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**SENATE BILL 5529**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Trudeau, Saldaña, Conway, Hasegawa, Liias, Lovelett, Nguyen, Nobles, Randall, Valdez, Wellman, and C. Wilson

AN ACT Relating to removing the exclusion of certain domestic workers from certain worker protections; amending RCW 51.12.020; reenacting and amending RCW 49.60.040; and adding a new section to chapter 49.60 RCW.

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

**Sec.**  RCW 49.60.040 and 2020 c 85 s 1 are each reenacted and amended to read as follows:

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

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

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

(3) "Casual labor" means work that is irregular, uncertain, and incidental in nature and duration and is different in nature from the type of paid work in which the worker is customarily engaged in.

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

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

((~~(5)~~)) (6) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

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

((~~(7)~~)) (8)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

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

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

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

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

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

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

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

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

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

((~~(8)~~)) (9) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

((~~(9)~~)) (10) "Domestic service" means household services for members of households or their guests in private homes. This includes the maintenance of private homes or their premises.

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

((~~(10)~~))(12) "Employ" includes to permit to work.

(13) "Employee" does not include ((~~any~~)):

(a) Any individual employed by his or her parents, spouse, or child((~~, or in the domestic service of any person~~));

(b) Persons who provide babysitting on a casual labor basis;

(c) Persons who provide services or supports for a family member on a casual labor basis;

(d) Any individual employed in casual labor in or about a private home, unless performed in the course of a hiring entity's trade, business, or profession;

(e) Individual providers, as defined in RCW 74.39A.240;

(f) An au pair participant who has been granted a J-1 visa for participation in the federal department of state designated exchange visitor program governed by 22 C.F.R. Sec. 62.31;

(g) Persons who perform house sitting, pet sitting, and dog walking duties that do not involve domestic service; or

(h) Persons providing services to another family member who is sick, convalescing, elderly, or a person with a disability, where the family members do not intend to establish an employer-employee relationship. An employer-employee relationship does not exist under such circumstances when:

(i) The family members have mutually agreed that care is provided gratuitously; or

(ii) The family member provides services for fewer than 15 hours per week and the family member providing care does not provide domestic services in the person's ordinary course of business.

((~~(11)~~)) (14) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit. Employer also includes any person employing an employee for domestic service.

((~~(12)~~)) (15) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

((~~(13)~~)) (16) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

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

((~~(15)~~)) (18) "Hiring entity" means any employer, as defined in RCW 49.46.010, or in subsection (14) of this section, who employs an employee for domestic services, as well as any individual, partnership, association, corporation, business trust, or any combination thereof, which pays a wage or pays wages. It includes any such entity, person, or group of persons that provides compensation directly or indirectly to a domestic worker for the performance of domestic services and any such entity, person, or persons acting directly or indirectly in the interest of the hiring entity in relation to the domestic worker. "Hiring entity" does not include a state agency or home care agency as defined in RCW 70.127.010 and licensed under chapter 70.127 RCW if the home care agency receives funding through RCW 74.39A.310.

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

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

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

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

((~~(17)~~)) (21) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

((~~(18)~~)) (22) "National origin" includes "ancestry."

((~~(19)~~)) (23) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

((~~(20)~~)) (24) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

((~~(21)~~)) (25) "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists.

((~~(22)~~)) (26) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

((~~(23)~~)) (27) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

((~~(24)~~)) (28) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

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

((~~(26)~~)) (30) "Sex" means gender.

((~~(27)~~)) (31) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

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

An employee employed in domestic service who files a complaint or brings suit alleging discrimination in violation of RCW 49.60.180 shall be entitled to all the procedural and substantive rights available under this chapter except when:

(1) The employer is a person who is elderly or has a disability that results in discriminatory or harassing behaviors;

(2) The employer or a hiring entity informs the employee providing home care or personal care services to a person who has a documented behavioral condition, that the employer or hiring entity has reason to believe that those behaviors will result in discrimination and abusive conduct likely occurring in or around the client's home prior to assigning the employee to that client and throughout the duration of service;

(3) The behaviors can be shown as directly resulting from a diagnosed and documented cognitive impairment; and

(4) The employee voluntarily agrees to initiate or continue the employment relationship; or

(5) The employer or hiring entity receiving personal care services, as defined in RCW 74.39A.009, refuses to hire an employee based on gender preferences.

**Sec.**  RCW 51.12.020 and 2022 c 281 s 8 are each amended to read as follows:

The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) ((~~Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.~~

~~(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.~~

~~(3)~~)) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

((~~(4)~~)) (2) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

((~~(5)~~)) (3) Sole proprietors or partners.

((~~(6)~~)) (4) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

((~~(7)~~)) (5) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

((~~(8)~~)) (6)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400 may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under (a) of this subsection, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

((~~(9)~~)) (7) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

((~~(10)~~)) (8) Services performed by a newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published.

((~~(11)~~)) (9) Services performed by an insurance producer, as defined in RCW 48.17.010, or a surplus line broker licensed under chapter 48.15 RCW.

((~~(12)~~)) (10) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

((~~(13)~~)) (11) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection ((~~(5)~~)) (3) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection ((~~(8)~~)) (6) of this section were the company a corporation.

((~~(14)~~)) (12) For hire vehicle operators under chapter 46.72 RCW who own or lease the for hire vehicle, chauffeurs under chapter 46.72A RCW who own or lease the limousine, and operators of taxicabs under chapter 81.72 RCW who own or lease the taxicab. An owner or lessee may elect coverage in the manner provided by RCW 51.32.030.

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