
SENATE BILL 5748

State of Washington

54th Legislature

1995 Regular Session

By Senators Prentice, Fraser, Sellar, Rinehart, Prince, Smith, C. Anderson, Franklin, Kohl, Heavey, Pelz and Wojahn; by request of Human Rights Commission

Read first time 02/03/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to expanding the state law against discrimination;
2 amending RCW 49.60.010 and 49.60.260; reenacting and amending RCW
3 49.60.040, 49.60.222, 49.60.225, and 49.60.240; providing an effective
4 date; and declaring an emergency.

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

6 **Sec. 1.** RCW 49.60.010 and 1993 c 510 s 1 are each amended to read
7 as follows:

8 This chapter shall be known as the "law against discrimination".
9 It is an exercise of the police power of the state for the protection
10 of the public welfare, health, and peace of the people of this state,
11 and in fulfillment of the provisions of the Constitution of this state
12 concerning civil rights. The legislature hereby finds and declares
13 that practices of discrimination against any of its inhabitants because
14 of race, creed, color, national origin, families with children, sex,
15 marital status, age, or the presence of any sensory, mental, or
16 physical disability or the use of a trained guide dog or service dog by
17 a disabled person are a matter of state concern, that such
18 discrimination threatens not only the rights and proper privileges of
19 its inhabitants but menaces the institutions and foundation of a free

1 democratic state. A state agency is herein created with powers with
2 respect to elimination and prevention of discrimination in employment,
3 in credit and insurance transactions, in places of public resort,
4 accommodation, or amusement, and in real property transactions because
5 of race, creed, color, national origin, families with children, sex,
6 marital status, age, or the presence of any sensory, mental, or
7 physical disability or the use of a trained guide dog or service dog by
8 a disabled person; and the commission established hereunder is hereby
9 given general jurisdiction and power for such purposes.

10 **Sec. 2.** RCW 49.60.040 and 1993 c 510 s 4 and 1993 c 69 s 3 are
11 each reenacted and amended to read as follows:

12 As used in this chapter:

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

20 (2) "Commission" means the Washington state human rights
21 commission;

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

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

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

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

36 (7) "Marital status" means the legal status of being married,
37 single, separated, divorced, or widowed;

38 (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, national origin, or with any sensory, mental, or physical
8 disability, or the use of a trained guide dog or service dog by a
9 disabled person, to be treated as not welcome, accepted, desired, or
10 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,
38 mausoleum, or cemetery operated or maintained by a bona fide religious
39 or sectarian institution;

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

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

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

14 (14) "Sex" means gender;

15 (15) "Aggrieved person" (~~((means))~~) includes any person who: (a)
16 Claims to have been injured by an unfair practice in a real estate
17 transaction; or (b) believes that (~~((he or she))~~) such person will be
18 injured by an unfair practice in a real estate transaction that is
19 about to occur; or (c) claims to have been injured by any other unfair
20 practice under this chapter;

21 (16) "Complainant" means the person who files a complaint (~~((in a~~
22 ~~real estate transaction))~~) with the commission pursuant to this chapter;

23 (17) "Respondent" means any person accused in a complaint or
24 amended complaint of an unfair practice filed under this chapter;

25 (18) "Credit transaction" includes any open or closed end credit
26 transaction, whether in the nature of a loan, retail installment
27 transaction, credit card issue or charge, or otherwise, and whether for
28 personal or for business purposes, in which a service, finance, or
29 interest charge is imposed, or which provides for repayment in
30 scheduled payments, when such credit is extended in the regular course
31 of any trade or commerce, including but not limited to transactions by
32 banks, savings and loan associations or other financial lending
33 institutions of whatever nature, stock brokers, or by a merchant or
34 mercantile establishment which as part of its ordinary business permits
35 or provides that payment for purchases of property or service therefrom
36 may be deferred;

37 (~~((18))~~) (19) "Families with children status" means (~~((when))~~) one or
38 more individuals who have not attained the age of eighteen years (~~((is))~~)
39 being domiciled with a parent or another person having legal custody of

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

7 (20) "Covered multifamily dwelling" means: (a) Buildings
8 consisting of four or more dwelling units if such buildings have one or
9 more elevators; and (b) ground floor dwelling units in other buildings
10 consisting of four or more dwelling units;

11 (21) "Dwelling unit" means a single unit of residence for a family
12 or one or more persons;

13 (22) "Premise" means the interior or exterior spaces, parts,
14 components, or elements of a building, including individual dwelling
15 units and the public and common use areas of a building.

16 **Sec. 3.** RCW 49.60.222 and 1993 c 510 s 17 and 1993 c 69 s 5 are
17 each reenacted and amended to read as follows:

18 (1) It is an unfair practice for any person, whether acting for
19 himself, herself, or another, because of sex, marital status, race,
20 creed, color, national origin, families with children status, the
21 presence of any sensory, mental, or physical disability, or the use of
22 a trained guide dog or service dog by a disabled person:

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

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

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

29 (d) To refuse to negotiate for a real estate transaction with a
30 person;

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

35 (f) To discriminate in the sale or rental, or to otherwise make
36 unavailable or deny a dwelling, ~~to any person ((because of a disability~~
37 ~~of that person,))~~; or to a person residing in or intending to reside in
38 that dwelling after it is sold, rented, or made (~~(unavailable))~~)

1 available; or to any person associated with the person buying or
2 renting;

3 (g) To make, print, circulate, post, or mail, or cause to be so
4 made or published a statement, advertisement, or sign, or to use a form
5 of application for a real estate transaction, or to make a record or
6 inquiry in connection with a prospective real estate transaction, which
7 indicates, directly or indirectly, an intent to make a limitation,
8 specification, or discrimination with respect thereto;

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

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

14 (j) To discriminate in the course of negotiating, executing, or
15 financing a real estate transaction whether by mortgage, deed of trust,
16 contract, or other instrument imposing a lien or other security in real
17 property, or in negotiating or executing any item or service related
18 thereto including issuance of title insurance, mortgage insurance, loan
19 guarantee, or other aspect of the transaction. Nothing in this section
20 shall limit the effect of RCW 49.60.176 relating to unfair practices in
21 credit transactions; or

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

24 (2) For the purposes of this chapter discrimination based on the
25 presence of any sensory, mental, or physical disability or the use of
26 a trained guide dog or service dog by a blind, deaf, or physically
27 disabled person includes:

28 (a) A refusal to permit, at the expense of the disabled person,
29 reasonable modifications of existing (~~(dwelling)~~) premises occupied or
30 to be occupied by such person if such modifications may be necessary to
31 afford such person full enjoyment of the dwelling, except that, in the
32 case of a rental, the landlord may, where it is reasonable to do so,
33 condition permission for a modification on the renter agreeing to
34 restore the interior of the dwelling to the condition that existed
35 before the modification, reasonable wear and tear excepted;

36 (b) To refuse to make reasonable accommodation in rules, policies,
37 practices, or services when such accommodations may be necessary to
38 afford a person with the presence of any sensory, mental, or physical
39 disability and/or the use of a trained guide dog or service dog by a

1 blind, deaf, or physically disabled person equal opportunity to use and
2 enjoy a dwelling; or

3 (c) To fail to design and construct dwellings and covered
4 multifamily dwellings in conformance with the federal fair housing
5 amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other
6 applicable laws or regulations pertaining to access by persons with any
7 sensory, mental, or physical disability or use of a trained guide dog
8 or service dog. Whenever the requirements of applicable laws or
9 regulations differ, the requirements which require greater
10 accessibility for persons with any sensory, mental, or physical
11 disability shall govern.

12 (~~For purposes of this subsection (2), "dwelling" means any~~
13 ~~building, structure, or portion thereof that is occupied as, or~~
14 ~~designed or intended for occupancy as, a residence by four or more~~
15 ~~families, and any vacant land that is offered for sale or lease for the~~
16 ~~construction or location thereon of any such building, structure, or~~
17 ~~portion thereof.))~~

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

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

37 (5) Notwithstanding any other provision of this chapter, it shall
38 not be an unfair practice for any public establishment providing for
39 accommodations offered for the full enjoyment of transient guests as

1 defined by RCW 9.91.010(1)(c) to make distinctions on the basis of
2 families with children status. Nothing in this section shall limit the
3 effect of RCW 49.60.215 relating to unfair practices in places of
4 public accommodation.

5 (6) Nothing in this chapter prohibiting discrimination based on
6 families with children status applies to housing for older persons as
7 defined by the federal fair housing amendments act of 1988, 42 U.S.C.
8 Sec. 3607(b)(1) through (3). Nothing in this chapter authorizes
9 requirements for housing for older persons different than the
10 requirements in the federal fair housing amendments act of 1988, 42
11 U.S.C. Sec. 3607(b)(1) through (3).

12 **Sec. 4.** RCW 49.60.225 and 1993 c 510 s 20 and 1993 c 69 s 9 are
13 each reenacted and amended to read as follows:

14 (1) When a reasonable cause determination has been made under RCW
15 49.60.240 that an unfair practice in a real estate transaction has been
16 committed and a finding has been made that the respondent has engaged
17 in any unfair practice under RCW 49.60.250, the administrative law
18 judge shall promptly issue an order for such relief suffered by the
19 aggrieved person as may be appropriate, which may include actual
20 damages as provided by (~~Title VIII of the United States civil rights~~
21 ~~act of 1964, as amended, and~~) the federal fair housing amendments act
22 of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other
23 equitable relief. Such order may, to further the public interest,
24 assess a civil penalty against the respondent:

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

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

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

1 color, national origin, families with children status, or the presence
2 of any sensory, mental, or physical disability or the use of a trained
3 guide dog or service dog by a blind, deaf, or physically disabled
4 person. Enforcement of the order and appeal therefrom by the
5 complainant or respondent may be made as provided in RCW 49.60.260 and
6 49.60.270. If acts constituting the unfair practice in a real estate
7 transaction that is the object of the charge are determined to have
8 been committed by the same natural person who has been previously
9 determined to have committed acts constituting an unfair practice in a
10 real estate transaction, then the civil penalty of up to fifty thousand
11 dollars may be imposed without regard to the period of time within
12 which any subsequent unfair practice in a real estate transaction
13 occurred. All civil penalties assessed under this section shall be
14 paid into the state treasury and credited to the 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 **Sec. 5.** RCW 49.60.240 and 1993 c 510 s 22 and 1993 c 69 s 12 are
23 each reenacted and amended to read as follows:

24 After the filing of any complaint, the chairperson of the
25 commission shall refer it to the appropriate section of the
26 commission's staff for prompt investigation and ascertainment of the
27 facts alleged in the complaint. The investigation shall be limited to
28 the alleged facts contained in the complaint. The results of the
29 investigation shall be reduced to written findings of fact, and a
30 finding shall be made that there is or that there is not reasonable
31 cause for believing that an unfair practice has been or is being
32 committed. A copy of said findings shall be provided to the
33 complainant and to the person named in such complaint, hereinafter
34 referred to as the respondent.

35 If the finding is made that there is reasonable cause for believing
36 that an unfair practice has been or is being committed, the
37 commission's staff shall immediately endeavor to eliminate the unfair
38 practice by conference, conciliation, and persuasion.

1 If an agreement is reached for the elimination of such unfair
2 practice as a result of such conference, conciliation, and persuasion,
3 the agreement shall be reduced to writing and signed by the respondent,
4 and an order shall be entered by the commission setting forth the terms
5 of said agreement. No order shall be entered by the commission at this
6 stage of the proceedings except upon such written agreement, except
7 that during the period beginning with the filing of complaints alleging
8 an unfair practice with respect to real estate transactions pursuant to
9 RCW 49.60.222 through 49.60.225, and ending with the filing of a
10 finding of reasonable cause or a dismissal by the commission, the
11 commission staff shall, to the extent feasible, engage in conciliation
12 with respect to such complaint. Any conciliation agreement arising out
13 of conciliation efforts by the commission shall be an agreement between
14 the respondent and the complainant and shall be subject to the approval
15 of the commission. Each conciliation agreement shall be made public
16 unless the complainant and respondent otherwise agree and the
17 commission determines that disclosure is not required to further the
18 purposes of this chapter.

19 If no such agreement can be reached, a finding to that effect shall
20 be made and reduced to writing, with a copy thereof provided to the
21 complainant and the respondent.

22 The commission may adopt rules, including procedural time
23 requirements, for processing complaints alleging an unfair practice
24 with respect to real estate transactions pursuant to RCW 49.60.222
25 through 49.60.225 and which may be consistent with the federal fair
26 housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.).

27 **Sec. 6.** RCW 49.60.260 and 1993 c 69 s 15 are each amended to read
28 as follows:

29 (1) The commission or any person entitled to relief of a final
30 order may petition the court within the county wherein any unfair
31 practice occurred or wherein any person charged with an unfair practice
32 resides or transacts business for the enforcement of any final order
33 which is not complied with and is issued by the commission or an
34 administrative law judge under the provisions of this chapter and for
35 appropriate temporary relief or a restraining order, and shall certify
36 and file in court the final order sought to be enforced. Within five
37 days after filing such petition in court, the commission or any person
38 entitled to relief of a final order shall cause a notice of the

1 petition to be sent by certified mail to all parties or their
2 representatives.

3 (2) If within sixty days after the date the administrative law
4 judge's order concerning an unfair practice in a real estate
5 transaction is entered, no petition has been filed under subsection (1)
6 of this section and the commission has not sought enforcement of the
7 final order under this section, any person entitled to relief under the
8 final order may petition for a decree enforcing the order in the
9 superior courts of the state of Washington for the county in which the
10 unfair practice in a real estate transaction under RCW 49.60.222
11 through 49.60.224 is alleged to have occurred.

12 (3) From the time the petition is filed, the court shall have
13 jurisdiction of the proceedings and of the questions determined
14 thereon, and shall have the power to grant such temporary relief or
15 restraining order as it deems just and suitable.

16 (4) If the petition shows that there is a final order issued by the
17 commission or administrative law judge under RCW 49.60.240 or 49.60.250
18 and that the order has not been complied with in whole or in part, the
19 court shall issue an order directing the person who is alleged to have
20 not complied with the administrative order to appear in court at a time
21 designated in the order, not less than ten days from the date thereof,
22 and show cause why the administrative order should not be enforced
23 according to the terms. The commission or any person entitled to
24 relief of any final order shall immediately serve the noncomplying
25 party with a copy of the court order and the petition.

26 (5) The administrative order shall be enforced by the court if the
27 person does not appear, or if the person appears and the court finds
28 that:

29 (a) The order is regular on its face;

30 (b) The order has not been complied with; and

31 (c) The person's answer discloses no valid reason why the order
32 should not be enforced, or that the reason given in the person's answer
33 could have been raised by review under RCW 34.05.510 through 34.05.598,
34 and the person has given no valid excuse for failing to use that
35 remedy.

36 (6) The jurisdiction of the court shall be exclusive and its
37 judgment and decree shall be final, except that the same shall be
38 subject to appellate review by the supreme court or the court of
39 appeals, on appeal, by either party, irrespective of the nature of the

1 decree or judgment. The review shall be taken and prosecuted in the
2 same manner and form and with the same effect as is provided in other
3 cases.

4 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and shall take
7 effect July 1, 1995.

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