
HOUSE BILL 1766

State of Washington 61st Legislature 2009 Regular Session

By Representatives Ormsby, Darneille, Chase, Miloscia, Nelson, Green, Kagi, Kenney, Morrell, and Hasegawa

Read first time 01/28/09. Referred to Committee on Judiciary.

1 AN ACT Relating to discrimination based on lawful source of income;
2 amending RCW 49.60.030, 49.60.222, 49.60.223, 49.60.224, and 49.60.225;
3 and reenacting and amending RCW 49.60.040.

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

5 **Sec. 1.** RCW 49.60.030 and 2007 c 187 s 3 are each amended to read
6 as follows:

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

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

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

18 (c) The right to engage in real estate transactions without

1 discrimination, including discrimination against families with children
2 and discrimination against individuals due to lawful source of income;

3 (d) The right to engage in credit transactions without
4 discrimination;

5 (e) The right to engage in insurance transactions or transactions
6 with health maintenance organizations without discrimination:
7 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,
8 48.44.220, or 48.46.370 does not constitute an unfair practice for the
9 purposes of this subparagraph; and

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

27 (2) Any person deeming himself or herself injured by any act in
28 violation of this chapter shall have a civil action in a court of
29 competent jurisdiction to enjoin further violations, or to recover the
30 actual damages sustained by the person, or both, together with the cost
31 of suit including reasonable attorneys' fees or any other appropriate
32 remedy authorized by this chapter or the United States Civil Rights Act
33 of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988
34 (42 U.S.C. Sec. 3601 et seq.).

35 (3) Except for any unfair practice committed by an employer against
36 an employee or a prospective employee, or any unfair practice in a real
37 estate transaction which is the basis for relief specified in the
38 amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any

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

7 **Sec. 2.** RCW 49.60.040 and 2007 c 317 s 2 and 2007 c 187 s 4 are
8 each reenacted and amended to read as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

11 (1) "Person" includes one or more individuals, partnerships,
12 associations, organizations, corporations, cooperatives, legal
13 representatives, trustees and receivers, or any group of persons; it
14 includes any owner, lessee, proprietor, manager, agent, or employee,
15 whether one or more natural persons; and further includes any political
16 or civil subdivisions of the state and any agency or instrumentality of
17 the state or of any political or civil subdivision thereof.

18 (2) "Commission" means the Washington state human rights
19 commission.

20 (3) "Employer" includes any person acting in the interest of an
21 employer, directly or indirectly, who employs eight or more persons,
22 and does not include any religious or sectarian organization not
23 organized for private profit.

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

27 (5) "Labor organization" includes any organization which exists for
28 the purpose, in whole or in part, of dealing with employers concerning
29 grievances or terms or conditions of employment, or for other mutual
30 aid or protection in connection with employment.

31 (6) "Employment agency" includes any person undertaking with or
32 without compensation to recruit, procure, refer, or place employees for
33 an employer.

34 (7) "Marital status" means the legal status of being married,
35 single, separated, divorced, or widowed.

36 (8) "National origin" includes "ancestry".

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

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

1 mausoleum, or cemetery operated or maintained by a bona fide religious
2 or sectarian institution.

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

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

11 (13) "Dwelling" means any building, structure, or portion thereof
12 that is occupied as, or designed or intended for occupancy as, a
13 residence by one or more families, and any vacant land that is offered
14 for sale or lease for the construction or location thereon of any such
15 building, structure, or portion thereof.

16 (14) "Sex" means gender.

17 (15) "Sexual orientation" means heterosexuality, homosexuality,
18 bisexuality, and gender expression or identity. As used in this
19 definition, "gender expression or identity" means having or being
20 perceived as having a gender identity, self-image, appearance,
21 behavior, or expression, whether or not that gender identity, self-
22 image, appearance, behavior, or expression is different from that
23 traditionally associated with the sex assigned to that person at birth.

24 (16) "Aggrieved person" means any person who: (a) Claims to have
25 been injured by an unfair practice in a real estate transaction; or (b)
26 believes that he or she will be injured by an unfair practice in a real
27 estate transaction that is about to occur.

28 (17) "Complainant" means the person who files a complaint in a real
29 estate transaction.

30 (18) "Respondent" means any person accused in a complaint or
31 amended complaint of an unfair practice in a real estate transaction.

32 (19) "Credit transaction" includes any open or closed end credit
33 transaction, whether in the nature of a loan, retail installment
34 transaction, credit card issue or charge, or otherwise, and whether for
35 personal or for business purposes, in which a service, finance, or
36 interest charge is imposed, or which provides for repayment in
37 scheduled payments, when such credit is extended in the regular course
38 of any trade or commerce, including but not limited to transactions by

1 banks, savings and loan associations or other financial lending
2 institutions of whatever nature, stock brokers, or by a merchant or
3 mercantile establishment which as part of its ordinary business permits
4 or provides that payment for purchases of property or service therefrom
5 may be deferred.

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

14 (21) "Covered multifamily dwelling" means: (a) Buildings
15 consisting of four or more dwelling units if such buildings have one or
16 more elevators; and (b) ground floor dwelling units in other buildings
17 consisting of four or more dwelling units.

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

21 (23) "Dog guide" means a dog that is trained for the purpose of
22 guiding blind persons or a dog that is trained for the purpose of
23 assisting hearing impaired persons.

24 (24) "Service animal" means an animal that is trained for the
25 purpose of assisting or accommodating a sensory, mental, or physical
26 disability of a person with a disability.

27 (25)(a) "Disability" means the presence of a sensory, mental, or
28 physical impairment that:

- 29 (i) Is medically cognizable or diagnosable; or
- 30 (ii) Exists as a record or history; or
- 31 (iii) Is perceived to exist whether or not it exists in fact.

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

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

1 (i) Any physiological disorder, or condition, cosmetic
2 disfigurement, or anatomical loss affecting one or more of the
3 following body systems: Neurological, musculoskeletal, special sense
4 organs, respiratory, including speech organs, cardiovascular,
5 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
6 and endocrine; or

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

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

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

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

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

25 (26) "Honorably discharged veteran or military status" means a
26 person who is:

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

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

31 (27) "Lawful source of income" means verifiable legal income,
32 including income derived from employment, social security, supplemental
33 security income, other retirement programs, child support, alimony, and
34 any federal, state, local, or nonprofit-administered benefit or subsidy
35 programs, including housing assistance, public assistance, and general
36 assistance programs.

1 **Sec. 3.** RCW 49.60.222 and 2007 c 187 s 13 are each amended to read
2 as follows:

3 (1) It is an unfair practice for any person, whether acting for
4 himself, herself, or another, because of sex, marital status, sexual
5 orientation, race, creed, color, national origin, lawful source of
6 income, families with children status, honorably discharged veteran or
7 military status, the presence of any sensory, mental, or physical
8 disability, or the use of a trained dog guide or service animal by a
9 person with a disability:

10 (a) To refuse to engage in a real estate transaction with a person;

11 (b) To discriminate against a person in the terms, conditions, or
12 privileges of a real estate transaction or in the furnishing of
13 facilities or services in connection therewith;

14 (c) To refuse to receive or to fail to transmit a bona fide offer
15 to engage in a real estate transaction from a person;

16 (d) To refuse to negotiate for a real estate transaction with a
17 person;

18 (e) To represent to a person that real property is not available
19 for inspection, sale, rental, or lease when in fact it is so available,
20 or to fail to bring a property listing to his or her attention, or to
21 refuse to permit the person to inspect real property;

22 (f) To discriminate in the sale or rental, or to otherwise make
23 unavailable or deny a dwelling, to any person; or to a person residing
24 in or intending to reside in that dwelling after it is sold, rented, or
25 made available; or to any person associated with the person buying or
26 renting;

27 (g) To make, print, circulate, post, or mail, or cause to be so
28 made or published a statement, advertisement, or sign, or to use a form
29 of application for a real estate transaction, or to make a record or
30 inquiry in connection with a prospective real estate transaction, which
31 indicates, directly or indirectly, an intent to make a limitation,
32 specification, or discrimination with respect thereto;

33 (h) To offer, solicit, accept, use, or retain a listing of real
34 property with the understanding that a person may be discriminated
35 against in a real estate transaction or in the furnishing of facilities
36 or services in connection therewith;

37 (i) To expel a person from occupancy of real property;

1 (j) To discriminate in the course of negotiating, executing, or
2 financing a real estate transaction whether by mortgage, deed of trust,
3 contract, or other instrument imposing a lien or other security in real
4 property, or in negotiating or executing any item or service related
5 thereto including issuance of title insurance, mortgage insurance, loan
6 guarantee, or other aspect of the transaction. Nothing in this section
7 shall limit the effect of RCW 49.60.176 relating to unfair practices in
8 credit transactions; or

9 (k) To attempt to do any of the unfair practices defined in this
10 section.

11 (2) For the purposes of this chapter discrimination based on the
12 presence of any sensory, mental, or physical disability or the use of
13 a trained dog guide or service animal by a person who is blind, deaf,
14 or physically disabled includes:

15 (a) A refusal to permit, at the expense of the person with a
16 disability, reasonable modifications of existing premises occupied or
17 to be occupied by such person if such modifications may be necessary to
18 afford such person full enjoyment of the dwelling, except that, in the
19 case of a rental, the landlord may, where it is reasonable to do so,
20 condition permission for a modification on the renter agreeing to
21 restore the interior of the dwelling to the condition that existed
22 before the modification, reasonable wear and tear excepted;

23 (b) To refuse to make reasonable accommodation in rules, policies,
24 practices, or services when such accommodations may be necessary to
25 afford a person with the presence of any sensory, mental, or physical
26 disability and/or the use of a trained dog guide or service animal by
27 a person who is blind, deaf, or physically disabled equal opportunity
28 to use and enjoy a dwelling; or

29 (c) To fail to design and construct covered multifamily dwellings
30 and premises in conformance with the federal fair housing amendments
31 act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws
32 or regulations pertaining to access by persons with any sensory,
33 mental, or physical disability or use of a trained dog guide or service
34 animal. Whenever the requirements of applicable laws or regulations
35 differ, the requirements which require greater accessibility for
36 persons with any sensory, mental, or physical disability shall govern.

37 Nothing in (a) or (b) of this subsection shall apply to: (i) A
38 single-family house rented or leased by the owner if the owner does not

1 own or have an interest in the proceeds of the rental or lease of more
2 than three such single-family houses at one time, the rental or lease
3 occurred without the use of a real estate broker or salesperson, as
4 defined in RCW ((~~18.85.010~~)) 18.85.011, and the rental or lease
5 occurred without the publication, posting, or mailing of any
6 advertisement, sign, or statement in violation of subsection (1)(g) of
7 this section; or (ii) rooms or units in dwellings containing living
8 quarters occupied or intended to be occupied by no more than four
9 families living independently of each other if the owner maintains and
10 occupies one of the rooms or units as his or her residence.

11 (3) Notwithstanding any other provision of this chapter, it shall
12 not be an unfair practice or a denial of civil rights for any public or
13 private educational institution to separate the sexes or give
14 preference to or limit use of dormitories, residence halls, or other
15 student housing to persons of one sex or to make distinctions on the
16 basis of marital or families with children status.

17 (4) Except pursuant to subsection (2)(a) of this section, this
18 section shall not be construed to require structural changes,
19 modifications, or additions to make facilities accessible to a person
20 with a disability except as otherwise required by law. Nothing in this
21 section affects the rights, responsibilities, and remedies of landlords
22 and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right
23 to post and enforce reasonable rules of conduct and safety for all
24 tenants and their guests, provided that chapters 59.18 and 59.20 RCW
25 are only affected to the extent they are inconsistent with the
26 nondiscrimination requirements of this chapter. Nothing in this
27 section limits the applicability of any reasonable federal, state, or
28 local restrictions regarding the maximum number of occupants permitted
29 to occupy a dwelling.

30 (5) Notwithstanding any other provision of this chapter, it shall
31 not be an unfair practice for any public establishment providing for
32 accommodations offered for the full enjoyment of transient guests as
33 defined by RCW 9.91.010(1)(c) to make distinctions on the basis of
34 families with children status. Nothing in this section shall limit the
35 effect of RCW 49.60.215 relating to unfair practices in places of
36 public accommodation.

37 (6) Nothing in this chapter prohibiting discrimination based on
38 families with children status applies to housing for older persons as

1 defined by the federal fair housing amendments act of 1988, 42 U.S.C.
2 Sec. 3607(b)(1) through (3), as amended by the housing for older
3 persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.
4 Nothing in this chapter authorizes requirements for housing for older
5 persons different than the requirements in the federal fair housing
6 amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as
7 amended by the housing for older persons act of 1995, P.L. 104-76, as
8 enacted on December 28, 1995.

9 (7) Nothing in this chapter shall apply to real estate transactions
10 involving the sharing of a dwelling unit, or rental or sublease of a
11 portion of a dwelling unit, when the dwelling unit is to be occupied by
12 the owner or sublessor. For purposes of this section, "dwelling unit"
13 has the same meaning as in RCW 59.18.030.

14 **Sec. 4.** RCW 49.60.223 and 2007 c 187 s 14 are each amended to read
15 as follows:

16 It is an unfair practice for any person, for profit, to induce or
17 attempt to induce any person to sell or rent any real property by
18 representations regarding the entry or prospective entry into the
19 neighborhood of a person or persons of a particular race, creed, color,
20 sex, national origin, lawful source of income, sexual orientation,
21 families with children status, honorably discharged veteran or military
22 status, or with any sensory, mental, or physical disability and/or the
23 use of a trained dog guide or service animal by a person who is blind,
24 deaf, or physically disabled.

25 **Sec. 5.** RCW 49.60.224 and 2007 c 187 s 15 are each amended to read
26 as follows:

27 (1) Every provision in a written instrument relating to real
28 property which purports to forbid or restrict the conveyance,
29 encumbrance, occupancy, or lease thereof to individuals of a specified
30 race, creed, color, sex, national origin, lawful source of income,
31 sexual orientation, families with children status, honorably discharged
32 veteran or military status, or with any sensory, mental, or physical
33 disability or the use of a trained dog guide or service animal by a
34 person who is blind, deaf, or physically disabled, and every condition,
35 restriction, or prohibition, including a right of entry or possibility
36 of reverter, which directly or indirectly limits the use or occupancy

1 of real property on the basis of race, creed, color, sex, national
2 origin, lawful source of income, sexual orientation, families with
3 children status, honorably discharged veteran or military status, or
4 the presence of any sensory, mental, or physical disability or the use
5 of a trained dog guide or service animal by a person who is blind,
6 deaf, or physically disabled is void.

7 (2) It is an unfair practice to insert in a written instrument
8 relating to real property a provision that is void under this section
9 or to honor or attempt to honor such a provision in the chain of title.

10 **Sec. 6.** RCW 49.60.225 and 2007 c 187 s 16 are each amended to read
11 as follows:

12 (1) When a reasonable cause determination has been made under RCW
13 49.60.240 that an unfair practice in a real estate transaction has been
14 committed and a finding has been made that the respondent has engaged
15 in any unfair practice under RCW 49.60.250, the administrative law
16 judge shall promptly issue an order for such relief suffered by the
17 aggrieved person as may be appropriate, which may include actual
18 damages as provided by the federal fair housing amendments act of 1988
19 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable
20 relief. Such order may, to further the public interest, assess a civil
21 penalty against the respondent:

22 (a) In an amount up to ten thousand dollars if the respondent has
23 not been determined to have committed any prior unfair practice in a
24 real estate transaction;

25 (b) In an amount up to twenty-five thousand dollars if the
26 respondent has been determined to have committed one other unfair
27 practice in a real estate transaction during the five-year period
28 ending on the date of the filing of this charge; or

29 (c) In an amount up to fifty thousand dollars if the respondent has
30 been determined to have committed two or more unfair practices in a
31 real estate transaction during the seven-year period ending on the date
32 of the filing of this charge, for loss of the right secured by RCW
33 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as
34 now or hereafter amended, to be free from discrimination in real
35 property transactions because of sex, marital status, race, creed,
36 color, national origin, lawful source of income, sexual orientation,
37 families with children status, honorably discharged veteran or military

1 status, or the presence of any sensory, mental, or physical disability
2 or the use of a trained dog guide or service animal by a person who is
3 blind, deaf, or physically disabled. Enforcement of the order and
4 appeal therefrom by the complainant or respondent may be made as
5 provided in RCW 49.60.260 and 49.60.270. If acts constituting the
6 unfair practice in a real estate transaction that is the object of the
7 charge are determined to have been committed by the same natural person
8 who has been previously determined to have committed acts constituting
9 an unfair practice in a real estate transaction, then the civil penalty
10 of up to fifty thousand dollars may be imposed without regard to the
11 period of time within which any subsequent unfair practice in a real
12 estate transaction occurred. All civil penalties assessed under this
13 section shall be paid into the state treasury and credited to the
14 general fund.

15 (2) Such order shall not affect any contract, sale, conveyance,
16 encumbrance, or lease consummated before the issuance of an order that
17 involves a bona fide purchaser, encumbrancer, or tenant who does not
18 have actual notice of the charge filed under this chapter.

19 (3) Notwithstanding any other provision of this chapter, persons
20 awarded damages under this section may not receive additional damages
21 pursuant to RCW 49.60.250.

22 NEW SECTION. **Sec. 7.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

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