

FINAL BILL REPORT

SB 6236

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Synopsis as Enacted

Brief Description: Concerning certain noneconomic damage waivers.

Sponsors: Senators Kuderer, Pedersen, Lovelett, Wellman and Hasegawa.

Senate Committee on Law & Justice
House Committee on Civil Rights & Judiciary

Background: The Washington Law Against Discrimination (WLAD), first adopted in 1949, establishes it is a civil right to be free from discrimination based on race; creed; color; national origin; families with children; sex; marital status; age; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a disabled person. This right applies to employment; places of public resort, accommodation, assemblage, or amusement; commerce; and real estate, credit, and insurance transactions.

In a civil lawsuit under WLAD, a plaintiff may allege discrimination and also claim the discriminatory action caused non-economic damages. Non-economic damages are defined in a different state law and mean subjective, non-monetary losses, including but not limited to, pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship.

In 2018, the Legislature amended WLAD to clarify that by requesting non-economic damages under WLAD, a claimant does not place their health at issue or waive any health care privilege. Exceptions are provided and are grammatically structured in state law as follows where a claimant:

- alleges a specific and diagnosable physical or psychiatric injury as a proximate cause of the respondents' conduct;
- relies on the records or testimony of a health care provider or expert witness to seek general damages; or
- alleges failure to accommodate a disability or alleges discrimination on the basis of a disability.

Any waiver under those three circumstances is limited to health care records and communications between the claimant and provider:

- created or occurring in a period beginning two years prior to the first alleged unlawful act and ending at the last date for which the claimant seeks damages; and

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- relating specifically to the diagnosable injury, to the health care provider on which the claimant relies, or the disability specifically at issue in the allegation.

The exceptions above are disjunctive, meaning each exception is a mutually exclusive alternative by which a health care privilege may be waived or have the claimant's health placed at issue.

Summary: Grammatical changes are made to the law. The exceptions are changed as follows:

- alleges a specific and diagnosed physical or psychiatric injury as a proximate cause of the respondents' conduct, and relies on the records or testimony of a health care provider or expert witness to seek general damages; or
- alleges failure to accommodate a disability or alleges discrimination on the basis of a disability.

The effect of the grammatical changes requires a conjunctive condition for the first and second exception before a health care privilege may be waived. Conjunctive means that both exceptions must exist before a health care privilege is waived. The disjunctive for the third exception is retained.

Diagnosable injuries is changed to diagnosed injuries. Using the term diagnosed in the past tense has the effect of limiting waivers of any health care privilege and potential discovery to past injuries.

Votes on Final Passage:

Senate	45	3
House	56	41

Effective: June 11, 2020