
SUBSTITUTE HOUSE BILL 2822

State of Washington

65th Legislature

2018 Regular Session

By House Judiciary (originally sponsored by Representatives Steele, McBride, Muri, Johnson, Caldier, Valdez, Eslick, and Gregerson)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to the definition and misrepresentation of
2 service animals; amending RCW 49.60.215 and 7.80.120; reenacting and
3 amending RCW 49.60.040; adding a new section to chapter 49.60 RCW;
4 creating a new section; repealing RCW 49.60.218; prescribing
5 penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature declares that service
8 animals that are properly trained to assist persons with disabilities
9 play a vital role in establishing independence for such persons.
10 There are an increasing number of occurrences where people
11 intentionally or mistakenly represent their pet, therapy animal, or
12 emotional support animal to be a service animal and attempt to bring
13 the animal into a place that it would otherwise not be allowed to
14 enter. Federal and state laws require places of public accommodation,
15 including food establishments, to allow an animal that is presented
16 as a service animal into a place of public accommodation; these same
17 places of public accommodation face a dilemma when someone enters the
18 premises and intentionally misrepresents his or her animal as a
19 service animal. The legislature finds that the misrepresentation of
20 an animal as a service animal trained to perform specific work or
21 tasks constitutes a disservice both to persons who rely on the use of

1 legitimate service animals, as well as places of public accommodation
2 and their patrons. The purpose of this act is to penalize the
3 intentional misrepresentation of a service animal, which
4 delegitimizes the genuine need for the use of service animals and
5 makes it harder for persons with disabilities to gain unquestioned
6 acceptance of their legitimate, properly trained, and essential
7 service animals.

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

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

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

16 (2) "Any place of public resort, accommodation, assemblage, or
17 amusement" includes, but is not limited to, any place, licensed or
18 unlicensed, kept for gain, hire, or reward, or where charges are made
19 for admission, service, occupancy, or use of any property or
20 facilities, whether conducted for the entertainment, housing, or
21 lodging of transient guests, or for the benefit, use, or
22 accommodation of those seeking health, recreation, or rest, or for
23 the burial or other disposition of human remains, or for the sale of
24 goods, merchandise, services, or personal property, or for the
25 rendering of personal services, or for public conveyance or
26 transportation on land, water, or in the air, including the stations
27 and terminals thereof and the garaging of vehicles, or where food or
28 beverages of any kind are sold for consumption on the premises, or
29 where public amusement, entertainment, sports, or recreation of any
30 kind is offered with or without charge, or where medical service or
31 care is made available, or where the public gathers, congregates, or
32 assembles for amusement, recreation, or public purposes, or public
33 halls, public elevators, and public washrooms of buildings and
34 structures occupied by two or more tenants, or by the owner and one
35 or more tenants, or any public library or educational institution, or
36 schools of special instruction, or nursery schools, or day care
37 centers or children's camps: PROVIDED, That nothing contained in this
38 definition shall be construed to include or apply to any institute,
39 bona fide club, or place of accommodation, which is by its nature

1 distinctly private, including fraternal organizations, though where
2 public use is permitted that use shall be covered by this chapter;
3 nor shall anything contained in this definition apply to any
4 educational facility, columbarium, crematory, mausoleum, or cemetery
5 operated or maintained by a bona fide religious or sectarian
6 institution.

7 (3) "Commission" means the Washington state human rights
8 commission.

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

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

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

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

29 (i) Is medically cognizable or diagnosable; or

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

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

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

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

39 (i) Any physiological disorder, or condition, cosmetic
40 disfigurement, or anatomical loss affecting one or more of the

1 following body systems: Neurological, musculoskeletal, special sense
2 organs, respiratory, including speech organs, cardiovascular,
3 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
4 and endocrine; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (19) "Person" includes one or more individuals, partnerships,
37 associations, organizations, corporations, cooperatives, legal
38 representatives, trustees and receivers, or any group of persons; it
39 includes any owner, lessee, proprietor, manager, agent, or employee,
40 whether one or more natural persons; and further includes any

1 political or civil subdivisions of the state and any agency or
2 instrumentality of the state or of any political or civil subdivision
3 thereof.

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

7 (21) "Real estate transaction" includes the sale, appraisal,
8 brokering, exchange, purchase, rental, or lease of real property,
9 transacting or applying for a real estate loan, or the provision of
10 brokerage services.

11 (22) "Real property" includes buildings, structures, dwellings,
12 real estate, lands, tenements, leaseholds, interests in real estate
13 cooperatives, condominiums, and hereditaments, corporeal and
14 incorporeal, or any interest therein.

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

17 (24) "Service animal" means ~~((an animal))~~ any dog or miniature
18 horse, as discussed in section 4 of this act, that is individually
19 trained ((for the purpose of assisting or accommodating a sensory,
20 mental, or physical disability of a person with a disability)) to do
21 work or perform tasks for the benefit of an individual with a
22 disability, including a physical, sensory, psychiatric, intellectual,
23 or other mental disability. The work or tasks performed by the
24 service animal must be directly related to the individual's
25 disability. Examples of work or tasks include, but are not limited
26 to, assisting individuals who are blind or have low vision with
27 navigation and other tasks, alerting individuals who are deaf or hard
28 of hearing to the presence of people or sounds, providing nonviolent
29 protection or rescue work, pulling a wheelchair, assisting an
30 individual during a seizure, alerting individuals to the presence of
31 allergens, retrieving items such as medicine or the telephone,
32 providing physical support and assistance with balance and stability
33 to individuals with mobility disabilities, and helping persons with
34 psychiatric and neurological disabilities by preventing or
35 interrupting impulsive or destructive behaviors. The crime deterrent
36 effects of an animal's presence and the provision of emotional
37 support, well-being, comfort, or companionship do not constitute work
38 or tasks. This subsection does not apply to RCW 49.60.222 through
39 49.60.227 with respect to housing accommodations or real estate
40 transactions.

1 (25) "Sex" means gender.

2 (26) "Sexual orientation" means heterosexuality, homosexuality,
3 bisexuality, and gender expression or identity. As used in this
4 definition, "gender expression or identity" means having or being
5 perceived as having a gender identity, self-image, appearance,
6 behavior, or expression, whether or not that gender identity, self-
7 image, appearance, behavior, or expression is different from that
8 traditionally associated with the sex assigned to that person at
9 birth.

10 **Sec. 3.** RCW 49.60.215 and 2011 c 237 s 1 are each amended to
11 read as follows:

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

32 ~~((2) This section does not apply to food establishments, as
33 defined in RCW 49.60.218, with respect to the use of a trained dog
34 guide or service animal by a person with a disability. Food
35 establishments are subject to RCW 49.60.218 with respect to trained
36 dog guides and service animals.))~~

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.60
38 RCW to read as follows:

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

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

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

10 (2)(a) An enforcement officer as defined under RCW 7.80.040 may
11 investigate and enforce this section by making an inquiry of the
12 person accompanied by the animal in question and issuing a civil
13 infraction. Refusal to answer the questions allowable under (b) of
14 this subsection shall create a presumption that the animal is not a
15 service animal and the enforcement officer may issue a civil
16 infraction and require the person to remove the animal from the place
17 of public accommodation.

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

35 (3) A place of public accommodation shall make reasonable
36 modifications in policies, practices, or procedures to permit the use
37 of a miniature horse by an individual with a disability in accordance
38 with RCW 49.60.040(24) if the miniature horse has been individually
39 trained to do work or perform tasks for the benefit of the individual
40 with a disability. In determining whether reasonable modifications in

1 policies, practices, or procedures can be made to allow a miniature
2 horse into a facility, a place of public accommodation shall act in
3 accordance with all applicable laws and regulations.

4 **Sec. 5.** RCW 7.80.120 and 2013 c 278 s 3 are each amended to read
5 as follows:

6 (1) A person found to have committed a civil infraction shall be
7 assessed a monetary penalty.

8 (a) The maximum penalty and the default amount for a class 1
9 civil infraction shall be two hundred fifty dollars, not including
10 statutory assessments, except for an infraction of state law
11 involving (i) potentially dangerous litter as specified in RCW
12 70.93.060(4) or violent video or computer games under RCW 9.91.180,
13 in which case the maximum penalty and default amount is five hundred
14 dollars; or (ii) a person's refusal to submit to a test or tests
15 pursuant to RCW 79A.60.040 and 79A.60.700, in which case the maximum
16 penalty and default amount is one thousand dollars; or (iii) the
17 misrepresentation of service animals under section 4 of this act, in
18 which case the maximum penalty and default amount is five hundred
19 dollars;

20 (b) The maximum penalty and the default amount for a class 2
21 civil infraction shall be one hundred twenty-five dollars, not
22 including statutory assessments;

23 (c) The maximum penalty and the default amount for a class 3
24 civil infraction shall be fifty dollars, not including statutory
25 assessments; and

26 (d) The maximum penalty and the default amount for a class 4
27 civil infraction shall be twenty-five dollars, not including
28 statutory assessments.

29 (2) The supreme court shall prescribe by rule the conditions
30 under which local courts may exercise discretion in assessing fines
31 for civil infractions.

32 (3) Whenever a monetary penalty is imposed by a court under this
33 chapter it is immediately payable. If the person is unable to pay at
34 that time the court may grant an extension of the period in which the
35 penalty may be paid. If the penalty is not paid on or before the time
36 established for payment, the court may proceed to collect the penalty
37 in the same manner as other civil judgments and may notify the
38 prosecuting authority of the failure to pay.

1 (4) The court may also order a person found to have committed a
2 civil infraction to make restitution.

3 NEW SECTION. **Sec. 6.** RCW 49.60.218 (Use of dog guide or service
4 animal—Unfair practice—Definitions) and 2011 c 237 s 2 are each
5 repealed.

6 NEW SECTION. **Sec. 7.** This act takes effect January 1, 2019.

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