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**SUBSTITUTE SENATE BILL 5487**

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**State of Washington 66th Legislature 2019 Regular Session**

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

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

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

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

**Sec.**  RCW 49.60.040 and 2018 c 176 s 2 are each 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) "Basic activities of daily living" means self-care abilities such as bathing, body care, eating, locomotion, use of the toilet, personal hygiene, dressing, and transfer.

(4) "Caregiver" means a person who provides a person with disability assistance with basic activities of daily living and whose presence is required for a person with a disability to attend a public event or patronize a place of public resort, accommodation, assemblage, or amusement.

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

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

((~~(5)~~)) (7) "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)~~)) (8) "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)~~)) (9)(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, 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)~~)) (10) "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)~~)) (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) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

((~~(11)~~)) (13) "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.

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

((~~(13)~~)) (15) "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)~~)) (16) "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)~~)) (17) "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)~~)) (18) "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)~~)) (19) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

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

((~~(19)~~)) (21) "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)~~)) (22) "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)~~)) (23) "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.

((~~(22)~~)) (24) "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.

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

((~~(24)~~)) (26) "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.

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

((~~(26)~~)) (28) "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.

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

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

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

(b) The caregiver must supply essential help for basic activities of daily living as defined in RCW 49.60.040. The caregiver or the person with a disability must affirmatively make the request for complimentary admission and assert that the companion is a caregiver that performs essential help for basic activities of daily living in order to qualify for this protection.

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

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

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

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

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

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

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

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

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

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

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

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

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