

CERTIFICATION OF ENROLLMENT

SENATE BILL 5474

Chapter 510, Laws of 1993

(partial veto)

53rd Legislature
1993 Regular Session

DISCRIMINATION LAWS--REVISED TERMINOLOGY AND PROVISIONS

EFFECTIVE DATE: 7/25/93

Passed by the Senate April 25, 1993
YEAS 27 NAYS 20

JOEL PRITCHARD

President of the Senate

Passed by the House April 24, 1993
YEAS 95 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved May 18, 1993, with the
exception of sections 5 and 19, which
are vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SENATE BILL 5474 as passed by the
Senate and the House of
Representatives on the dates hereon
set forth.

MARTY BROWN

Secretary

FILED

May 18, 1993 - 2:41 p.m.

**Secretary of State
State of Washington**

SENATE BILL 5474

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senators A. Smith, Pelz, Niemi, Spanel, Drew, Prince, Roach and Franklin; by request of Human Rights Commission

Read first time 01/29/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to discrimination; amending RCW 49.60.010,
2 49.60.020, 49.60.030, 49.60.120, 49.60.130, 49.60.174, 49.60.175,
3 49.60.176, 49.60.178, 49.60.180, 49.60.190, 49.60.200, 49.60.205,
4 49.60.222, 49.60.223, 49.60.224, 49.60.225, 49.60.230, 49.60.240,
5 49.60.250, 49.44.090, and 70.124.060; and reenacting and amending RCW
6 49.60.040 and 49.60.215.

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

8 **Sec. 1.** RCW 49.60.010 and 1985 c 185 s 1 are each amended to read
9 as follows:

10 This chapter shall be known as the "law against discrimination".
11 It is an exercise of the police power of the state for the protection
12 of the public welfare, health, and peace of the people of this state,
13 and in fulfillment of the provisions of the Constitution of this state
14 concerning civil rights. The legislature hereby finds and declares
15 that practices of discrimination against any of its inhabitants because
16 of race, creed, color, national origin, sex, marital status, age, or
17 the presence of any sensory, mental, or physical ((handicap))
18 disability or the use of a trained guide dog or service dog by a
19 disabled person are a matter of state concern, that such discrimination

1 threatens not only the rights and proper privileges of its inhabitants
2 but menaces the institutions and foundation of a free democratic state.
3 A state agency is herein created with powers with respect to
4 elimination and prevention of discrimination in employment, in credit
5 and insurance transactions, in places of public resort, accommodation,
6 or amusement, and in real property transactions because of race, creed,
7 color, national origin, sex, marital status, age, or the presence of
8 any sensory, mental, or physical (~~handicap~~) disability or the use of
9 a trained guide dog or service dog by a disabled person; and the
10 commission established hereunder is hereby given general jurisdiction
11 and power for such purposes.

12 **Sec. 2.** RCW 49.60.020 and 1973 1st ex.s. c 214 s 2 are each
13 amended to read as follows:

14 The provisions of this chapter shall be construed liberally for the
15 accomplishment of the purposes thereof. Nothing contained in this
16 chapter shall be deemed to repeal any of the provisions of any other
17 law of this state relating to discrimination because of race, color,
18 creed, national origin, sex, marital status, age, or the presence of
19 any sensory, mental, or physical (~~handicap~~) disability, other than a
20 law which purports to require or permit doing any act which is an
21 unfair practice under this chapter. Nor shall anything herein
22 contained be construed to deny the right to any person to institute any
23 action or pursue any civil or criminal remedy based upon an alleged
24 violation of his or her civil rights.

25 **Sec. 3.** RCW 49.60.030 and 1984 c 32 s 2 are each amended to read
26 as follows:

27 (1) The right to be free from discrimination because of race,
28 creed, color, national origin, sex, or the presence of any sensory,
29 mental, or physical (~~handicap~~) disability or the use of a trained
30 guide dog or service dog by a disabled person is recognized as and
31 declared to be a civil right. This right shall include, but not be
32 limited to:

33 (a) The right to obtain and hold employment without discrimination;

34 (b) The right to the full enjoyment of any of the accommodations,
35 advantages, facilities, or privileges of any place of public resort,
36 accommodation, assemblage, or amusement;

1 (c) The right to engage in real estate transactions without
2 discrimination;

3 (d) The right to engage in credit transactions without
4 discrimination;

5 (e) The right to engage in insurance transactions or transactions
6 with health maintenance organizations without discrimination:
7 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,
8 48.44.220, or 48.46.370 does not constitute an unfair practice for the
9 purposes of this subparagraph; and

10 (f) The right to engage in commerce free from any discriminatory
11 boycotts or blacklists. Discriminatory boycotts or blacklists for
12 purposes of this section shall be defined as the formation or execution
13 of any express or implied agreement, understanding, policy or
14 contractual arrangement for economic benefit between any persons which
15 is not specifically authorized by the laws of the United States and
16 which is required or imposed, either directly or indirectly, overtly or
17 covertly, by a foreign government or foreign person in order to
18 restrict, condition, prohibit, or interfere with or in order to exclude
19 any person or persons from any business relationship on the basis of
20 race, color, creed, religion, sex, the presence of any sensory, mental,
21 or physical disability, or the use of a trained guide dog or service
22 dog by a disabled person, or national origin or lawful business
23 relationship: PROVIDED HOWEVER, That nothing herein contained shall
24 prohibit the use of boycotts as authorized by law pertaining to labor
25 disputes and unfair labor practices.

26 (2) Any person deeming himself or herself injured by any act in
27 violation of this chapter shall have a civil action in a court of
28 competent jurisdiction to enjoin further violations, to recover the
29 actual damages sustained by ((him)) the person, or both, together with
30 the cost of suit including a reasonable attorney's fees or any other
31 remedy authorized by this chapter or the United States Civil Rights Act
32 of 1964 as amended; and

33 (~~(3) ((Notwithstanding any other provisions of this chapter, any~~
34 ~~aet)) Except for any unfair practice committed by an employer against~~
35 ~~an employee or a prospective employee, or any unfair practice in a real~~
36 ~~estate transaction which is the basis for relief specified in the~~
37 ~~amendments to RCW 49.60.225 contained in chapter . . . (House Bill 1476~~
38 ~~section 9) Laws of 1993, any unfair practice prohibited by this chapter~~
39 ~~((related to sex discrimination or discriminatory boycotts or~~

1 ~~blacklists~~) which is committed in the course of trade or commerce ((in
2 ~~the state of Washington~~) as defined in the Consumer Protection Act,
3 chapter 19.86 RCW, (~~shall be deemed an unfair practice within the~~
4 ~~meaning of RCW 19.86.020 and 19.86.030 and subject to all the~~
5 ~~provisions of chapter 19.86 RCW as now or hereafter amended~~) is, for
6 the purpose of applying that chapter, a matter affecting the public
7 interest, is not reasonable in relation to the development and
8 preservation of business, and is an unfair or deceptive act in trade or
9 commerce.

10 **Sec. 4.** RCW 49.60.040 and 1985 c 203 s 2 and 1985 c 185 s 2 are
11 each reenacted and amended to read as follows:

12 As used in this chapter:

13 "Person" includes one or more individuals, partnerships,
14 associations, organizations, corporations, cooperatives, legal
15 representatives, trustees and receivers, or any group of persons; it
16 includes any owner, lessee, proprietor, manager, agent, or employee,
17 whether one or more natural persons; and further includes any political
18 or civil subdivisions of the state and any agency or instrumentality of
19 the state or of any political or civil subdivision thereof;

20 "Commission" means the Washington state human rights commission;

21 "Employer" includes any person acting in the interest of an
22 employer, directly or indirectly, who employs eight or more persons,
23 and does not include any religious or sectarian organization not
24 organized for private profit;

25 "Employee" does not include any individual employed by his or her
26 parents, spouse, or child, or in the domestic service of any person;

27 "Labor organization" includes any organization which exists for the
28 purpose, in whole or in part, of dealing with employers concerning
29 grievances or terms or conditions of employment, or for other mutual
30 aid or protection in connection with employment;

31 "Employment agency" includes any person undertaking with or without
32 compensation to recruit, procure, refer, or place employees for an
33 employer;

34 "Marital status" means the legal status of being married, single,
35 separated, divorced, or widowed;

36 "National origin" includes "ancestry";

37 "Full enjoyment of" includes the right to purchase any service,
38 commodity, or article of personal property offered or sold on, or by,

1 any establishment to the public, and the admission of any person to
2 accommodations, advantages, facilities, or privileges of any place of
3 public resort, accommodation, assemblage, or amusement, without acts
4 directly or indirectly causing persons of any particular race, creed,
5 color, sex, national origin, or with any sensory, mental, or physical
6 (~~handicap~~) disability, or the use of a trained guide dog or service
7 dog by a (~~blind or deaf~~) disabled person (~~using a trained dog~~
8 ~~guide~~), to be treated as not welcome, accepted, desired, or solicited;

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

38 "Real property" includes buildings, structures, real estate, lands,
39 tenements, leaseholds, interests in real estate cooperatives,

1 condominiums, and hereditaments, corporeal and incorporeal, or any
2 interest therein;

3 "Real estate transaction" includes the sale, exchange, purchase,
4 rental, or lease of real property;

5 "Sex" means gender((-));

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

18 ****NEW SECTION. Sec. 5. A new section is added to chapter 49.60 RCW***
19 ***to read as follows:***

20 ***(1) For purposes of the term "disability" as used in this chapter,***
21 ***homosexuality and bisexuality are not impairments and as such are not***
22 ***disabilities under this act. Under this chapter, the term "disability"***
23 ***shall not include:***

24 ***(a) Transvestism, transsexualism, pedophilia, exhibitionism,***
25 ***voyeurism, gender identity disorders not resulting from physical***
26 ***impairments, or other sexual behavior disorders;***

27 ***(b) Compulsive gambling, kleptomania, or pyromania; or***

28 ***(c) Psychoactive substance use disorders resulting from current***
29 ***illegal use of drugs.***

30 ***(2)(a) For purposes of this chapter, a person who is currently***
31 ***engaging in the illegal use of drugs, when the covered entity acts on***
32 ***the basis of such use, shall not be considered to have a disability.***

33 ***(b) Nothing in (a) of this subsection may be construed to exclude***
34 ***as an individual with a disability an individual who:***

35 ***(i) Has successfully completed a supervised drug rehabilitation***
36 ***program and is no longer engaging in the illegal use of drugs, or has***
37 ***otherwise been rehabilitated successfully and is no longer engaging in***
38 ***such use;***

1 (ii) *Is participating in a supervised rehabilitation program and is*
2 *no longer engaging in such use; or*

3 (iii) *Is erroneously regarded as engaging in such use, but is not*
4 *engaging in such use;*

5 *except that it shall not be a violation of this chapter for a covered*
6 *entity to adopt or administer reasonable policies or procedures,*
7 *including but not limited to drug testing, designed to ensure that an*
8 *individual described in (b) (i) or (ii) of this subsection is no longer*
9 *engaging in the illegal use of drugs; however, nothing in this section*
10 *may be construed to encourage, prohibit, restrict, or authorize the*
11 *conducting of testing for the illegal use of drugs.*

12 *Sec. 5 was vetoed, see message at end of chapter.

13 **Sec. 6.** RCW 49.60.120 and 1985 c 185 s 10 are each amended to read
14 as follows:

15 The commission shall have the functions, powers and duties:

16 (1) To appoint an executive (~~(secretary)~~) director and chief
17 examiner, and such investigators, examiners, clerks, and other
18 employees and agents as it may deem necessary, fix their compensation
19 within the limitations provided by law, and prescribe their duties.

20 (2) To obtain upon request and utilize the services of all
21 governmental departments and agencies.

22 (3) To adopt, promulgate, amend, and rescind suitable rules and
23 regulations to carry out the provisions of this chapter, and the
24 policies and practices of the commission in connection therewith.

25 (4) To receive, investigate, and pass upon complaints alleging
26 unfair practices as defined in this chapter.

27 (5) To issue such publications and such results of investigations
28 and research as in its judgment will tend to promote good will and
29 minimize or eliminate discrimination because of sex, race, creed,
30 color, national origin, marital status, age, or the presence of any
31 sensory, mental, or physical (~~(handicap)~~) disability, or the use of a
32 trained guide dog or service dog by a disabled person.

33 (6) To make such technical studies as are appropriate to effectuate
34 the purposes and policies of this chapter and to publish and distribute
35 the reports of such studies.

36 (7) To cooperate and act jointly or by division of labor with the
37 United States or other states, with other Washington state agencies,
38 commissions, and other government entities, and with political

1 subdivisions of the state of Washington and their respective human
2 rights agencies to carry out the purposes of this chapter. However,
3 the powers which may be exercised by the commission under this
4 subsection permit investigations and complaint dispositions only if the
5 investigations are designed to reveal, or the complaint deals only
6 with, allegations which, if proven, would constitute unfair practices
7 under this chapter. The commission may perform such services for these
8 agencies and be reimbursed therefor.

9 (8) To foster good relations between minority and majority
10 population groups of the state through seminars, conferences,
11 educational programs, and other intergroup relations activities.

12 **Sec. 7.** RCW 49.60.130 and 1985 c 185 s 11 are each amended to read
13 as follows:

14 The commission has power to create such advisory agencies and
15 conciliation councils, local, regional, or state-wide, as in its
16 judgment will aid in effectuating the purposes of this chapter. The
17 commission may empower them to study the problems of discrimination in
18 all or specific fields of human relationships or in specific instances
19 of discrimination because of sex, race, creed, color, national origin,
20 marital status, age, or the presence of any sensory, mental, or
21 physical (~~handicap~~) disability or the use of a trained guide dog or
22 service dog by a disabled person; to foster through community effort or
23 otherwise good will, cooperation, and conciliation among the groups and
24 elements of the population of the state, and to make recommendations to
25 the commission for the development of policies and procedures in
26 general and in specific instances, and for programs of formal and
27 informal education which the commission may recommend to the
28 appropriate state agency.

29 Such advisory agencies and conciliation councils shall be composed
30 of representative citizens, serving without pay, but with reimbursement
31 for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as
32 now existing or hereafter amended, and the commission may make
33 provision for technical and clerical assistance to such agencies and
34 councils and for the expenses of such assistance. The commission may
35 use organizations specifically experienced in dealing with questions of
36 discrimination.

1 **Sec. 8.** RCW 49.60.174 and 1988 c 206 s 902 are each amended to
2 read as follows:

3 (1) For the purposes of determining whether an unfair practice
4 under this chapter has occurred, claims of discrimination based on
5 actual or perceived HIV infection shall be evaluated in the same manner
6 as other claims of discrimination based on sensory, mental, or physical
7 (~~handicap~~) disability; or the use of a trained guide dog or service
8 dog by a disabled person.

9 (2) Subsection (1) of this section shall not apply to transactions
10 with insurance entities, health service contractors, or health
11 maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178
12 to prohibit fair discrimination on the basis of actual HIV infection
13 status when bona fide statistical differences in risk or exposure have
14 been substantiated.

15 (3) For the purposes of this chapter, "HIV" means the human
16 immunodeficiency virus, and includes all HIV and HIV-related viruses
17 which damage the cellular branch of the human immune system and leave
18 the infected person immunodeficient.

19 **Sec. 9.** RCW 49.60.175 and 1979 c 127 s 4 are each amended to read
20 as follows:

21 It shall be an unfair practice to use the sex, race, creed, color,
22 national origin, marital status, or the presence of any sensory,
23 mental, or physical (~~handicap~~) disability of any person, or the use
24 of a trained guide dog or service dog by a disabled person, concerning
25 an application for credit in any credit transaction to determine the
26 credit worthiness of an applicant.

27 **Sec. 10.** RCW 49.60.176 and 1979 c 127 s 5 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 in connection with any credit transaction
31 because of race, creed, color, national origin, sex, marital status, or
32 the presence of any sensory, mental, or physical (~~handicap~~)
33 disability or the use of a trained guide dog or service dog by a
34 disabled person:

35 (a) To deny credit to any person;

36 (b) To increase the charges or fees for or collateral required to
37 secure any credit extended to any person;

1 (c) To restrict the amount or use of credit extended or to impose
2 different terms or conditions with respect to the credit extended to
3 any person or any item or service related thereto;

4 (d) To attempt to do any of the unfair practices defined in this
5 section.

6 (2) Nothing in this section shall prohibit any party to a credit
7 transaction from considering the credit history of any individual
8 applicant.

9 (3) Further, nothing in this section shall prohibit any party to a
10 credit transaction from considering the application of the community
11 property law to the individual case or from taking reasonable action
12 thereon.

13 **Sec. 11.** RCW 49.60.178 and 1984 c 32 s 1 are each amended to read
14 as follows:

15 It is an unfair practice for any person whether acting for himself,
16 herself, or another in connection with an insurance transaction or
17 transaction with a health maintenance organization to cancel or fail or
18 refuse to issue or renew insurance or a health maintenance agreement to
19 any person because of sex, marital status, race, creed, color, national
20 origin, or the presence of any sensory, mental, or physical
21 ((handicap)) disability or the use of a trained guide dog or service
22 dog by a disabled person: PROVIDED, That a practice which is not
23 unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not
24 constitute an unfair practice for the purposes of this section. For
25 the purposes of this section, "insurance transaction" is defined in RCW
26 48.01.060, health maintenance agreement is defined in RCW 48.46.020,
27 and "health maintenance organization" is defined in RCW 48.46.020.

28 The fact that such unfair practice may also be a violation of
29 chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an
30 action brought under this section.

31 The insurance commissioner, under RCW 48.30.300, and the human
32 rights commission, under chapter 49.60 RCW, shall have concurrent
33 jurisdiction under this section and shall enter into a working
34 agreement as to procedure to be followed in complaints under this
35 section.

36 **Sec. 12.** RCW 49.60.180 and 1985 c 185 s 16 are each amended to
37 read as follows:

1 It is an unfair practice for any employer:

2 (1) To refuse to hire any person because of age, sex, marital
3 status, race, creed, color, national origin, or the presence of any
4 sensory, mental, or physical (~~handicap~~) disability or the use of a
5 trained guide dog or service dog by a disabled person, unless based
6 upon a bona fide occupational qualification: PROVIDED, That the
7 prohibition against discrimination because of such (~~handicap~~)
8 disability shall not apply if the particular disability prevents the
9 proper performance of the particular worker involved.

10 (2) To discharge or bar any person from employment because of age,
11 sex, marital status, race, creed, color, national origin, or the
12 presence of any sensory, mental, or physical (~~handicap~~) disability or
13 the use of a trained guide dog or service dog by a disabled person.

14 (3) To discriminate against any person in compensation or in other
15 terms or conditions of employment because of age, sex, marital status,
16 race, creed, color, national origin, or the presence of any sensory,
17 mental, or physical (~~handicap~~) disability or the use of a trained
18 guide dog or service dog by a disabled person: PROVIDED, That it shall
19 not be an unfair practice for an employer to segregate washrooms or
20 locker facilities on the basis of sex, or to base other terms and
21 conditions of employment on the sex of employees where the commission
22 by regulation or ruling in a particular instance has found the
23 employment practice to be appropriate for the practical realization of
24 equality of opportunity between the sexes.

25 (4) To print, or circulate, or cause to be printed or circulated
26 any statement, advertisement, or publication, or to use any form of
27 application for employment, or to make any inquiry in connection with
28 prospective employment, which expresses any limitation, specification,
29 or discrimination as to age, sex, marital status, race, creed, color,
30 national origin, or the presence of any sensory, mental, or physical
31 (~~handicap~~) disability or the use of a trained guide dog or service
32 dog by a disabled person, or any intent to make any such limitation,
33 specification, or discrimination, unless based upon a bona fide
34 occupational qualification: PROVIDED, Nothing contained herein shall
35 prohibit advertising in a foreign language.

36 **Sec. 13.** RCW 49.60.190 and 1985 c 185 s 17 are each amended to
37 read as follows:

38 It is an unfair practice for any labor union or labor organization:

1 (1) To deny membership and full membership rights and privileges to
2 any person because of age, sex, marital status, race, creed, color,
3 national origin, or the presence of any sensory, mental, or physical
4 (~~handicap~~) disability or the use of a trained guide dog or service
5 dog by a disabled person.

6 (2) To expel from membership any person because of age, sex,
7 marital status, race, creed, color, national origin, or the presence of
8 any sensory, mental, or physical (~~handicap~~) disability or the use of
9 a trained guide dog or service dog by a disabled person.

10 (3) To discriminate against any member, employer, employee, or
11 other person to whom a duty of representation is owed because of age,
12 sex, marital status, race, creed, color, national origin, or the
13 presence of any sensory, mental, or physical (~~handicap~~) disability or
14 the use of a trained guide dog or service dog by a disabled person.

15 **Sec. 14.** RCW 49.60.200 and 1973 1st ex.s. c 214 s 9 are each
16 amended to read as follows:

17 It is an unfair practice for any employment agency to fail or
18 refuse to classify properly or refer for employment, or otherwise to
19 discriminate against, an individual because of age, sex, marital
20 status, race, creed, color, national origin, or the presence of any
21 sensory, mental, or physical (~~handicap~~) disability or the use of a
22 trained guide dog or service dog by a disabled person, or to print or
23 circulate, or cause to be printed or circulated any statement,
24 advertisement, or publication, or to use any form of application for
25 employment, or to make any inquiry in connection with prospective
26 employment, which expresses any limitation, specification or
27 discrimination as to age, sex, race, creed, color, or national origin,
28 or the presence of any sensory, mental, or physical (~~handicap~~)
29 disability or the use of a trained guide dog or service dog by a
30 disabled person, or any intent to make any such limitation,
31 specification, or discrimination, unless based upon a bona fide
32 occupational qualification: PROVIDED, Nothing contained herein shall
33 prohibit advertising in a foreign language.

34 **Sec. 15.** RCW 49.60.205 and 1985 c 185 s 28 are each amended to
35 read as follows:

36 No person shall be considered to have committed an unfair practice
37 on the basis of age discrimination unless the practice (~~discriminates~~

1 against a person between the age of forty and seventy years and))
2 violates RCW 49.44.090. It is a defense to any complaint of an unfair
3 practice of age discrimination that the practice does not violate RCW
4 49.44.090.

5 **Sec. 16.** RCW 49.60.215 and 1985 c 203 s 1 and 1985 c 90 s 6 are
6 each reenacted and amended to read as follows:

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

25 **Sec. 17.** RCW 49.60.222 and 1989 c 61 s 1 are each amended to read
26 as follows:

27 It is an unfair practice for any person, whether acting for
28 himself, herself, or another, because of sex, marital status, race,
29 creed, color, national origin, the presence of any sensory, mental, or
30 physical ((handicap)) disability, or the use of a trained guide dog or
31 service dog by a ((blind, deaf, or physically)) disabled person:

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

33 (2) To discriminate against a person in the terms, conditions, or
34 privileges of a real estate transaction or in the furnishing of
35 facilities or services in connection therewith;

36 (3) To refuse to receive or to fail to transmit a bona fide offer
37 to engage in a real estate transaction from a person;

1 (4) To refuse to negotiate for a real estate transaction with a
2 person;

3 (5) To represent to a person that real property is not available
4 for inspection, sale, rental, or lease when in fact it is so available,
5 or to fail to bring a property listing to his or her attention, or to
6 refuse to permit ((him)) the person to inspect real property;

7 (6) To print, circulate, post, or mail, or cause to be so published
8 a statement, advertisement, or sign, or to use a form of application
9 for a real estate transaction, or to make a record or inquiry in
10 connection with a prospective real estate transaction, which indicates,
11 directly or indirectly, an intent to make a limitation, specification,
12 or discrimination with respect thereto;

13 (7) To offer, solicit, accept, use, or retain a listing of real
14 property with the understanding that a person may be discriminated
15 against in a real estate transaction or in the furnishing of facilities
16 or services in connection therewith;

17 (8) To expel a person from occupancy of real property;

18 (9) To discriminate in the course of negotiating, executing, or
19 financing a real estate transaction whether by mortgage, deed of trust,
20 contract, or other instrument imposing a lien or other security in real
21 property, or in negotiating or executing any item or service related
22 thereto including issuance of title insurance, mortgage insurance, loan
23 guarantee, or other aspect of the transaction. Nothing in this section
24 shall limit the effect of RCW 49.60.176 relating to unfair practices in
25 credit transactions; or

26 (10) To attempt to do any of the unfair practices defined in this
27 section.

28 Notwithstanding any other provision of law, it shall not be an
29 unfair practice or a denial of civil rights for any public or private
30 educational institution to separate the sexes or give preference to or
31 limit use of dormitories, residence halls, or other student housing to
32 persons of one sex or to make distinctions on the basis of marital or
33 family status.

34 This section shall not be construed to require structural changes,
35 modifications, or additions to make facilities accessible to a
36 ((handicapped)) disabled person except as otherwise required by law.
37 Nothing in this section affects the rights and responsibilities of
38 landlords and tenants pursuant to chapter 59.18 RCW.

1 **Sec. 18.** RCW 49.60.223 and 1979 c 127 s 9 are each amended to read
2 as follows:

3 It is an unfair practice for any person, for profit, to induce or
4 attempt to induce any person to sell or rent any real property by
5 representations regarding the entry or prospective entry into the
6 neighborhood of a person or persons of a particular race, creed, color,
7 national origin, sex, or with any sensory, mental, or physical
8 ((handicap)) disability and/or the use of a trained guide dog or
9 service dog by a disabled person.

10 ***Sec. 19.** RCW 49.60.224 and 1979 c 127 s 10 are each amended to
11 read as follows:

12 (1) *Every provision in a written instrument relating to real*
13 *property which purports to forbid or restrict the conveyance,*
14 *encumbrance, occupancy, or lease thereof to individuals of a specified*
15 *race, creed, color, national origin, sex, or with any sensory, mental,*
16 *or physical ((handicap)) disability, or the use of a trained guide dog*
17 *or service dog by a disabled person, and every condition, restriction,*
18 *or prohibition, including a right of entry or possibility of reverter,*
19 *which directly or indirectly limits the use or occupancy of real*
20 *property on the basis of race, creed, color, national origin, ((or))*
21 *sex, the presence of any sensory, mental, or physical ((handicap))*
22 *disability, or the use of a trained guide dog or service dog by a*
23 *disabled person is void.*

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

27 ***Sec. 19** was vetoed, see message at end of chapter.

28 **Sec. 20.** RCW 49.60.225 and 1985 c 185 s 19 are each amended to
29 read as follows:

30 When a determination has been made under RCW 49.60.250 that an
31 unfair practice involving real property has been committed, the
32 commission may, in addition to other relief authorized by RCW
33 49.60.250, award the complainant up to one thousand dollars for loss of
34 the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222
35 through 49.60.226, as now or hereafter amended, to be free from
36 discrimination in real property transactions because of sex, marital
37 status, race, creed, color, national origin, or the presence of any

1 sensory, mental, or physical (~~handicap~~) disability or the use of a
2 trained guide dog or service dog by a disabled person. Enforcement of
3 the order and appeal therefrom by the complainant or respondent shall
4 be made as provided in RCW 49.60.260 and 49.60.270.

5 **Sec. 21.** RCW 49.60.230 and 1985 c 185 s 21 are each amended to
6 read as follows:

7 (1) Who may file a complaint:

8 (~~(1)~~) (a) Any person claiming to be aggrieved by an alleged
9 unfair practice may, personally or by his or her attorney, make, sign,
10 and file with the commission a complaint in writing under oath or by
11 declaration. The complaint shall state the name (~~and address~~) of the
12 person alleged to have committed the unfair practice and the
13 particulars thereof, and contain such other information as may be
14 required by the commission.

15 (~~(2)~~) (b) Whenever it has reason to believe that any person has
16 been engaged or is engaging in an unfair practice, the commission may
17 issue a complaint.

18 (~~(3)~~) (c) Any employer or principal whose employees, or agents,
19 or any of them, refuse or threaten to refuse to comply with the
20 provisions of this chapter may file with the commission a written
21 complaint under oath or by declaration asking for assistance by
22 conciliation or other remedial action.

23 (2) Any complaint filed pursuant to this section must be so filed
24 within six months after the alleged act of discrimination.

25 **Sec. 22.** RCW 49.60.240 and 1985 c 185 s 22 are each amended to
26 read as follows:

27 After the filing of any complaint, the chairperson of the
28 commission shall refer it to the appropriate section of the
29 commission's staff for prompt investigation and ascertainment of the
30 facts alleged in the complaint. The investigation shall be limited to
31 the alleged facts contained in the complaint. The results of the
32 investigation shall be reduced to written findings of fact, and a
33 finding shall be made that there is or that there is not reasonable
34 cause for believing that an unfair practice has been or is being
35 committed. A copy of said findings shall be (~~furnished~~) provided to
36 the complainant and to the person named in such complaint, hereinafter
37 referred to as the respondent.

1 If the finding is made that there is reasonable cause for believing
2 that an unfair practice has been or is being committed, the
3 commission's staff shall immediately endeavor to eliminate the unfair
4 practice by conference, conciliation and persuasion.

5 If an agreement is reached for the elimination of such unfair
6 practice as a result of such conference, conciliation and persuasion,
7 the agreement shall be reduced to writing and signed by the respondent,
8 and an order shall be entered by the commission setting forth the terms
9 of said agreement. No order shall be entered by the commission at this
10 stage of the proceedings except upon such written agreement.

11 If no such agreement can be reached, a finding to that effect shall
12 be made and reduced to writing, with a copy thereof ((furnished))
13 provided to the complainant and the respondent.

14 **Sec. 23.** RCW 49.60.250 and 1992 c 118 s 5 are each amended to read
15 as follows:

16 (1) In case of failure to reach an agreement for the elimination of
17 such unfair practice, and upon the entry of findings to that effect,
18 the entire file, including the complaint and any and all findings made,
19 shall be certified to the chairperson of the commission. The
20 chairperson of the commission shall thereupon request the appointment
21 of an administrative law judge under Title 34 RCW to hear the complaint
22 and shall cause to be issued and served in the name of the commission
23 a written notice, together with a copy of the complaint, as the same
24 may have been amended, requiring the respondent to answer the charges
25 of the complaint at a hearing before the administrative law judge, at
26 a time and place to be specified in such notice.

27 (2) The place of any such hearing may be the office of the
28 commission or another place designated by it. The case in support of
29 the complaint shall be presented at the hearing by counsel for the
30 commission: PROVIDED, That the complainant may retain independent
31 counsel and submit testimony and be fully heard. No member or employee
32 of the commission who previously made the investigation or caused the
33 notice to be issued shall participate in the hearing except as a
34 witness, nor shall the member or employee participate in the
35 deliberations of the administrative law judge in such case. Any
36 endeavors or negotiations for conciliation shall not be received in
37 evidence.

1 (3) The respondent shall file a written answer to the complaint and
2 appear at the hearing in person or otherwise, with or without counsel,
3 and submit testimony and be fully heard. The respondent has the right
4 to cross-examine the complainant.

5 (4) The administrative law judge conducting any hearing may permit
6 reasonable amendment to any complaint or answer. Testimony taken at
7 the hearing shall be under oath and recorded.

8 (5) If, upon all the evidence, the administrative law judge finds
9 that the respondent has engaged in any unfair practice, the
10 administrative law judge shall state findings of fact and shall issue
11 and file with the commission and cause to be served on such respondent
12 an order requiring such respondent to cease and desist from such unfair
13 practice and to take such affirmative action, including, (but not
14 limited to) hiring, reinstatement or upgrading of employees, with or
15 without back pay, an admission or restoration to full membership rights
16 in any respondent organization, or to take such other action as, in the
17 judgment of the administrative law judge, will effectuate the purposes
18 of this chapter, including action that could be ordered by a court,
19 except that damages for humiliation and mental suffering shall not
20 exceed ((one)) ten thousand dollars, and including a requirement for
21 report of the matter on compliance.

22 (6) If a determination is made that retaliatory action, as defined
23 in RCW 42.40.050, has been taken against a whistleblower, as defined in
24 RCW 42.40.020, the administrative law judge may, in addition to any
25 other remedy, impose a civil penalty upon the retaliator of up to three
26 thousand dollars and issue an order to the state employer to suspend
27 the retaliator for up to thirty days without pay. At a minimum, the
28 administrative law judge shall require that a letter of reprimand be
29 placed in the retaliator's personnel file. All penalties recovered
30 shall be paid into the state treasury and credited to the general fund.

31 (7) The final order of the administrative law judge shall include
32 a notice to the parties of the right to obtain judicial review of the
33 order by appeal in accordance with the provisions of RCW 34.05.510
34 through 34.05.598, and that such appeal must be served and filed within
35 thirty days after the service of the order on the parties.

36 (8) If, upon all the evidence, the administrative law judge finds
37 that the respondent has not engaged in any alleged unfair practice, the
38 administrative law judge shall state findings of fact and shall
39 similarly issue and file an order dismissing the complaint.

1 (9) An order dismissing a complaint may include an award of
2 reasonable attorneys' fees in favor of the respondent if the
3 administrative law judge concludes that the complaint was frivolous,
4 unreasonable, or groundless.

5 (10) The commission shall establish rules of practice to govern,
6 expedite, and effectuate the foregoing procedure.

7 **Sec. 24.** RCW 49.44.090 and 1985 c 185 s 30 are each amended to
8 read as follows:

9 It shall be an unfair practice:

10 (1) For an employer or licensing agency, because an individual is
11 ~~((between the ages of))~~ forty ((and seventy)) years of age or older, to
12 refuse to hire or employ or license or to bar or to terminate from
13 employment such individual, or to discriminate against such individual
14 in promotion, compensation or in terms, conditions or privileges of
15 employment: PROVIDED, That employers or licensing agencies may
16 establish reasonable minimum and/or maximum age limits with respect to
17 candidates for positions of employment, which positions are of such a
18 nature as to require extraordinary physical effort, endurance,
19 condition or training, subject to the approval of the executive
20 ~~((secretary))~~ director of the Washington state human rights commission
21 or the director of labor and industries through the division of
22 industrial relations.

23 (2) For any employer, licensing agency or employment agency to
24 print or circulate or cause to be printed or circulated any statement,
25 advertisement, or publication, or to use any form of application for
26 employment or to make any inquiry in connection with prospective
27 employment, which expresses any limitation, specification or
28 discrimination respecting individuals ~~((between the ages of))~~ forty
29 ~~((and seventy))~~ years of age or older: PROVIDED, That nothing herein
30 shall forbid a requirement of disclosure of birth date upon any form of
31 application for employment or by the production of a birth certificate
32 or other sufficient evidence of the applicant's true age after an
33 employee is hired.

34 Nothing contained in this section or in RCW 49.60.180 as to age
35 shall be construed to prevent the termination of the employment of any
36 person who is physically unable to perform his or her duties or to
37 affect the retirement policy or system of any employer where such
38 policy or system is not merely a subterfuge to evade the purposes of

1 this section; nor shall anything in this section or in RCW 49.60.180 be
2 deemed to preclude the varying of insurance coverages according to an
3 employee's age; nor shall this section be construed as applying to any
4 state, county, or city law enforcement agencies, or as superseding any
5 law fixing or authorizing the establishment of reasonable minimum or
6 maximum age limits with respect to candidates for certain positions in
7 public employment which are of such a nature as to require
8 extraordinary physical effort, or which for other reasons warrant
9 consideration of age factors.

10 **Sec. 25.** RCW 70.124.060 and 1981 c 174 s 5 are each amended to
11 read as follows:

12 (1) A person other than a person alleged to have committed the
13 abuse or neglect participating in good faith in the making of a report
14 pursuant to this chapter, or testifying as to alleged patient abuse or
15 neglect in a judicial proceeding, shall in so doing be immune from any
16 liability, civil or criminal, arising out of such reporting or
17 testifying under any law of this state or its political subdivisions,
18 and if such person is an employee of a nursing home or state hospital
19 it shall be an unfair practice under chapter 49.60 RCW for the employer
20 to (~~dismiss said~~) discharge, expel, or otherwise discriminate against
21 the employee for such reporting activity.

22 (2) Conduct conforming with the reporting requirements of this
23 chapter shall not be deemed a violation of the confidential
24 communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110.
25 Nothing in this chapter shall be construed as to supersede or abridge
26 remedies provided in chapter 4.92 RCW.

27 NEW SECTION. **Sec. 26.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

Passed the Senate April 25, 1993.

Passed the House April 24, 1993.

Approved by the Governor May 18, 1993, with the exception of
certain items which were vetoed.

Filed in Office of Secretary of State May 18, 1993.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 5 and
3 19, Senate Bill No. 5474, entitled:

4 "AN ACT Relating to discrimination;"

5 Senate Bill No. 5474 strengthens the penalties available to the
6 Human Rights Commission for civil rights violations. I strongly
7 support the bill's direction in this, as well as a number of technical
8 clean up provisions. However, section 5 of the bill would
9 unnecessarily amend the definition of disability in Chapter 49.60 RCW,
10 the state Law Against Discrimination. The determination of
11 disabilities under current law can be examined by the Commission on a
12 case by case basis.

13 Section 19 of the bill amends RCW 49.60.224. This same section of
14 law is amended to include the changes contained in this bill in section
15 8 of House Bill No. 1476 which I have already signed. Therefore,
16 section 19 is unnecessary.

17 For these reasons, I have vetoed sections 5 and 19 of Senate Bill
18 No. 5474.

19 With the exception of sections 5 and 19, Senate Bill No. 5474 is
20 approved."