ (12) "Employee" does not include any individual employed
29 by his or her parents, spouse, or child, or in the domestic service
30 of any person.

31 ~~((11))~~ (13) "Employer" includes any person acting in the
32 interest of an employer, directly or indirectly, who employs eight or
33 more persons, and does not include any religious or sectarian
34 organization not organized for private profit.

35 ~~((12))~~ (14) "Employment agency" includes any person undertaking
36 with or without compensation to recruit, procure, refer, or place
37 employees for an employer.

38 ~~((13))~~ (15) "Families with children status" means one or more
39 individuals who have not attained the age of eighteen years being
40 domiciled with a parent or another person having legal custody of

1 such individual or individuals, or with the designee of such parent
2 or other person having such legal custody, with the written
3 permission of such parent or other person. Families with children
4 status also applies to any person who is pregnant or is in the
5 process of securing legal custody of any individual who has not
6 attained the age of eighteen years.

7 ~~((14))~~ (16) "Full enjoyment of" includes the right to purchase
8 any service, commodity, or article of personal property offered or
9 sold on, or by, any establishment to the public, and the admission of
10 any person to accommodations, advantages, facilities, or privileges
11 of any place of public resort, accommodation, assemblage, or
12 amusement, without acts directly or indirectly causing persons of any
13 particular race, creed, color, sex, sexual orientation, national
14 origin, or with any sensory, mental, or physical disability, or the
15 use of a trained dog guide or service animal by a person with a
16 disability, to be treated as not welcome, accepted, desired, or
17 solicited.

18 ~~((15))~~ (17) "Honorably discharged veteran or military status"
19 means a person who is:

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

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

24 ~~((16))~~ (18) "Labor organization" includes any organization
25 which exists for the purpose, in whole or in part, of dealing with
26 employers concerning grievances or terms or conditions of employment,
27 or for other mutual aid or protection in connection with employment.

28 ~~((17))~~ (19) "Marital status" means the legal status of being
29 married, single, separated, divorced, or widowed.

30 ~~((18))~~ (20) "National origin" includes "ancestry."

31 ~~((19))~~ (21) "Person" includes one or more individuals,
32 partnerships, associations, organizations, corporations,
33 cooperatives, legal representatives, trustees and receivers, or any
34 group of persons; it includes any owner, lessee, proprietor, manager,
35 agent, or employee, whether one or more natural persons; and further
36 includes any political or civil subdivisions of the state and any
37 agency or instrumentality of the state or of any political or civil
38 subdivision thereof.

1 ~~((20))~~ (22) "Premises" means the interior or exterior spaces,
2 parts, components, or elements of a building, including individual
3 dwelling units and the public and common use areas of a building.

4 ~~((21))~~ (23) "Real estate transaction" includes the sale,
5 appraisal, brokering, exchange, purchase, rental, or lease of real
6 property, transacting or applying for a real estate loan, or the
7 provision of brokerage services.

8 ~~((22))~~ (24) "Real property" includes buildings, structures,
9 dwellings, real estate, lands, tenements, leaseholds, interests in
10 real estate cooperatives, condominiums, and hereditaments, corporeal
11 and incorporeal, or any interest therein.

12 ~~((23))~~ (25) "Respondent" means any person accused in a
13 complaint or amended complaint of an unfair practice in a real estate
14 transaction.

15 ~~((24))~~ (26) "Service animal" means any dog or miniature horse,
16 as discussed in RCW 49.60.214, that is individually trained to do
17 work or perform tasks for the benefit of an individual with a
18 disability, including a physical, sensory, psychiatric, intellectual,
19 or other mental disability. The work or tasks performed by the
20 service animal must be directly related to the individual's
21 disability. Examples of work or tasks include, but are not limited
22 to, assisting individuals who are blind or have low vision with
23 navigation and other tasks, alerting individuals who are deaf or hard
24 of hearing to the presence of people or sounds, providing nonviolent
25 protection or rescue work, pulling a wheelchair, assisting an
26 individual during a seizure, alerting individuals to the presence of
27 allergens, retrieving items such as medicine or the telephone,
28 providing physical support and assistance with balance and stability
29 to individuals with mobility disabilities, and helping persons with
30 psychiatric and neurological disabilities by preventing or
31 interrupting impulsive or destructive behaviors. The crime deterrent
32 effects of an animal's presence and the provision of emotional
33 support, well-being, comfort, or companionship do not constitute work
34 or tasks. This subsection does not apply to RCW 49.60.222 through
35 49.60.227 with respect to housing accommodations or real estate
36 transactions.

37 ~~((25))~~ (27) "Sex" means gender.

38 ~~((26))~~ (28) "Sexual orientation" means heterosexuality,
39 homosexuality, bisexuality, and gender expression or identity. As
40 used in this definition, "gender expression or identity" means having

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

6 **Sec. 3.** RCW 49.60.215 and 2018 c 176 s 3 are each amended to
7 read as follows:

8 (1) It shall be an unfair practice for any person or the person's
9 agent or employee to commit an act which directly or indirectly
10 results in any distinction, restriction, or discrimination, or the
11 requiring of any person to pay a larger sum than the uniform rates
12 charged other persons, or the refusing or withholding from any person
13 the admission, patronage, custom, presence, frequenting, dwelling,
14 staying, or lodging in any place of public resort, accommodation,
15 assemblage, or amusement, except for conditions and limitations
16 established by law and applicable to all persons, regardless of race,
17 creed, color, national origin, sexual orientation, sex, honorably
18 discharged veteran or military status, status as a mother
19 breastfeeding her child, the presence of any sensory, mental, or
20 physical disability, or the use of a trained dog guide or service
21 animal by a person with a disability: PROVIDED, That this section
22 shall not be construed to require structural changes, modifications,
23 or additions to make any place accessible to a person with a
24 disability except as otherwise required by law: PROVIDED, That
25 behavior or actions constituting a risk to property or other persons
26 can be grounds for refusal and shall not constitute an unfair
27 practice.

28 (2)(a) Subject to the requirements of (b) of this subsection, it
29 is an unfair practice for a place of public resort, accommodation,
30 assemblage, or amusement that charges for admission, to deny
31 complimentary admission for one caregiver accompanying a person with
32 a disability who pays admission. If the place of public resort,
33 accommodation, assemblage, or amusement provides seating to people
34 who pay admission, the caregiver shall be provided one accompanying
35 seat, removable adjacent chair, or a space to stand in reasonable
36 proximity to the patron with a disability which may or may not have a
37 view of the event and may or may not have an associated ticket.

38 (b) The caregiver must supply essential help for basic activities
39 of daily living as defined in RCW 49.60.040. The caregiver or the

1 person with a disability must affirmatively make the request for
2 complimentary admission and assert that the companion is a caregiver
3 that performs essential help for basic activities of daily living in
4 order to qualify for this protection.

5 (c) When it is not obvious what service a caregiver provides,
6 only limited inquiries are allowed. Staff may ask two questions: (i)
7 Is the caregiver required because of a disability? and (ii) what
8 essential help for basic activities of daily living does the
9 caregiver provide? Staff cannot ask about the person's disability,
10 require medical documentation, require a special identification card
11 or training documentation, or ask that the caregiver demonstrate the
12 ability to perform the work or task.

13 (d) An establishment may not maintain any additional purchase
14 restrictions that unnecessarily burden the enjoyment of the person
15 with a disability or his or her caregiver's access including, but not
16 limited to: Requiring a caregiver's admission ticket, pass,
17 authorization, or other instrument used to obtain admission, to be
18 picked up in person at the box office; requiring a caregiver to be
19 physically present when admission is purchased; requiring caregiver
20 admission be requested at the time the ticket purchase is made; or
21 prohibiting a caregiver from accessing establishment facilities or
22 attractions. This subsection (2)(d) is not intended to require an
23 establishment to offer complimentary caregiver admission through
24 online ticket sales.

25 (e) This subsection (2) does not apply to establishments that
26 provide housing or lodging for transient guests.

27 (f) The complimentary caregiver admission ticket may not be
28 resold. The complimentary ticket may be used only by the caregiver
29 accompanying the paying patron with the disability.

30 **Sec. 4.** RCW 49.60.214 and 2018 c 176 s 4 are each amended to
31 read as follows:

32 (1) It shall be a civil infraction under chapter 7.80 RCW for any
33 person to misrepresent an animal as a service animal. A violation of
34 this section occurs when a person:

35 (a) Expressly or impliedly represents that an animal is a service
36 animal as defined in RCW 49.60.040 for the purpose of securing the
37 rights or privileges afforded disabled persons accompanied by service
38 animals set forth in state or federal law; and

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

3 (2)(a) An enforcement officer as defined under RCW 7.80.040 may
4 investigate and enforce this section by making an inquiry of the
5 person accompanied by the animal in question and issuing a civil
6 infraction. Refusal to answer the questions allowable under (b) of
7 this subsection shall create a presumption that the animal is not a
8 service animal and the enforcement officer may issue a civil
9 infraction and require the person to remove the animal from the place
10 of public accommodation.

11 (b) An enforcement officer or place of public accommodation shall
12 not ask about the nature or extent of a person's disability, but may
13 make two inquiries to determine whether an animal qualifies as a
14 service animal. An enforcement officer or place of public
15 accommodation may ask if the animal is required because of a
16 disability and what work or task the animal has been trained to
17 perform. An enforcement officer or place of public accommodation
18 shall not require documentation, such as proof that the animal has
19 been certified, trained, or licensed as a service animal, or require
20 that the service animal demonstrate its task. Generally, an
21 enforcement officer or place of public accommodation may not make
22 these inquiries about a service animal when it is readily apparent
23 that an animal is trained to do work or perform tasks for a person
24 with a disability, such as a dog is observed guiding a person who is
25 blind or has low vision, pulling a person's wheelchair, or providing
26 assistance with stability or balance to a person with an observable
27 mobility disability.

28 (3) A place of public accommodation shall make reasonable
29 modifications in policies, practices, or procedures to permit the use
30 of a miniature horse by an individual with a disability in accordance
31 with the definition of a service animal under RCW 49.60.040(~~(24)~~),
32 if the miniature horse has been individually trained to do work or
33 perform tasks for the benefit of the individual with a disability. In
34 determining whether reasonable modifications in policies, practices,
35 or procedures can be made to allow a miniature horse into a facility,
36 a place of public accommodation shall act in accordance with all
37 applicable laws and regulations.

38 NEW SECTION. **Sec. 5.** If any provision of this act or its
39 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- **END** ---