H-0709.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1760**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**By** Representatives Barnard, Chapman, Graham, Walen, Sandlin, Eslick, Goodman, McClintock, Ybarra, Volz, Senn, Santos, Doglio, and Christian

AN ACT Relating to civil actions alleging violation of the right to be free from discrimination because of 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; amending RCW 49.60.030; and adding a new section to chapter 49.60 RCW.

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

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

With regard to any civil action under RCW 49.60.030(2) that alleges any place of public resort, accommodation, assemblage, or amusement that is operated by a private entity has a building, facility, or parking lot that violates this chapter by reason of discrimination because of 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:

(1)(a) Before filing such civil action, the aggrieved person or the person's attorney shall provide written notice with sufficient detail to allow the private entity to identify and cure the violation or comply with the law. If the private entity does not cure the violation or comply with the law within 30 days after receiving the notice, the aggrieved person may file the civil action. For the purposes of this subsection, "sufficient detail" means the name of the aggrieved person who encountered the barrier, the date when the barrier was encountered by the aggrieved person, and a description of the barrier that was encountered by the aggrieved person.

(b) If the private entity is required to obtain a building permit or other similar form of government approval to make the changes necessary to cure the violation or comply with the law and the private entity, within 30 days after receiving the notice required by (a) of this subsection, provides the aggrieved person or the person's attorney with a corrective action plan and submits the completed application for the building permit or other similar form of government approval to the appropriate governmental entity for a determination, the aggrieved person may not file the civil action for an additional 60 days from the date that the private entity provided the corrective action plan to the aggrieved person or the person's attorney. The time after the completed application for the building permit or other similar form of government approval is submitted to the governmental entity up until a final determination is provided to the private entity is tolled and is not included in calculating the additional 60 days, except that any delay that is caused by the private entity before the final determination is provided is not tolled. During the additional 60 days, the private entity must comply with the requirements of this chapter with respect to any new construction.

(2) When filing such civil action, an aggrieved person must file an affidavit, under penalty of perjury, that the aggrieved person has read the entire complaint, agrees with all of the allegations and facts contained in the complaint and, unless authorized by statute or rule, is not receiving and has not been promised anything of value in exchange for filing the civil action.

(3) An aggrieved person or the aggrieved person's attorney may not demand or collect money from the private entity before the end of the applicable time period under subsection (1) of this section but may state that the private entity may be civilly liable for a violation of this chapter.

(4) On the motion of any party, the court may stay such civil action to determine whether the person filing the civil action or the person's attorney is a vexatious litigant or to determine whether there are multiple civil actions that involve the same plaintiff and that should be consolidated consistent with the rules of civil procedure.

(5)(a) In addition to any sanction that the court may award to a party pursuant to any rule or law, the court may impose a sanction on a plaintiff or the plaintiff's attorney in such civil action if the court determines that such action, or a series of actions under this chapter, are brought for the primary purpose of obtaining a payment from the defendant due to the costs of defending the action in a court. When imposing a sanction, the court may consider the totality of the abusive litigation-related practices of the plaintiff and the plaintiff's attorney.

(b) If the court imposes a sanction pursuant to (a) of this subsection, the court may order a party to pay a part of the sanction to the commission and, if ordered, the parties must notify the commission of the court's order. The commission shall use these moneys to:

(i) Educate covered persons or entities about the person's or entity's obligations under this chapter with respect to the right to be free from discrimination because of 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; and

(ii) Award attorney fees to claimants who file a meritorious complaint with the commission and who resolve the complaint without litigation.

**Sec.**  RCW 49.60.030 and 2020 c 52 s 4 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged veteran or military status, sexual orientation, or 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 is recognized as and declared to be a civil right. This right shall include, but not be limited to:

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

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

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

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

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this ((~~subparagraph~~)) subsection (1)(e);

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, 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, or national origin, citizenship or immigration status, or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action, subject to section 1 of this act, in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

**--- END ---**