

**SB 6236 - H AMD 2154**

By Representative Irwin

WITHDRAWN 03/06/2020

1 On page 2, after line 6, insert the following:

2

3 "Sec. 2. RCW 49.60.030 and 2009 c 164 s 1 are each amended to  
4 read as follows:

5 (1) The right to be free from discrimination because of race,  
6 creed, color, national origin, sex, honorably discharged veteran or  
7 military status, sexual orientation, or the presence of any sensory,  
8 mental, or physical disability or the use of a trained dog guide or  
9 service animal by a person with a disability is recognized as and  
10 declared to be a civil right. This right shall include, but not be  
11 limited to:

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

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

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

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

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

27

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

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

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

29 (b) Noneconomic damages may be awarded only when based on an  
30 alleged specific diagnosed physical or psychiatric injury  
31 proximately resulting from the respondent's conduct.

32 (3) Except for any unfair practice committed by an employer  
33 against an employee or a prospective employee, or any unfair  
34 practice in a real estate transaction which is the basis for relief

1 specified in the amendments to RCW 49.60.225 contained in chapter  
2 69, Laws of 1993, any unfair practice prohibited by this chapter  
3 which is committed in the course of trade or commerce as defined in  
4 the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose  
5 of applying that chapter, a matter affecting the public interest, is  
6 not reasonable in relation to the development and preservation of  
7 business, and is an unfair or deceptive act in trade or commerce.

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9       **Sec. 3.** RCW 49.60.250 and 2008 c 266 s 8 are each amended to  
10 read as follows:

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

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

34

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

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

8 (5) If, upon all the evidence, the administrative law judge  
9 finds that the respondent has engaged in any unfair practice, the  
10 administrative law judge shall state findings of fact and shall  
11 issue and file with the commission and cause to be served on such  
12 respondent an order requiring such respondent to cease and desist  
13 from such unfair practice and to take such affirmative action,  
14 including, (but not limited to) hiring, reinstatement or upgrading  
15 of employees, with or without back pay, an admission or restoration  
16 to full membership rights in any respondent organization, or to take  
17 such other action as, in the judgment of the administrative law  
18 judge, will effectuate the purposes of this chapter, including  
19 action that could be ordered by a court, except that damages for  
20 humiliation and mental suffering shall not exceed twenty thousand  
21 dollars and noneconomic damages may be awarded only when based on an  
22 alleged specific diagnosed physical or psychiatric injury  
23 proximately resulting from the respondent's conduct, and including a  
24 requirement for report of the matter on compliance. Relief available  
25 for violations of RCW 49.60.222 through 49.60.224 shall be limited  
26 to the relief specified in RCW 49.60.225.

27 (6) If a determination is made that retaliatory action, as  
28 defined in RCW 42.40.050, has been taken against a whistleblower, as  
29 defined in RCW 42.40.020, the administrative law judge may, in  
30 addition to any other remedy, require restoration of benefits, back  
31 pay, and any increases in compensation that would have occurred,  
32 with interest; impose a civil penalty upon the retaliator of up to  
33 five thousand dollars; and issue an order to the state employer to  
34 suspend the retaliator for up to thirty days without pay. At a

1 minimum, the administrative law judge shall require that a letter of  
2 reprimand be placed in the retaliator's personnel file. No agency  
3 shall issue any nondisclosure order or policy, execute any  
4 nondisclosure agreement, or spend any funds requiring information  
5 that is public under the public records act, chapter 42.56 RCW, be  
6 kept confidential; except that nothing in this section shall affect  
7 any state or federal law requiring information be kept confidential.  
8 All penalties recovered shall be paid into the state treasury and  
9 credited to the general fund.

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

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

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

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

26 (11) Instead of filing with the commission, a complainant may  
27 pursue arbitration conducted by the American arbitration association  
28 or another arbitrator mutually agreed by the parties, with the cost  
29 of arbitration shared equally by the complainant and the respondent."  
30

31 Correct the title.

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EFFECT: Limits an award of noneconomic damages under the  
Washington Law Against Discrimination to claims based on the

allegation of a specific diagnosed physical or psychiatric injury proximately resulting from the respondent's conduct.

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