

HOUSE BILL REPORT

HB 1024

As Reported by House Committee On:

Judiciary

Appropriations Subcommittee on General Government

Title: An act relating to service animals.

Brief Description: Addressing service animals.

Sponsors: Representatives Moeller, Appleton, Ryu, Haigh, Cody and Upthegrove; by request of Human Rights Commission.

Brief History:

Committee Activity:

Judiciary: 1/16/13, 1/30/13 [DPS];

Appropriations Subcommittee on General Government: 2/23/13, 2/25/13 [DP2S(w/o sub JUDI)].

Brief Summary of Second Substitute Bill

- Aligns state law with the Federal Fair Housing Amendments Act of 1988 with respect to animals that assist persons with disabilities for purposes of reasonable accommodation in housing.
- Amends language to "the use of an animal that is necessary as a reasonable accommodation."
- Makes state law consistent with federal law.
- Authorizes the Human Rights Commission to adopt rules necessary to implement the act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Goodman, Jinkins, Kirby, Orwall and Roberts.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Hope, Klippert and Nealey.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Cece Clynch (786-7195).

Background:

Washington's Law Against Discrimination.

Under Washington's Law Against Discrimination (WLAD), it is an unfair practice to discriminate in a variety of transactions on the basis 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.

For purposes of most sections of the WLAD, except for "food establishments," "service animal" means an animal that is trained for the purpose of assisting or accommodating a sensory, mental, or physical disability of a person with a disability. (With respect to "food establishments," a "service animal" is defined as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, or a miniature horse that has been so trained.)

In real estate transactions under the WLAD, discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled specifically includes:

- a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;
- a refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled equal opportunity to use and enjoy a dwelling; or
- a failure to design and construct covered multifamily dwellings and premises in conformance with the federal Fair Housing Act (Fair Housing Act) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained dog guide or service animal.

Federal Fair Housing Act.

Unlike the WLAD, the Fair Housing Act does not use or define "service animal." Species other than dogs, with or without training, as well as animals that provide emotional support, have been recognized under the Fair Housing Act as necessary assistance animals under the "reasonable accommodation" provisions of the Fair Housing Act.

The Fair Housing Act provides that it is unlawful to discriminate:

- in the sale or rental of a dwelling to any buyer or renter because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling after the transaction, or any person associated with that buyer or renter; or

- against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a handicap of that person, or a person residing in or intending to reside in that dwelling after the transaction, or any person associated with the buyer or renter.

For purposes of the Fair Housing Act, discrimination specifically includes:

- a refusal to permit, at the expense of the handicapped person, reasonable modification of existing premises occupied or to be occupied by such person if those modifications may be necessary to afford full enjoyment of the premises, except that the landlord may, where it is reasonable, condition permission to modify upon the renter agreeing to restore the interior of the premises to the prior condition, reasonable wear and tear excepted;
- a refusal to make reasonable accommodation in rules, policies, practices, or services, when those accommodations may be necessary to afford an equal opportunity to use and enjoy a dwelling; or
- a failure to design and construct multifamily dwellings in accordance with the requirements of the Fair Housing Act.

Human Rights Commission.

The Human Rights Commission (HRC) is charged, under the WLAD, with formulating policies to effectuate the purposes of the WLAD. Complaints of discrimination under the WLAD may be filed with the HRC for investigation, elimination of any unfair practice by conference, conciliation, and persuasion, and administrative hearing. The HRC is specifically empowered to cooperate and act jointly or by division of labor with the federal government or other states to carry out the purposes of the WLAD, and to be reimbursed by such other agencies for its services.

Summary of Substitute Bill:

Findings are made that the WLAD provisions are in conflict with the Fair Housing Act with respect to animals that assist persons with disabilities in the context of housing. Legislative intent is expressed that the requirements of the federal law in this respect govern these animals for purposes of reasonable accommodation in housing.

The WLAD's general definition of "service animal" is amended to provide that it does not apply to unfair practices in real estate transactions. Specific provision is made in each of the four WLAD sections dealing with various aspects of real estate transactions that it is an unfair practice to discriminate on the basis of the use of animals that are necessary as a reasonable accommodation to assist, support, or provide services to persons with disabilities (not just those who are blind, deaf, or physically disabled) as provided under the federal Fair Housing Amendments Act of 1988 and implementing regulations, as they existed on the effective date of each section, or such subsequent date as may be provided by the HRC by rule, consistent with the purposes of each section.

It is also expressly noted in the general definition of "service animal" that this definition does not apply with respect to unfair practices in food establishments. The food establishment

section of the WLAD had been amended to this effect in a prior year but this change had not previously been noted in the general definition section.

A reference to "real estate broker or salesperson," as defined in a section of code that has been repealed, is updated to refer only to "broker" as that term is defined under the new section of code.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- adds a findings and intent section;
- rephrases the exception found in the general definition of "service animal" to specifically note two exceptions for: (1) real estate transactions; and (2) food establishments;
- removes amendatory language in the food establishment section of the original bill that specifically provided that the food establishment definition does not apply in real estate transactions; and
- rather than simply remove language referencing "service animals" from the real estate sections, as did the original bill, provides, in each WLAD real estate section, that it is an unfair practice to discriminate on the basis of the use of animals that are necessary as a reasonable accommodation to assist, support, or provide services to persons with disabilities as provided under the federal Fair Housing Amendments Act of 1988 and implementing regulations, as they existed on the effective date of each section, or such subsequent date as may be provided by the HRC by rule, consistent with the purposes of each section.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is request legislation from the HRC. The purpose is to align the state and federal statutes. Passage of this legislation would allow the HRC to contract with the United States Department of Housing and Urban Development (HUD) to investigate complaints of discrimination in real estate transactions. Under a HUD contract, the HRC would be paid \$2,600 per case plus an additional \$20,000 in administrative monies. These funds would provide significant financial support to the HRC. The genesis of the discrepancy between the state and federal laws regarding service animals can be traced back to a 2004 Court of Appeals case involving a dog named Spicy who detected its owner's migraine headaches. Following that case, in 2008 the HUD sent the HRC a letter saying that it could no longer allow the HRC to investigate dual filings where the complainant alleged a violation of both the state Law Against Discrimination and the Fair Housing Act. Instead, those cases had to

be referred back to the HUD which not only resulted in a loss of funds for the HRC but, also, it meant that state residents had to deal with the federal agency rather than the state agency. Most people would rather deal with the state agency. The difference between state and federal law in this area also causes confusion for everyone, including landlords who are following state law but must also comport with federal law. The All American Dogs Foundation has placed 19 dogs to date, helping veterans to regain their independence through the use of these dogs. Some of these veterans don't have physical disabilities, but they do have the need for these dogs to help them with disabilities such as traumatic brain injuries. Although these service animals may look like pets, they are providing service to veterans. It is anticipated that there will be more use of these animals as more and more veterans return from Iraq and Afghanistan. More and more animals are being used as service animals. These changes will make the situation simpler and clearer.

(With concerns) It is recognized that federal law controls here. A request has been made to the HRC for revisions, and it is understood that the HUD would have to approve any changes. It is in the best interest to have the state and federal laws in alignment but it would be best if federal and state law were identical.

(Opposed) Lawmakers should put themselves in the shoes of the landlord out there in Omak. This landlord has two applicants, one potential tenant who has a service animal that may cause problems and the other potential tenant about whom the landlord has no concerns. The current state law is not perfect but it works. This bill should be tabled and efforts made to try to reach an acceptable compromise. There is more at stake than just fees for the HRC. Consideration has been given to making the state and federal laws identical, but there is a certain ridiculousness to snakes and parrots as service animals. Market choice will be lost with changes to this law.

Persons Testifying: (In support) Representative Cody, co-sponsor; Sharon Ortiz, Washington State Human Rights Commission; Aaron McCarthy, All American Dogs Foundation; Toby Olson, Governor's Committee on Disabilities; and David Lord, Disabilities Rights Washington.

(With concerns) Joe Puckett, Washington Multi-family Housing Association.

(Opposed) Tim Seth, Washington Landlord Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 5 members: Representatives Hudgins, Chair; Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Parker, Ranking Minority Member; Buys, Chandler and Taylor.

Staff: Danielle Cruver (786-7157).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government Compared to Recommendation of Committee On Judiciary:

The Appropriations Subcommittee on General Government recommended the original bill be amended as follows:

- Add a section that finds that the existing state law is in conflict with the federal Fair Housing Amendments Act of 1988 with respect to animals that assist persons with disabilities for purposes of reasonable accommodation in housing and expresses intent to provide that the requirements of the federal law, as they existed on the effective date of the section, govern.
- Refers to unfair practices related to real estate transactions and "the use of an animal that is necessary as a reasonable accommodation" (rather than "animals needed because of a disability").
- Strikes language in current law regarding "use of a trained dog guide or service animal" consistent with other places in the bill in which identical language is stricken.
- Authorizes the Human Rights Commission to adopt rules necessary to implement the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The parties have met and come up with an amendment to the bill that would keep all parties happy. The Human Rights Commission (HRC) is okay with the changes proposed. This bill is not designed to determine what is "reasonable accommodation." The federal level would be more appropriate to make that determination. Veterans are subject to clinical trials and assistant animals are often suggested. Assistant animals are used for post-traumatic stress disorder and traumatic brain injury treatments. Veterans are urged to get a note from their doctor and tell landlords up front that they need to waive their policies to accommodate veterans with assistant animals.

(Opposed) The Washington State Landlord Association is against this bill. While they are sympathetic to the budget issues of the HRC, the laws regarding landlords are very complex. Clear language and definitions are needed. There are other tenants with allergies or who have been traumatized by police dogs and want to live someplace without pets.

Persons Testifying: (In support) Toby Olson, Governor's Commission on Disability Issues; Skip Dreps; and Sharon Ortiz, Washington State Human Rights Commission.

(Opposed) Tim Seth, Washington Landlord Association; Kyle Woodring, Rental Housing Association; and Chester Baldwin, Washington Apartment Association.

Persons Signed In To Testify But Not Testifying: None.