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**SUBSTITUTE SENATE BILL 5487**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Padden, Kuderer, and Saldaña)

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

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

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

38 (4) "Caregiver" means a person who provides a person with  
39 disability assistance with basic activities of daily living and whose  
40 presence is required for a person with a disability to attend a

1 public event or patronize a place of public resort, accommodation,  
2 assemblage, or amusement.

3 (5) "Commission" means the Washington state human rights  
4 commission.

5 ((+4)) (6) "Complainant" means the person who files a complaint  
6 in a real estate transaction.

7 ((+5)) (7) "Covered multifamily dwelling" means: (a) Buildings  
8 consisting of four or more dwelling units if such buildings have one  
9 or more elevators; and (b) ground floor dwelling units in other  
10 buildings consisting of four or more dwelling units.

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

23 ((+7)) (9)(a) "Disability" means the presence of a sensory,  
24 mental, or physical impairment that:

25 (i) Is medically cognizable or diagnosable; or

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

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

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

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

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

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

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

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

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

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

20 ~~((8))~~ (10) "Dog guide" means a dog that is trained for the  
21 purpose of guiding blind persons or a dog that is trained for the  
22 purpose of assisting hearing impaired persons.

23 ~~((9))~~ (11) "Dwelling" means any building, structure, or portion  
24 thereof that is occupied as, or designed or intended for occupancy  
25 as, a residence by one or more families, and any vacant land that is  
26 offered for sale or lease for the construction or location thereon of  
27 any such building, structure, or portion thereof.

28 ~~((10))~~ (12) "Employee" does not include any individual employed  
29 by his or her parents, spouse, or child, or in the domestic service  
30 of any person.

31 ~~((11))~~ (13) "Employer" includes any person acting in the  
32 interest of an employer, directly or indirectly, who employs eight or  
33 more persons, and does not include any religious or sectarian  
34 organization not organized for private profit.

35 ~~((12))~~ (14) "Employment agency" includes any person undertaking  
36 with or without compensation to recruit, procure, refer, or place  
37 employees for an employer.

38 ~~((13))~~ (15) "Families with children status" means one or more  
39 individuals who have not attained the age of eighteen years being  
40 domiciled with a parent or another person having legal custody of

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

7 ~~((14))~~ (16) "Full enjoyment of" includes the right to purchase  
8 any service, commodity, or article of personal property offered or  
9 sold on, or by, any establishment to the public, and the admission of  
10 any person to accommodations, advantages, facilities, or privileges  
11 of any place of public resort, accommodation, assemblage, or  
12 amusement, without acts directly or indirectly causing persons of any  
13 particular race, creed, color, sex, sexual orientation, national  
14 origin, or with any sensory, mental, or physical disability, or the  
15 use of a trained dog guide or service animal by a person with a  
16 disability, to be treated as not welcome, accepted, desired, or  
17 solicited.

18 ~~((15))~~ (17) "Honorably discharged veteran or military status"  
19 means a person who is:

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

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

24 ~~((16))~~ (18) "Labor organization" includes any organization  
25 which exists for the purpose, in whole or in part, of dealing with  
26 employers concerning grievances or terms or conditions of employment,  
27 or for other mutual aid or protection in connection with employment.

28 ~~((17))~~ (19) "Marital status" means the legal status of being  
29 married, single, separated, divorced, or widowed.

30 ~~((18))~~ (20) "National origin" includes "ancestry."

31 ~~((19))~~ (21) "Person" includes one or more individuals,  
32 partnerships, associations, organizations, corporations,  
33 cooperatives, legal representatives, trustees and receivers, or any  
34 group of persons; it includes any owner, lessee, proprietor, manager,  
35 agent, or employee, whether one or more natural persons; and further  
36 includes any political or civil subdivisions of the state and any  
37 agency or instrumentality of the state or of any political or civil  
38 subdivision thereof.

1       (~~(20)~~) (22) "Premises" means the interior or exterior spaces,  
2 parts, components, or elements of a building, including individual  
3 dwelling units and the public and common use areas of a building.

4       (~~(21)~~) (23) "Real estate transaction" includes the sale,  
5 appraisal, brokering, exchange, purchase, rental, or lease of real  
6 property, transacting or applying for a real estate loan, or the  
7 provision of brokerage services.

8       (~~(22)~~) (24) "Real property" includes buildings, structures,  
9 dwellings, real estate, lands, tenements, leaseholds, interests in  
10 real estate cooperatives, condominiums, and hereditaments, corporeal  
11 and incorporeal, or any interest therein.

12       (~~(23)~~) (25) "Respondent" means any person accused in a  
13 complaint or amended complaint of an unfair practice in a real estate  
14 transaction.

15       (~~(24)~~) (26) "Service animal" means any dog or miniature horse,  
16 as discussed in RCW 49.60.214, that is individually trained to do  
17 work or perform tasks for the benefit of an individual with a  
18 disability, including a physical, sensory, psychiatric, intellectual,  
19 or other mental disability. The work or tasks performed by the  
20 service animal must be directly related to the individual's  
21 disability. Examples of work or tasks include, but are not limited  
22 to, assisting individuals who are blind or have low vision with  
23 navigation and other tasks, alerting individuals who are deaf or hard  
24 of hearing to the presence of people or sounds, providing nonviolent  
25 protection or rescue work, pulling a wheelchair, assisting an  
26 individual during a seizure, alerting individuals to the presence of  
27 allergens, retrieving items such as medicine or the telephone,  
28 providing physical support and assistance with balance and stability  
29 to individuals with mobility disabilities, and helping persons with  
30 psychiatric and neurological disabilities by preventing or  
31 interrupting impulsive or destructive behaviors. The crime deterrent  
32 effects of an animal's presence and the provision of emotional  
33 support, well-being, comfort, or companionship do not constitute work  
34 or tasks. This subsection does not apply to RCW 49.60.222 through  
35 49.60.227 with respect to housing accommodations or real estate  
36 transactions.

37       (~~(25)~~) (27) "Sex" means gender.

38       (~~(26)~~) (28) "Sexual orientation" means heterosexuality,  
39 homosexuality, bisexuality, and gender expression or identity. As  
40 used in this definition, "gender expression or identity" means having

1 or being perceived as having a gender identity, self-image,  
2 appearance, behavior, or expression, whether or not that gender  
3 identity, self-image, appearance, behavior, or expression is  
4 different from that traditionally associated with the sex assigned to  
5 that person at birth.

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

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

28 (2)(a) Subject to the requirements of (b) of this subsection, it  
29 is an unfair practice for a place of public resort, accommodation,  
30 assemblage, or amusement that charges for admission, to deny  
31 complimentary admission for one caregiver accompanying a person with  
32 a disability who pays admission. If the place of public resort,  
33 accommodation, assemblage, or amusement provides seating to people  
34 who pay admission, the caregiver shall be provided one accompanying  
35 seat, removable adjacent chair, or a space to stand in reasonable  
36 proximity to the patron with a disability which may or may not have a  
37 view of the event and may or may not have an associated ticket.

38 (b) The caregiver must supply essential help for basic activities  
39 of daily living as defined in RCW 49.60.040. The caregiver or the

1 person with a disability must affirmatively make the request for  
2 complimentary admission and assert that the companion is a caregiver  
3 that performs essential help for basic activities of daily living in  
4 order to qualify for this protection.

5 (c) When it is not obvious what service a caregiver provides,  
6 only limited inquiries are allowed. Staff may ask two questions: (i)  
7 Is the caregiver required because of a disability? and (ii) what  
8 essential help for basic activities of daily living does the  
9 caregiver provide? Staff cannot ask about the person's disability,  
10 require medical documentation, require a special identification card  
11 or training documentation, or ask that the caregiver demonstrate the  
12 ability to perform the work or task.

13 (d) An establishment may not maintain any additional purchase  
14 restrictions that unnecessarily burden the enjoyment of the person  
15 with a disability or his or her caregiver's access including, but not  
16 limited to: Requiring a caregiver's admission ticket, pass,  
17 authorization, or other instrument used to obtain admission, to be  
18 picked up in person at the box office; requiring a caregiver to be  
19 physically present when admission is purchased; requiring caregiver  
20 admission be requested at the time the ticket purchase is made; or  
21 prohibiting a caregiver from accessing establishment facilities or  
22 attractions. This subsection (2)(d) is not intended to require an  
23 establishment to offer complimentary caregiver admission through  
24 online ticket sales.

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

27 (f) The complimentary caregiver admission ticket may not be  
28 resold. The complimentary ticket may be used only by the caregiver  
29 accompanying the paying patron with the disability.

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

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

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



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

3 (2)(a) An enforcement officer as defined under RCW 7.80.040 may  
4 investigate and enforce this section by making an inquiry of the  
5 person accompanied by the animal in question and issuing a civil  
6 infraction. Refusal to answer the questions allowable under (b) of  
7 this subsection shall create a presumption that the animal is not a  
8 service animal and the enforcement officer may issue a civil  
9 infraction and require the person to remove the animal from the place  
10 of public accommodation.

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

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

38 NEW SECTION. **Sec. 5.** If any provision of this act or its  
39 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

--- **END** ---