

---

**SUBSTITUTE SENATE BILL 5672**

---

**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kline and Kohl-Welles)

READ FIRST TIME 02/25/09.

1       AN ACT Relating to protecting consumers from discrimination based  
2 on lawful source of income; amending RCW 49.60.222, 49.60.223,  
3 49.60.224, and 49.60.225; reenacting and amending RCW 49.60.040; adding  
4 new sections to chapter 49.60 RCW; and providing an expiration date.

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

6       **Sec. 1.** RCW 49.60.040 and 2007 c 317 s 2 and 2007 c 187 s 4 are  
7 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

28 (10) "Any place of public resort, accommodation, assemblage, or  
29 amusement" includes, but is not limited to, any place, licensed or  
30 unlicensed, kept for gain, hire, or reward, or where charges are made  
31 for admission, service, occupancy, or use of any property or  
32 facilities, whether conducted for the entertainment, housing, or  
33 lodging of transient guests, or for the benefit, use, or accommodation  
34 of those seeking health, recreation, or rest, or for the burial or  
35 other disposition of human remains, or for the sale of goods,  
36 merchandise, services, or personal property, or for the rendering of  
37 personal services, or for public conveyance or transportation on land,  
38 water, or in the air, including the stations and terminals thereof and

1 the garaging of vehicles, or where food or beverages of any kind are  
2 sold for consumption on the premises, or where public amusement,  
3 entertainment, sports, or recreation of any kind is offered with or  
4 without charge, or where medical service or care is made available, or  
5 where the public gathers, congregates, or assembles for amusement,  
6 recreation, or public purposes, or public halls, public elevators, and  
7 public washrooms of buildings and structures occupied by two or more  
8 tenants, or by the owner and one or more tenants, or any public library  
9 or educational institution, or schools of special instruction, or  
10 nursery schools, or day care centers or children's camps: PROVIDED,  
11 That nothing contained in this definition shall be construed to include  
12 or apply to any institute, bona fide club, or place of accommodation,  
13 which is by its nature distinctly private, including fraternal  
14 organizations, though where public use is permitted that use shall be  
15 covered by this chapter; nor shall anything contained in this  
16 definition apply to any educational facility, columbarium, crematory,  
17 mausoleum, or cemetery operated or maintained by a bona fide religious  
18 or sectarian institution.

19 (11) "Real property" includes buildings, structures, dwellings,  
20 real estate, lands, tenements, leaseholds, interests in real estate  
21 cooperatives, condominiums, and hereditaments, corporeal and  
22 incorporeal, or any interest therein.

23 (12) "Real estate transaction" includes the sale, appraisal,  
24 brokering, exchange, purchase, rental, or lease of real property,  
25 transacting or applying for a real estate loan, or the provision of  
26 brokerage services.

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

32 (14) "Sex" means gender.

33 (15) "Sexual orientation" means heterosexuality, homosexuality,  
34 bisexuality, and gender expression or identity. As used in this  
35 definition, "gender expression or identity" means having or being  
36 perceived as having a gender identity, self-image, appearance,  
37 behavior, or expression, whether or not that gender identity, self-

1 image, appearance, behavior, or expression is different from that  
2 traditionally associated with the sex assigned to that person at birth.

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

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

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

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

23 (20) "Families with children status" means one or more individuals  
24 who have not attained the age of eighteen years being domiciled with a  
25 parent or another person having legal custody of such individual or  
26 individuals, or with the designee of such parent or other person having  
27 such legal custody, with the written permission of such parent or other  
28 person. Families with children status also applies to any person who  
29 is pregnant or is in the process of securing legal custody of any  
30 individual who has not attained the age of eighteen years.

31 (21) "Covered multifamily dwelling" means: (a) Buildings  
32 consisting of four or more dwelling units if such buildings have one or  
33 more elevators; and (b) ground floor dwelling units in other buildings  
34 consisting of four or more dwelling units.

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

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

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

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

9 (i) Is medically cognizable or diagnosable; or

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

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

12 (b) A disability exists whether it is temporary or permanent,  
13 common or uncommon, mitigated or unmitigated, or whether or not it  
14 limits the ability to work generally or work at a particular job or  
15 whether or not it limits any other activity within the scope of this  
16 chapter.

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

19 (i) Any physiological disorder, or condition, cosmetic  
20 disfigurement, or anatomical loss affecting one or more of the  
21 following body systems: Neurological, musculoskeletal, special sense  
22 organs, respiratory, including speech organs, cardiovascular,  
23 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,  
24 and endocrine; or

25 (ii) Any mental, developmental, traumatic, or psychological  
26 disorder, including but not limited to cognitive limitation, organic  
27 brain syndrome, emotional or mental illness, and specific learning  
28 disabilities.

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

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

36 (ii) The employee must have put the employer on notice of the  
37 existence of an impairment, and medical documentation must establish a

1 reasonable likelihood that engaging in job functions without an  
2 accommodation would aggravate the impairment to the extent that it  
3 would create a substantially limiting effect.

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

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

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

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

12 (27) "Lawful source of income" means verifiable legal income used  
13 in the renting or leasing of real property, including income derived  
14 from employment, social security, supplemental security income, other  
15 retirement programs, child support, alimony, and any federal, state,  
16 local, or nonprofit-administered benefit or subsidy programs, including  
17 housing assistance, public assistance, and general assistance programs.

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

20 (1) It is an unfair practice for any person, whether acting for  
21 himself, herself, or another, because of sex, marital status, sexual  
22 orientation, race, creed, color, national origin, lawful source of  
23 income, families with children status, honorably discharged veteran or  
24 military status, the presence of any sensory, mental, or physical  
25 disability, or the use of a trained dog guide or service animal by a  
26 person with a disability:

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

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

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

33 (d) To refuse to negotiate for a real estate transaction with a  
34 person;

35 (e) To represent to a person that real property is not available  
36 for inspection, sale, rental, or lease when in fact it is so available,

1 or to fail to bring a property listing to his or her attention, or to  
2 refuse to permit the person to inspect real property;

3 (f) To discriminate in the sale or rental, or to otherwise make  
4 unavailable or deny a dwelling, to any person; or to a person residing  
5 in or intending to reside in that dwelling after it is sold, rented, or  
6 made available; or to any person associated with the person buying or  
7 renting;

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

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

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

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

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

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

33 (a) A refusal to permit, at the expense of the person with a  
34 disability, reasonable modifications of existing premises occupied or  
35 to be occupied by such person if such modifications may be necessary to  
36 afford such person full enjoyment of the dwelling, except that, in the  
37 case of a rental, the landlord may, where it is reasonable to do so,

1 condition permission for a modification on the renter agreeing to  
2 restore the interior of the dwelling to the condition that existed  
3 before the modification, reasonable wear and tear excepted;

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

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

18 Nothing in (a) or (b) of this subsection shall apply to: (i) A  
19 single-family house rented or leased by the owner if the owner does not  
20 own or have an interest in the proceeds of the rental or lease of more  
21 than three such single-family houses at one time, the rental or lease  
22 occurred without the use of a real estate broker or salesperson, as  
23 defined in RCW (~~(18.85.010)~~) 18.85.011, and the rental or lease  
24 occurred without the publication, posting, or mailing of any  
25 advertisement, sign, or statement in violation of subsection (1)(g) of  
26 this section; or (ii) rooms or units in dwellings containing living  
27 quarters occupied or intended to be occupied by no more than four  
28 families living independently of each other if the owner maintains and  
29 occupies one of the rooms or units as his or her residence.

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

36 (4) Except pursuant to subsection (2)(a) of this section, this  
37 section shall not be construed to require structural changes,  
38 modifications, or additions to make facilities accessible to a person



1 with a disability except as otherwise required by law. Nothing in this  
2 section affects the rights, responsibilities, and remedies of landlords  
3 and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right  
4 to post and enforce reasonable rules of conduct and safety for all  
5 tenants and their guests, provided that chapters 59.18 and 59.20 RCW  
6 are only affected to the extent they are inconsistent with the  
7 nondiscrimination requirements of this chapter. Nothing in this  
8 section limits the applicability of any reasonable federal, state, or  
9 local restrictions regarding the maximum number of occupants permitted  
10 to occupy a dwelling.

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

18 (6) Nothing in this chapter prohibiting discrimination based on  
19 families with children status applies to housing for older persons as  
20 defined by the federal fair housing amendments act of 1988, 42 U.S.C.  
21 Sec. 3607(b)(1) through (3), as amended by the housing for older  
22 persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.  
23 Nothing in this chapter authorizes requirements for housing for older  
24 persons different than the requirements in the federal fair housing  
25 amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as  
26 amended by the housing for older persons act of 1995, P.L. 104-76, as  
27 enacted on December 28, 1995.

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

33 **Sec. 3.** RCW 49.60.223 and 2007 c 187 s 14 are each amended to read  
34 as follows:

35 It is an unfair practice for any person, for profit, to induce or  
36 attempt to induce any person to sell or rent any real property by  
37 representations regarding the entry or prospective entry into the

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

7 **Sec. 4.** RCW 49.60.224 and 2007 c 187 s 15 are each amended to read  
8 as follows:

9 (1) Every provision in a written instrument relating to real  
10 property which purports to forbid or restrict the conveyance,  
11 encumbrance, occupancy, or lease thereof to individuals of a specified  
12 race, creed, color, sex, national origin, lawful source of income,  
13 sexual orientation, families with children status, honorably discharged  
14 veteran or military status, or with any sensory, mental, or physical  
15 disability or the use of a trained dog guide or service animal by a  
16 person who is blind, deaf, or physically disabled, and every condition,  
17 restriction, or prohibition, including a right of entry or possibility  
18 of reverter, which directly or indirectly limits the use or occupancy  
19 of real property on the basis of race, creed, color, sex, national  
20 origin, lawful source of income, sexual orientation, families with  
21 children status, honorably discharged veteran or military status, or  
22 the presence of any sensory, mental, or physical disability or the use  
23 of a trained dog guide or service animal by a person who is blind,  
24 deaf, or physically disabled is void.

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

28 **Sec. 5.** RCW 49.60.225 and 2007 c 187 s 16 are each amended to read  
29 as follows:

30 (1) When a reasonable cause determination has been made under RCW  
31 49.60.240 that an unfair practice in a real estate transaction has been  
32 committed and a finding has been made that the respondent has engaged  
33 in any unfair practice under RCW 49.60.250, the administrative law  
34 judge shall promptly issue an order for such relief suffered by the  
35 aggrieved person as may be appropriate, which may include actual  
36 damages as provided by the federal fair housing amendments act of 1988

1 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable  
2 relief. Such order may, to further the public interest, assess a civil  
3 penalty against the respondent:

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

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

11 (c) In an amount up to fifty thousand dollars if the respondent has  
12 been determined to have committed two or more unfair practices in a  
13 real estate transaction during the seven-year period ending on the date  
14 of the filing of this charge, for loss of the right secured by RCW  
15 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as  
16 now or hereafter amended, to be free from discrimination in real  
17 property transactions because of sex, marital status, race, creed,  
18 color, national origin, lawful source of income, sexual orientation,  
19 families with children status, honorably discharged veteran or military  
20 status, or the presence of any sensory, mental, or physical disability  
21 or the use of a trained dog guide or service animal by a person who is  
22 blind, deaf, or physically disabled. Enforcement of the order and  
23 appeal therefrom by the complainant or respondent may be made as  
24 provided in RCW 49.60.260 and 49.60.270. If acts constituting the  
25 unfair practice in a real estate transaction that is the object of the  
26 charge are determined to have been committed by the same natural person  
27 who has been previously determined to have committed acts constituting  
28 an unfair practice in a real estate transaction, then the civil penalty  
29 of up to fifty thousand dollars may be imposed without regard to the  
30 period of time within which any subsequent unfair practice in a real  
31 estate transaction occurred. All civil penalties assessed under this  
32 section shall be paid into the state treasury and credited to the  
33 general fund.

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

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

4 (4) Complainants alleging discrimination based on lawful source of  
5 income in the rental of residential real property must first exhaust  
6 administrative remedies provided for in chapter 49.60 RCW prior to  
7 filing a private right of action.

8 NEW SECTION. Sec. 6. A new section is added to chapter 49.60 RCW  
9 to read as follows:

10 The lawful source of income provisions of this chapter apply to  
11 living arrangements subject to chapter 59.18 RCW, and do not include  
12 exempted living arrangements as described in RCW 59.18.040.

13 NEW SECTION. Sec. 7. A new section is added to chapter 49.60 RCW  
14 to read as follows:

15 (1) The director must collect and submit the following information  
16 in a report to the appropriate committees of the senate and house of  
17 representatives:

18 (a) The number of complaints filed that alleged lawful source of  
19 income discrimination generally, including the number of complaints  
20 that were based solely on lawful source of income and the number of  
21 source of income complaints that had multiple bases for discrimination  
22 in the rental of residential real property;

23 (b) The number of reasonable cause and no reasonable cause findings  
24 based on lawful source of income;

25 (c) The number of cases closed with some benefit to the  
26 complainant;

27 (d) The number of complaints filed where the complainant lives in  
28 a jurisdiction with a similar source of income protection in the rental  
29 of residential real property; and

30 (e) Any other information the director deems useful.

31 (2) The initial report shall be submitted by December 1, 2009, and  
32 annually thereafter.

33 NEW SECTION. Sec. 8. If any provision of this act or its  
34 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.

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.60 RCW  
4 to read as follows:

5 This act does not apply to a housing complex where at least twenty  
6 percent of the tenants receive section 8 voucher subsidies.

7 NEW SECTION. **Sec. 10.** This act expires December 31, 2011.

--- END ---