

SHB 2511 - S COMM AMD

By Committee on Labor & Commerce

ADOPTED AND ENGROSSED 3/5/20

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** Whereas there is increasing demand for
4 domestic service professions and domestic workers are often isolated
5 and vulnerable to exploitation, it is a priority for the legislature
6 to provide workers with clear rights and freedom from harassment and
7 protection from retaliation; and to make clear for hiring entities
8 which actions are prohibited in a domestic service employment
9 relationship.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires
12 otherwise.

13 (1) "Casual labor" refers to work that is irregular, uncertain,
14 and incidental in nature and duration and is different in nature from
15 the type of paid work in which the worker is customarily engaged in.

16 (2) "Challenging behavior" means behavior by a person receiving
17 services or a hiring entity who is the recipient of services from a
18 domestic worker that is specifically caused by or related to a
19 disability that manifests in a way that might be experienced by a
20 domestic worker as offensive or presenting a safety risk.

21 (3) "Discrimination" means employment discrimination prohibited
22 by chapter 49.60 RCW.

23 (4) "Domestic service" means household services for members of
24 households or their guests in private homes. This includes the
25 maintenance of private homes or their premises.

26 (5)(a) "Domestic worker" includes hourly and salaried employees
27 who are paid wages for their services and includes any worker who:

28 (i) Works for one or more hiring entity; and

29 (ii) Is an individual who works in residences as a nanny, house
30 cleaner, home care worker, cook, gardener, or household manager, or
31 for any domestic service purpose including but not limited to: Caring

1 for a child; providing support services for a person who is sick,
2 convalescing, elderly, or a person with a disability; providing
3 housekeeping or house cleaning services; cooking; providing food or
4 butler services; parking cars; cleaning laundry; gardening; or
5 working as a household manager.

6 (b) "Domestic worker" does not include:

7 (i) Persons who provide babysitting on a casual labor basis;

8 (ii) Any individual employed in casual labor in or about a
9 private home, unless performed in the course of the hiring entity's
10 trade, business, or profession;

11 (iii) Individual providers, as defined in RCW 74.39A.240;

12 (iv) Persons who perform house sitting, pet sitting, food
13 delivery services, and dog walking duties that do not involve
14 domestic service;

15 (v) An au pair participant who has been granted a J-1 visa for
16 participation in the federal department of state designated exchange
17 visitor program governed by 22 C.F.R. Sec. 62.31;

18 (vi) Persons who provide services to members of their own family
19 when:

20 (A) The family members have mutually agreed that care is provided
21 gratuitously;

22 (B) The person who provides services or supports does not provide
23 domestic services in the person's ordinary course of business;

24 (C) The family member providing services or supports has no
25 agreement or expectation of consistent and regular payment for any
26 services provided;

27 (D) The family member providing services or supports is doing so
28 less than fifteen hours a week; or

29 (E) The family member is providing services or supports that are
30 irregular, uncertain, and incidental in nature and duration or are
31 different in nature from the type of paid work in which the worker is
32 customarily engaged in.

33 (6) "Employ" includes to permit to work.

34 (7) "Family member" shall be liberally construed to include, but
35 not be limited to, a parent, child, sibling, aunt, uncle, cousin,
36 grandparent, grandchild, grandniece, or grandnephew, or such
37 relatives when related by marriage or any individual related by blood
38 or affinity whose close association with the individual is the
39 equivalent of a family relationship.

1 (8) "Hiring entity" means any employer, as defined in RCW
2 49.46.010(4), and in RCW 49.60.040(11), who employs a domestic
3 worker, as well as any individual, partnership, association,
4 corporation, business trust, or any combination thereof, which pays a
5 wage or pays wages for the services of a domestic worker. It includes
6 any such entity, person, or group of persons that provides
7 compensation directly or indirectly to a domestic worker for the
8 performance of domestic services and any such entity, person, or
9 persons acting directly or indirectly in the interest of the hiring
10 entity in relation to the domestic worker. "Hiring entity" does not
11 include a state agency or home care agency as defined in RCW
12 70.127.010 and licensed under chapter 70.127 RCW if the home care
13 agency receives funding through RCW 74.39A.310, any adult family home
14 licensed under chapter 70.128 RCW, an assisted living facility
15 licensed under chapter 18.20 RCW, an enhanced services facility
16 licensed under chapter 70.97 RCW, any other long-term care facility
17 licensed by the department of social and health services, or any
18 other person or entity providing services pursuant to chapter 71A.12
19 RCW.

20 (9) "Personal care services" are care services as defined in RCW
21 74.39A.009.

22 NEW SECTION. **Sec. 3.** (1) A hiring entity that employs a
23 domestic worker may not:

24 (a) Request that the domestic worker allow the hiring entity, on
25 either a mandatory or voluntary basis, to have possession of any
26 personal effects, including any legal documents, including forms of
27 identification, passports, or other immigration documents;

28 (b) Engage in any form of discrimination as defined in section
29 2(3) of this act or subject a domestic worker to a hostile work
30 environment within the meaning of chapter 49.60 RCW; a domestic
31 worker shall be entitled to all rights available under chapter 49.60
32 RCW. It shall not constitute discrimination or harassment only when:

33 (i) The alleged discrimination is a challenging behavior; or
34 (ii) A hiring entity who is receiving personal care services, or
35 who has lawful authority or guardianship over a child receiving
36 personal care services, exercises a gender preference in hiring;

37 (c) Take any adverse action against a domestic worker for their
38 exercise of rights under this chapter, which may include, but is not
39 limited to:

1 (i) Denying the use of any rights provided under this chapter;
2 (ii) Denying or delaying payment due under this chapter;
3 (iii) Terminating, suspending, demoting, or denying a promotion;
4 (iv) Reducing the number of work hours for which the domestic
5 worker is scheduled;
6 (v) Altering the domestic worker's preexisting work schedule;
7 (vi) Reducing the domestic worker's rate of pay; and
8 (vii) Threatening to take, or taking action, based upon the
9 immigration status of a domestic worker or a domestic worker's family
10 member;
11 (d) Monitor or record, through any means, the activities of the
12 domestic worker using a bathroom or similar facility, in the domestic
13 worker's private living quarters, or while the domestic worker is
14 engaged in personal activities associated with dressing or changing
15 clothes;
16 (e) Monitor, record, or interfere with the private communications
17 of a domestic worker;
18 (f) Communicate to a person exercising rights protected under
19 this chapter, directly or indirectly, the willingness or intent to
20 inform a government employee or contracted organization suspected
21 citizenship or immigration status of a domestic worker or a family
22 member to a federal, state, or local agency because the domestic
23 worker has exercised any right under this chapter;
24 (g) Require or request any written agreements that:
25 (i) Waive a domestic worker's rights under federal, state, or
26 local law; or
27 (ii) Contain noncompete agreements, nondisclosure agreements,
28 nondisparagement agreements that inhibit a domestic worker's claims
29 of their legal rights under this chapter, or noncompete agreements
30 that limit the ability of domestic workers to seek any other form of
31 domestic work postemployment.
32 (2) It shall be considered a rebuttable presumption of
33 retaliation if the employer or any other person takes an adverse
34 action against a domestic worker within ninety calendar days of the
35 domestic worker's exercise of rights protected under this chapter.
36 However, in the case of seasonal employment that ended before the
37 close of the ninety calendar day period, the presumption also applies
38 if the employer fails to rehire a former domestic worker at the next
39 opportunity for work in the same position. The employer may rebut the

1 presumption with clear and convincing evidence that the adverse
2 action was taken for a permissible purpose.

3 (3) Where subsection (1)(b)(i) of this section applies, prior to
4 offering the employment to a domestic worker or as soon as the hiring
5 entity learns of the information if the domestic worker is already
6 employed, the hiring entity should, when possible, disclose
7 information about any challenging behaviors and relevant behavioral
8 health needs of the individual being cared for as well as tools and
9 supports that may be available to the domestic worker. If there is an
10 authorized representative for the hiring entity receiving care, or an
11 overlapping employment relationship with the hiring entity receiving
12 care, this information must be disclosed in writing by the authorized
13 representative or the hiring entity not receiving care services. The
14 disclosure should be reviewed regularly and must be updated, as
15 necessary, by the hiring entity when any changes in behavior occur
16 that impact safety or provision of personal care services.

17 (4) All communication of the information in subsection (3) of
18 this section must be tailored to respect the privacy of the person
19 receiving services from the domestic worker in accordance with the
20 federal health insurance portability and accountability act of 1996.

21 (5) The exemptions under this section shall not be construed to
22 relieve a hiring entity of liability under this chapter nor shall a
23 domestic worker's agreement to initiate or continue the employment
24 relationship be construed as consent to workplace violence.

25 NEW SECTION. **Sec. 4.** Where more than one hiring entity has an
26 employment relationship with a domestic worker in connection with the
27 same work or where more than one hiring entity has an overlapping
28 employment relationship with a domestic worker, the hiring entities
29 are subject to liability as well as fines and penalties for
30 violations.

31 NEW SECTION. **Sec. 5.** Any standards or rights established by any
32 applicable federal, state, or local law or ordinance, or any rule or
33 regulation issued thereunder, which are more favorable to domestic
34 workers than the minimum standards and rights established by this
35 chapter, or any rule or regulation issued hereunder, shall not be
36 affected by this chapter and such other laws, or rules or
37 regulations, shall be in full force and effect and may be enforced as

1 provided by law. The remedies provided by this chapter are not
2 exclusive and are concurrent with any other remedy provided by law.

3 NEW SECTION. **Sec. 6.** The attorney general's office shall
4 develop and make available a model disclosure statement which
5 describes a hiring entity's obligations related to a domestic
6 worker's rights under this chapter, in at least eight of the most
7 commonly spoken languages in Washington state. The disclosure
8 statement must include notice about any state law, rule, or
9 regulation applicable to domestic workers and indicate that federal
10 or local ordinances, laws, rules, or regulations may also apply. The
11 model disclosure must also include a telephone number and an address
12 of the department of labor and industries to enable domestic workers
13 to obtain more information about their rights, obligations, and
14 enforcement.

15 NEW SECTION. **Sec. 7.** The attorney general's office shall
16 develop and make available a model written employment agreement,
17 which describes actions that are prohibited by a hiring entity and
18 domestic workers' rights under this act in at least eight of the most
19 commonly spoken languages.

20 NEW SECTION. **Sec. 8.** (1) A work group, and accompanying
21 subcommittees as appropriate, on domestic workers administered by the
22 attorney general's office is formed to make recommendations on:

23 (a) A structure for an ongoing domestic worker standards board,
24 including determining the authority and scope of the board. Such
25 authority and scope shall include, but are not limited to, training
26 on relevant labor laws, benefits, and protections; discrimination and
27 sexual harassment; workplace safety standards; requirements on tax
28 obligations; job skills and accreditation; fair scheduling practices;
29 scope of rights and benefits that may apply to independent
30 contractors; outreach, education, and enforcement practices to ensure
31 compliance with applicable labor standards and to provide effective
32 and updated information to both hiring entities and domestic workers;

33 (b) Methods to make state industrial insurance available to
34 domestic workers, including recommendations on legislative,
35 regulatory, or other changes that should be made to the way hiring
36 entities or domestic workers engage with the state industrial
37 insurance system;

1 (c) Methods to increase access for domestic workers to paid sick
2 leave under RCW 49.46.210 and paid family and medical leave under
3 Title 50A RCW;

4 (d) The role of intermediary nonprofit organizations that assist
5 or refer directly impacted domestic workers in increasing access of
6 domestic workers to industrial insurance and to paid sick leave and
7 paid family and medical leave;

8 (e) Wage and hour models for domestic work, including but not
9 limited to live-in care providers such as nannies and au pairs, and
10 independent contractors.

11 (2) The work group shall include at least one representative from
12 each of the following groups that reflects a balance in membership
13 and interests:

14 (a) Directly impacted domestic workers employed in private homes
15 including one domestic worker providing child care services as a
16 nanny, and one domestic worker providing another form of domestic
17 service outside of child care;

18 (b) One current or former au pair;

19 (c) Unions, work centers, or intermediary nonprofit organizations
20 that assist or refer such directly impacted workers;

21 (d) Hiring entities who directly employ single domestic workers
22 in private homes;

23 (e) An organization that educates and organizes household hiring
24 entities;

25 (f) At least two members of the department of labor and
26 industries with expertise in industrial insurance and wage and hour
27 laws and rules;

28 (g) One representative from the department of social and health
29 services;

30 (h) An organization representing the area agencies on aging;

31 (i) An organization representing retired persons;

32 (j) An organization representing persons with disabilities;

33 (k) An organization or agency representing au pairs;

34 (l) One representative from the governor's office; and

35 (m) One representative from the attorney general's office.

36 (3) Representatives shall be appointed by the governor by July 1,
37 2020.

38 (4) The work group shall report its findings and recommendations
39 to the governor's office, attorney general's office, and appropriate
40 committees of the legislature by April 1, 2021.

1 **Sec. 9.** RCW 49.60.040 and 2018 c 176 s 2 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

9 (2) "Any place of public resort, accommodation, assemblage, or
10 amusement" includes, but is not limited to, any place, licensed or
11 unlicensed, kept for gain, hire, or reward, or where charges are made
12 for admission, service, occupancy, or use of any property or
13 facilities, whether conducted for the entertainment, housing, or
14 lodging of transient guests, or for the benefit, use, or
15 accommodation of those seeking health, recreation, or rest, or for
16 the burial or other disposition of human remains, or for the sale of
17 goods, merchandise, services, or personal property, or for the
18 rendering of personal services, or for public conveyance or
19 transportation on land, water, or in the air, including the stations
20 and terminals thereof and the garaging of vehicles, or where food or
21 beverages of any kind are sold for consumption on the premises, or
22 where public amusement, entertainment, sports, or recreation of any
23 kind is offered with or without charge, or where medical service or
24 care is made available, or where the public gathers, congregates, or
25 assembles for amusement, recreation, or public purposes, or public
26 halls, public elevators, and public washrooms of buildings and
27 structures occupied by two or more tenants, or by the owner and one
28 or more tenants, or any public library or educational institution, or
29 schools of special instruction, or nursery schools, or day care
30 centers or children's camps: PROVIDED, That nothing contained in this
31 definition shall be construed to include or apply to any institute,
32 bona fide club, or place of accommodation, which is by its nature
33 distinctly private, including fraternal organizations, though where
34 public use is permitted that use shall be covered by this chapter;
35 nor shall anything contained in this definition apply to any
36 educational facility, columbarium, crematory, mausoleum, or cemetery
37 operated or maintained by a bona fide religious or sectarian
38 institution.

39 (3) "Commission" means the Washington state human rights
40 commission.

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

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

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

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

21 (i) Is medically cognizable or diagnosable; or

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

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

24 (b) A disability exists whether it is temporary or permanent,
25 common or uncommon, mitigated or unmitigated, or whether or not it
26 limits the ability to work generally or work at a particular job or
27 whether or not it limits any other activity within the scope of this
28 chapter.

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

31 (i) Any physiological disorder, or condition, cosmetic
32 disfigurement, or anatomical loss affecting one or more of the
33 following body systems: Neurological, musculoskeletal, special sense
34 organs, respiratory, including speech organs, cardiovascular,
35 reproductive, digestive, (~~genitor-urinary~~) genitourinary, hemic and
36 lymphatic, skin, and endocrine; or

37 (ii) Any mental, developmental, traumatic, or psychological
38 disorder, including but not limited to cognitive limitation, organic
39 brain syndrome, emotional or mental illness, and specific learning
40 disabilities.

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

4 (i) The impairment must have a substantially limiting effect upon
5 the individual's ability to perform his or her job, the individual's
6 ability to apply or be considered for a job, or the individual's
7 access to equal benefits, privileges, or terms or conditions of
8 employment; or

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

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

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

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

24 (10) "Employee" does not include any individual employed by his
25 or her parents, spouse, or child(~~(, or in the domestic service of any~~
26 ~~person))~~).

27 (11) "Employer" includes any person acting in the interest of an
28 employer, directly or indirectly, who employs eight or more
29 persons(~~(7)~~) and does not include any religious or sectarian
30 organization not organized for private profit. "Employer" also
31 includes a hiring entity who employs a domestic worker, as defined in
32 section 2 of this act, regardless of the number of employees the
33 hiring entity employs.

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

37 (13) "Families with children status" means one or more
38 individuals who have not attained the age of eighteen years being
39 domiciled with a parent or another person having legal custody of
40 such individual or individuals, or with the designee of such parent

1 or other person having such legal custody, with the written
2 permission of such parent or other person. Families with children
3 status also applies to any person who is pregnant or is in the
4 process of securing legal custody of any individual who has not
5 attained the age of eighteen years.

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

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

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

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

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

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

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

29 (19) "Person" includes one or more individuals, partnerships,
30 associations, organizations, corporations, cooperatives, legal
31 representatives, trustees and receivers, or any group of persons; it
32 includes any owner, lessee, proprietor, manager, agent, or employee,
33 whether one or more natural persons; and further includes any
34 political or civil subdivisions of the state and any agency or
35 instrumentality of the state or of any political or civil subdivision
36 thereof.

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

1 (21) "Real estate transaction" includes the sale, appraisal,
2 brokering, exchange, purchase, rental, or lease of real property,
3 transacting or applying for a real estate loan, or the provision of
4 brokerage services.

5 (22) "Real property" includes buildings, structures, dwellings,
6 real estate, lands, tenements, leaseholds, interests in real estate
7 cooperatives, condominiums, and hereditaments, corporeal and
8 incorporeal, or any interest therein.

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

11 (24) "Service animal" means any dog or miniature horse, as
12 discussed in RCW 49.60.214, that is individually trained to do work
13 or perform tasks for the benefit of an individual with a disability,
14 including a physical, sensory, psychiatric, intellectual, or other
15 mental disability. The work or tasks performed by the service animal
16 must be directly related to the individual's disability. Examples of
17 work or tasks include, but are not limited to, assisting individuals
18 who are blind or have low vision with navigation and other tasks,
19 alerting individuals who are deaf or hard of hearing to the presence
20 of people or sounds, providing nonviolent protection or rescue work,
21 pulling a wheelchair, assisting an individual during a seizure,
22 alerting individuals to the presence of allergens, retrieving items
23 such as medicine or the telephone, providing physical support and
24 assistance with balance and stability to individuals with mobility
25 disabilities, and helping persons with psychiatric and neurological
26 disabilities by preventing or interrupting impulsive or destructive
27 behaviors. The crime deterrent effects of an animal's presence and
28 the provision of emotional support, well-being, comfort, or
29 companionship do not constitute work or tasks. This subsection does
30 not apply to RCW 49.60.222 through 49.60.227 with respect to housing
31 accommodations or real estate transactions.

32 (25) "Sex" means gender.

33 (26) "Sexual orientation" means heterosexuality, homosexuality,
34 bisexuality, and gender expression or identity. As used in this
35 definition, "gender expression or identity" means having or being
36 perceived as having a gender identity, self-image, appearance,
37 behavior, or expression, whether or not that gender identity, self-
38 image, appearance, behavior, or expression is different from that
39 traditionally associated with the sex assigned to that person at
40 birth.

1 NEW SECTION. **Sec. 10.** This act may be known and cited as the
2 domestic worker protection act.

3 NEW SECTION. **Sec. 11.** Sections 1 through 8, 10, and 12 of this
4 act constitute a new chapter in Title 49 RCW.

5 NEW SECTION. **Sec. 12.** Sections 1 through 7, 9, and 10 of this
6 act take effect July 1, 2021."

SHB 2511 - S COMM AMD
By Committee on Labor & Commerce

ADOPTED 3/5/20

7 On page 1, line 2 of the title, after "workers;" strike the
8 remainder of the title and insert "amending RCW 49.60.040; adding a
9 new chapter to Title 49 RCW; prescribing penalties; and providing an
10 effective date."

--- END ---