
SENATE BILL 5487

State of Washington

66th Legislature

2019 Regular Session

By Senators Padden, Kuderer, and Saldaña

Read first time 01/23/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to providing personal caregiver access in places
2 of public resort, accommodation, assemblage, or amusement; amending
3 RCW 49.60.040, 49.60.215, and 49.60.214; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes there are
6 instances where individuals with disabilities are excluded from
7 participating in activities or events in places of public resort,
8 accommodation, assemblage, or amusement. The legislature further
9 recognizes that an individual with a disability may require the use
10 of a personal caregiver or personal care attendant. In recognition of
11 the merits of the United States District Court for the Eastern
12 District of Pennsylvania's ruling in *Anderson v. Franklin Institute*,
13 185 F. Supp. 3d 628 (E.D. Pa. 2016), the legislature intends to
14 provide individuals with disabilities who use a personal caregiver or
15 personal care attendant with full and equal access to places of
16 public resort, accommodation, assemblage, or amusement.

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

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

1 (1) "Activities of daily living" includes basic activities of
2 daily living and instrumental activities of daily living.

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

7 (~~(2)~~) (3) "Any place of public resort, accommodation,
8 assemblage, or amusement" includes, but is not limited to, any place,
9 licensed or unlicensed, kept for gain, hire, or reward, or where
10 charges are made for admission, service, occupancy, or use of any
11 property or facilities, whether conducted for the entertainment,
12 housing, or lodging of transient guests, or for the benefit, use, or
13 accommodation of those seeking health, recreation, or rest, or for
14 the burial or other disposition of human remains, or for the sale of
15 goods, merchandise, services, or personal property, or for the
16 rendering of personal services, or for public conveyance or
17 transportation on land, water, or in the air, including the stations
18 and terminals thereof and the garaging of vehicles, or where food or
19 beverages of any kind are sold for consumption on the premises, or
20 where public amusement, entertainment, sports, or recreation of any
21 kind is offered with or without charge, or where medical service or
22 care is made available, or where the public gathers, congregates, or
23 assembles for amusement, recreation, or public purposes, or public
24 halls, public elevators, and public washrooms of buildings and
25 structures occupied by two or more tenants, or by the owner and one
26 or more tenants, or any public library or educational institution, or
27 schools of special instruction, or nursery schools, or day care
28 centers or children's camps: PROVIDED, That nothing contained in this
29 definition shall be construed to include or apply to any institute,
30 bona fide club, or place of accommodation, which is by its nature
31 distinctly private, including fraternal organizations, though where
32 public use is permitted that use shall be covered by this chapter;
33 nor shall anything contained in this definition apply to any
34 educational facility, columbarium, crematory, mausoleum, or cemetery
35 operated or maintained by a bona fide religious or sectarian
36 institution.

37 (~~(3)~~) (4) "Basic activities of daily living" means self-care
38 abilities such as bathing, body care, eating, locomotion, use of the
39 toilet, personal hygiene, dressing, and transfer.

1 (5) "Caregiver" means a person who provides a person with a
2 disability assistance with activities of daily living and whose
3 presence is required for a person with a disability to attend a
4 public event or patronize a place of public resort, accommodation,
5 assemblage, or amusement.

6 (6) "Commission" means the Washington state human rights
7 commission.

8 ~~((4))~~ (7) "Complainant" means the person who files a complaint
9 in a real estate transaction.

10 ~~((5))~~ (8) "Covered multifamily dwelling" means: (a) Buildings
11 consisting of four or more dwelling units if such buildings have one
12 or more elevators; and (b) ground floor dwelling units in other
13 buildings consisting of four or more dwelling units.

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

26 ~~((7))~~ (10)(a) "Disability" means the presence of a sensory,
27 mental, or physical impairment that:

28 (i) Is medically cognizable or diagnosable; or

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

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

31 (b) A disability exists whether it is temporary or permanent,
32 common or uncommon, mitigated or unmitigated, or whether or not it
33 limits the ability to work generally or work at a particular job or
34 whether or not it limits any other activity within the scope of this
35 chapter.

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

38 (i) Any physiological disorder, or condition, cosmetic
39 disfigurement, or anatomical loss affecting one or more of the
40 following body systems: Neurological, musculoskeletal, special sense

1 organs, respiratory, including speech organs, cardiovascular,
2 reproductive, digestive, (~~(genitor-urinary)~~) genitourinary, hemic and
3 lymphatic, skin, and endocrine; or

4 (ii) Any mental, developmental, traumatic, or psychological
5 disorder, including but not limited to cognitive limitation, organic
6 brain syndrome, emotional or mental illness, and specific learning
7 disabilities.

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

11 (i) The impairment must have a substantially limiting effect upon
12 the individual's ability to perform his or her job, the individual's
13 ability to apply or be considered for a job, or the individual's
14 access to equal benefits, privileges, or terms or conditions of
15 employment; or

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

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

23 (~~((8))~~) (11) "Dog guide" means a dog that is trained for the
24 purpose of guiding blind persons or a dog that is trained for the
25 purpose of assisting hearing impaired persons.

26 (~~((9))~~) (12) "Dwelling" means any building, structure, or portion
27 thereof that is occupied as, or designed or intended for occupancy
28 as, a residence by one or more families, and any vacant land that is
29 offered for sale or lease for the construction or location thereon of
30 any such building, structure, or portion thereof.

31 (~~((10))~~) (13) "Employee" does not include any individual employed
32 by his or her parents, spouse, or child, or in the domestic service
33 of any person.

34 (~~((11))~~) (14) "Employer" includes any person acting in the
35 interest of an employer, directly or indirectly, who employs eight or
36 more persons, and does not include any religious or sectarian
37 organization not organized for private profit.

38 (~~((12))~~) (15) "Employment agency" includes any person undertaking
39 with or without compensation to recruit, procure, refer, or place
40 employees for an employer.

1 (~~(13)~~) (16) "Families with children status" means one or more
2 individuals who have not attained the age of eighteen years being
3 domiciled with a parent or another person having legal custody of
4 such individual or individuals, or with the designee of such parent
5 or other person having such legal custody, with the written
6 permission of such parent or other person. Families with children
7 status also applies to any person who is pregnant or is in the
8 process of securing legal custody of any individual who has not
9 attained the age of eighteen years.

10 (~~(14)~~) (17) "Full enjoyment of" includes the right to purchase
11 any service, commodity, or article of personal property offered or
12 sold on, or by, any establishment to the public, and the admission of
13 any person to accommodations, advantages, facilities, or privileges
14 of any place of public resort, accommodation, assemblage, or
15 amusement, without acts directly or indirectly causing persons of any
16 particular race, creed, color, sex, sexual orientation, national
17 origin, or with any sensory, mental, or physical disability, or the
18 use of a trained dog guide or service animal by a person with a
19 disability, to be treated as not welcome, accepted, desired, or
20 solicited.

21 (~~(15)~~) (18) "Honorably discharged veteran or military status"
22 means a person who is:

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

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

27 (~~(16)~~) (19) "Instrumental activities of daily living" refers to
28 activities necessary for living independently in the community such
29 as shopping, housework, transportation, using the telephone, managing
30 finances, and managing medications.

31 (20) "Labor organization" includes any organization which exists
32 for the purpose, in whole or in part, of dealing with employers
33 concerning grievances or terms or conditions of employment, or for
34 other mutual aid or protection in connection with employment.

35 (~~(17)~~) (21) "Marital status" means the legal status of being
36 married, single, separated, divorced, or widowed.

37 (~~(18)~~) (22) "National origin" includes "ancestry."

38 (~~(19)~~) (23) "Person" includes one or more individuals,
39 partnerships, associations, organizations, corporations,
40 cooperatives, legal representatives, trustees and receivers, or any

1 group of persons; it includes any owner, lessee, proprietor, manager,
2 agent, or employee, whether one or more natural persons; and further
3 includes any political or civil subdivisions of the state and any
4 agency or instrumentality of the state or of any political or civil
5 subdivision thereof.

6 ~~((20))~~ (24) "Premises" means the interior or exterior spaces,
7 parts, components, or elements of a building, including individual
8 dwelling units and the public and common use areas of a building.

9 ~~((21))~~ (25) "Real estate transaction" includes the sale,
10 appraisal, brokering, exchange, purchase, rental, or lease of real
11 property, transacting or applying for a real estate loan, or the
12 provision of brokerage services.

13 ~~((22))~~ (26) "Real property" includes buildings, structures,
14 dwellings, real estate, lands, tenements, leaseholds, interests in
15 real estate cooperatives, condominiums, and hereditaments, corporeal
16 and incorporeal, or any interest therein.

17 ~~((23))~~ (27) "Respondent" means any person accused in a
18 complaint or amended complaint of an unfair practice in a real estate
19 transaction.

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

1 49.60.227 with respect to housing accommodations or real estate
2 transactions.

3 ~~((25))~~ (29) "Sex" means gender.

4 ~~((26))~~ (30) "Sexual orientation" means heterosexuality,
5 homosexuality, bisexuality, and gender expression or identity. As
6 used in this definition, "gender expression or identity" means having
7 or being perceived as having a gender identity, self-image,
8 appearance, behavior, or expression, whether or not that gender
9 identity, self-image, appearance, behavior, or expression is
10 different from that traditionally associated with the sex assigned to
11 that person at birth.

12 **Sec. 3.** RCW 49.60.215 and 2018 c 176 s 3 are each amended to
13 read as follows:

14 (1) It shall be an unfair practice for any person or the person's
15 agent or employee to commit an act which directly or indirectly
16 results in any distinction, restriction, or discrimination, or the
17 requiring of any person to pay a larger sum than the uniform rates
18 charged other persons, or the refusing or withholding from any person
19 the admission, patronage, custom, presence, frequenting, dwelling,
20 staying, or lodging in any place of public resort, accommodation,
21 assemblage, or amusement, except for conditions and limitations
22 established by law and applicable to all persons, regardless of race,
23 creed, color, national origin, sexual orientation, sex, honorably
24 discharged veteran or military status, status as a mother
25 breastfeeding her child, the presence of any sensory, mental, or
26 physical disability, or the use of a trained dog guide or service
27 animal by a person with a disability: PROVIDED, That this section
28 shall not be construed to require structural changes, modifications,
29 or additions to make any place accessible to a person with a
30 disability except as otherwise required by law: PROVIDED, That
31 behavior or actions constituting a risk to property or other persons
32 can be grounds for refusal and shall not constitute an unfair
33 practice.

34 (2)(a) Subject to the requirements of (b) of this subsection, it
35 is an unfair practice for a place of public resort, accommodation,
36 assemblage, or amusement that charges for admission, to deny
37 complimentary admission and one accompanying seat or removable
38 adjacent chair for one caregiver accompanying a person with a
39 disability who pays admission.

1 (b) The caregiver must supply essential help for activities of
2 daily living as it is defined in RCW 49.60.040. The caregiver or the
3 person with a disability must affirmatively make the request for
4 complimentary admission and assert that the companion is a caregiver
5 that performs essential help for activities of daily living in order
6 to qualify for this protection.

7 (c) An establishment may inquire into the nature of the services
8 provided by the caregiver, but not the nature of the person's
9 disability.

10 (d) An establishment may not maintain any additional purchase
11 restrictions that unnecessarily burden the enjoyment of the person
12 with a disability or his or her caregiver's access including, but not
13 limited to: Requiring a caregiver's admission ticket, pass,
14 authorization, or other instrument used to obtain admission, to be
15 picked up in person at the box office; requiring a caregiver to be
16 physically present when admission is purchased; requiring caregiver
17 admission be requested at the time the ticket purchase is made; or
18 prohibiting a caregiver from accessing establishment facilities or
19 attractions.

20 (e) This subsection (2) does not apply to establishments that
21 provide housing or lodging for transient guests.

22 **Sec. 4.** RCW 49.60.214 and 2018 c 176 s 4 are each amended to
23 read as follows:

24 (1) It shall be a civil infraction under chapter 7.80 RCW for any
25 person to misrepresent an animal as a service animal. A violation of
26 this section occurs when a person:

27 (a) Expressly or impliedly represents that an animal is a service
28 animal as defined in RCW 49.60.040 for the purpose of securing the
29 rights or privileges afforded disabled persons accompanied by service
30 animals set forth in state or federal law; and

31 (b) Knew or should have known that the animal in question did not
32 meet the definition of a service animal.

33 (2)(a) An enforcement officer as defined under RCW 7.80.040 may
34 investigate and enforce this section by making an inquiry of the
35 person accompanied by the animal in question and issuing a civil
36 infraction. Refusal to answer the questions allowable under (b) of
37 this subsection shall create a presumption that the animal is not a
38 service animal and the enforcement officer may issue a civil

1 infraction and require the person to remove the animal from the place
2 of public accommodation.

3 (b) An enforcement officer or place of public accommodation shall
4 not ask about the nature or extent of a person's disability, but may
5 make two inquiries to determine whether an animal qualifies as a
6 service animal. An enforcement officer or place of public
7 accommodation may ask if the animal is required because of a
8 disability and what work or task the animal has been trained to
9 perform. An enforcement officer or place of public accommodation
10 shall not require documentation, such as proof that the animal has
11 been certified, trained, or licensed as a service animal, or require
12 that the service animal demonstrate its task. Generally, an
13 enforcement officer or place of public accommodation may not make
14 these inquiries about a service animal when it is readily apparent
15 that an animal is trained to do work or perform tasks for a person
16 with a disability, such as a dog is observed guiding a person who is
17 blind or has low vision, pulling a person's wheelchair, or providing
18 assistance with stability or balance to a person with an observable
19 mobility disability.

20 (3) A place of public accommodation shall make reasonable
21 modifications in policies, practices, or procedures to permit the use
22 of a miniature horse by an individual with a disability in accordance
23 with the definition of a service animal under RCW 49.60.040(~~(24)~~),
24 if the miniature horse has been individually trained to do work or
25 perform tasks for the benefit of the individual with a disability. In
26 determining whether reasonable modifications in policies, practices,
27 or procedures can be made to allow a miniature horse into a facility,
28 a place of public accommodation shall act in accordance with all
29 applicable laws and regulations.

30 NEW SECTION. **Sec. 5.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

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