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No. 97630-9

THE SUPREME COURT
OF THE STATE OF WASHINGTON

W.H., et al.,

Plaintiffs,

vs.

OLYMPIA SCHOOL DISTRICT, et al.,

Defendants

PLAINTIFFS' CONSOLIDATED ANSWER TO AMICUS CURIAE
BRIEFS

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I. INTRODUCTION

Plaintiffs submit the following consolidated answer to the briefs of the five *amicus curiae* in this case: Washington State Association for Justice Foundation (“Washington Justice”); National Center for Victims of Crime (“Crime Victims”); Legal Voice; Washington Defense Trial Lawyers (“Defense Trial Lawyers”); and Washington Schools Risk Management Pool (“Risk Pool”).

II. ARGUMENT

A. Plaintiffs’ Answer to *Amicus Curiae* Washington Justice

Plaintiffs agree with and adopt Washington Justice’s arguments. Plaintiffs elaborate only on two points: (1) RCW 4.08.120’s plain language demonstrates its permissive, rather than exclusionary nature; and (2) WLAD’s private cause of action for public accommodation discrimination was intended “to *supplement* existing common law to target the particular evil of discrimination in public accommodations as a matter of law.” Washington Justice Br. at 11-12, 20 (emphasis in original).

First, as Washington Justice correctly observes, the legislature enacted RCW 4.08.120 in order to *permit* tort-and-contract-based causes of action against public corporations (including school districts) that previously were barred at common law. Washington Justice Br. at 5-8. The language utilized by the legislature reflects this permissive intent:

An action *may* be maintained against a county or other of the public corporations mentioned or described in RCW 4.08.110, either upon a contract made by such county, or other public corporation in its corporate character and within the scope of its authority, or for an

injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation.

RCW 4.08.120. It is well-established that the statutory term “may” is permissive and not binding. *See, e.g., Vaughn v. Chung*, 119 Wn.2d 273, 281, 830 P.2d 668 (1992) (“may” indicates something is permissible: “shall” indicates something is mandatory); *Blair v. GIM Corp.*, 88 Wn. App. 475, 480, 945 P.2d 1149 (1997) (“The word ‘may’ is permissive and not mandatory”). Washington courts repeatedly have rejected interpretations of statutes utilizing the term “may” as establishing an exclusive cause of action, remedy, or procedure. *See, e.g., Korslund v. Dyncorp Tri-Cities Servs., Inc.*, 121 Wn. App. 295, 321, 88 P.3d 966, 979 (2004) (citing *Norris v. Lumbermen’s Mut. Cas. Co.*, 881 F.2d 1144, 1147, 1150 (1st Cir.1989)), *aff’d*, 156 Wn.2d 168, 125 P.3d 119 (2005) (holding that 42 U.S.C. § 5851(b)’s administrative process and remedies for adjudicating whistleblower complaints was not “mandatory and exclusive” of common law tort claims where statute stated only aggrieved employees “may . . . file . . . a complaint with the Secretary of labor.”); *Blair*, 88 Wn. App. at 479-80 (rejecting contention that RCW 6.27.210’s “may . . . by filing an affidavit” language established “the use of an affidavit as the exclusive means of controverting the garnishee/defendant’s answer”).

Indeed, Washington courts avoid interpreting statutes utilizing “may” as exclusive in nature because it is also well-established that “[h]ad the Legislature intended the statute to be exclusive it would have been very simple to have expressly said so.” *Wilmot v. Kaiser Aluminum &*

Chem. Corp., 118 Wn.2d 46, 55, 60, 62, 821 P.2d 18 (1991) (holding that RCW 51.48.025's statutory cause of action for retaliatory discharge, which provides that an employee "may . . . file a complaint" and contained "no express language of exclusivity, nor . . . language strongly suggestive of exclusivity," was "not the exclusive means of redress"); *compare with* RCW 7.71.030(1) ("[t]his section shall provide the exclusive remedies in any lawsuit by a health care provider for any action taken by a professional peer review body of health care providers"); RCW 51.04.010 (providing a remedy for injured workers "to the exclusion of every other remedy, proceeding or compensation" and expressly abolishing all "civil causes of action for such personal injuries"); RCW 77.36.040(1) ("This chapter represents the exclusive remedy against the state for damage caused by wildlife interactions").

Second, Washington Justice aptly observes that WLAD supplements the existing common law with its own private cause of action targeting the particular evil of public accommodation discrimination. *See Potter v. Washington State Patrol*, 165 Wn.2d 67, 88, 196 P.3d 691 (2008) ("Where the common law remedy predates the statutory remedy, the court infers the statutory remedy is cumulative"). Through RCW 4.08.120, the legislature authorized common law tort lawsuits against school districts and other public corporations in 1953. Subsequently, the legislature created WLAD's administrative remedies for public accommodation discrimination in 1957 and its private right of action for such discrimination in 1973. LAWS OF 1957 ch. 37, § 16; LAWS OF 1973 ch.

141, § 3; **Appendix A, B.** Accordingly, because RCW 49.60.215's statutory remedies simply supplement the preexisting common law tort remedies authorized against public corporations by RCW 4.08.120, there is no conflict between the statutes.

B. Plaintiffs' Answer to *Amicus Curiae* Crime Victims

Plaintiffs agree with and adopt Crime Victims' arguments. Plaintiffs add only that Crime Victims cites Washington Office of Public Instruction and Olympia School District manuals and policies, as well as studies and statistical reports detailing the prevalence of sexual violence against women in support of its arguments that intentional sexual abuse constitutes gender-based discrimination under WLAD's public accommodation provisions. Crime Victims' Br. at 16-20. Plaintiffs note that, in liberally construing WLAD to effectuate its purposes—"remedying and preventing" prohibited forms of discrimination—the Court properly considers such materials. *See Taylor v. Burlington N. R.R. Holdings, Inc.*, 193 Wn.2d 611, 630, 444 P.3d 606 (2019) (considering and citing numerous medical treatises, manuals, and other examples of medical literature in liberally construing "impairment" under the WLAD to include obesity in order to effectuate prohibition against disability discrimination).

C. Plaintiffs' Answer to *Amicus Curiae* Legal Voice

Plaintiffs generally agree with and adopt Legal Voice's arguments, elaborating only on two points: (1) whether the Court should reject the District's categorical contention that "conduct targeting both men and

women is not based on sex, no matter how reprehensible” District’s Br. at 6; and (2) the fact that school buses historically have been at the forefront of combating discrimination.

First, Plaintiffs agree with Legal Voice that there is no support for the District’s sweeping proposition under federal or Washington law. There is no question that in both Washington and federal courts, rape constitutes a severe form of sexual harassment and, thus, objectively offensive gender discrimination. *S.S. v. Alexander*, 143 Wn. App. 75, 108, 177 P.3d 724 (2008); *Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 967–68 (9th Cir. 2002). And Plaintiffs agree with Legal Voice that forms of “[p]hysical sexual assault” other than forcible intercourse constitute objectively offensive gender-based discrimination on their face. *See Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1065 (9th Cir. 2002) (citing numerous cases and examples); *cf. Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80, 118 S. Ct. 998, 1002, 140 L. Ed. 2d 201 (1998) (harassment in sufficiently “sex-specific and derogatory terms” can “make it clear that the harasser is motivated by” gender under an objective, reasonable person standard; as an alternative liability theory, plaintiff may demonstrate “comparative evidence about how the alleged harasser treated members of both sexes in a mixed-sex” environment). And Plaintiffs further agree that some forms of “physical conduct of a sexual nature” are so severe in nature and inherently linked to a victim’s gender that they unquestionably constitute objectively offensive gender-based discrimination. *Rene*, 305 F.3d at 1068 (quoting *Meritor Savings Bank v.*

Vinson, 477 U.S. 57, 65, 106 S. Ct. 2399, 91 L. Ed. 2d 49 (1986).

As the Seventh Circuit aptly explained in delineating gender-based discrimination under Title VII, some forms of harassment are “inescapably and irrevocably linked” to a victim’s protected characteristics, regardless of the perpetrator’s motivations¹ or similar conduct toward others:

Likewise, when a woman’s breasts are grabbed or when her buttocks are pinched, the harassment necessarily is linked to her gender. *See Drinkwater v. Union Carbide Corp.*, 904 F.2d 853, 861 n. 15 (3rd Cir.1990) (“[w]omen’s sexuality largely defines women as women in this society, so violations of it are abuses of women as women”) (quoting Catherine A. MacKinnon, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 174 (1979)). It would not seem to matter that the harasser might simultaneously be harassing a male co-worker with comparable epithets and comparable physical molestation. When a male employee’s testicles are grabbed, his torment might be comparable, but the point is that he experiences that harassment as a man, not just as a worker, and she as a woman. In each case, the victim’s gender not only supplies the lexicon of the harassment, it affects how he or she will experience that harassment; and in anything short of a truly unisex society, men’s and women’s experiences will be different. In that sense, each arguably is the victim of sex discrimination. *See Steiner [v. Showboat Operating Co.]*, 25 F.3d 1459, 1464 (9th Cir. 1994) (“Even if [the harasser] used sexual epithets equal in intensity and in an equally degrading manner against male employees, he cannot thereby ‘cure’ his conduct toward women [A]lthough words from a man to a man are

¹ Indeed, this Court has been clear that whether a plaintiff’s protected characteristic was a “substantial factor” underlying the discriminatory acts they experienced “has nothing to do with the subjective intent of the defendant.” *Fell v. Spokane Transit Auth.*, 128 Wn.2d at 642 n. 30. “Regardless of the subjective intent of the defendant, if discrimination has resulted from some act of the defendant, the plaintiff can state a claim against that defendant.” *Fell*, 128 Wn.2d at 642 n. 30.

differently received than words from a man to a woman, we do not rule out the possibility that *both* men and women working at Showboat have viable claims . . . for sexual harassment.”) (emphasis in original); *see also Miller v. Vesta, [Inc., 946 F. Supp. 697, 706 (E.D. Wisc. 1996).]*

* * * *

When [a female worker] is taunted day after day in sexual terms, told she will be taken into a back room for sexual purposes, and has her breasts grabbed to determine whether she is “a boy or a girl,” she is no longer an employee but a sexual object, judged not by how well she does her job but by how she measures against the sexual standards of her co-workers. [*Drinkwater, 904 F.2d*] at 861 n. 15. From her point of view, and from the perspective of any reasonable person, the harasser’s motives are immaterial. Perhaps the harasser is sexually attracted to her, perhaps he just wants her job and figures that harassing her sexually would be the most effective way of driving her from it; either way, the environment is hostile, and the hostility is inescapably and irrevocably linked to her gender.

The same is true of racial harassment, for example. If an African American is repeatedly subjected to racial slurs and talk of lynching by his co-workers, we typically do not ask, “But was he singled out because of his race?” *See, e.g., Daniels v. Essex Group, Inc., 937 F.2d 1264 (7th Cir.1991); Hunter v. Allis-Chalmers Corp., Engine Div., 797 F.2d 1417 (7th Cir. 1986).* Perhaps intuitively, we understand that the harassment, perpetrated through the vehicle of race, is discriminatory and injurious in and of itself, even if his harassers wanted to make his life miserable for reasons altogether unrelated to the color of his skin. *See Frantz Fanon, The Fact of Blackness in the Anatomy Of Racism 108–11 (David Theo Goldberg, ed., 1990); see also, e.g., Daniels, 937 F.2d at 1273 & n. 3, 1274 & n. 4; Steiner, 25 F.3d at 1464; Aman v. Cort Furniture Rental Corp., [85 F.3d 1074, 1083 (3d Cir. 1996)].* With that understanding in mind, it is not difficult to imagine an abusive supervisor simultaneously harassing several subordinates of different racial and ethnic

backgrounds, but in each instance choosing an epithet, symbol, or gesture that he surely knows will have a uniquely hurtful and intimidating impact upon its intended target. Perhaps he paints a swastika on the locker of a Jewish employee, while he threatens a worker of Japanese ancestry with internment. The discrimination in that scenario lies not in the selection of victims (which might be random) but in the decision to perpetrate the harassment through words and conduct charged with unmistakable racial, religious, and ethnic overtones, creating a work environment that is uniquely hostile to each victim because of his particular race, religion, or ethnicity. *See* Steven S. Locke, *The Equal Opportunity Harasser As a Paradigm for Recognizing Sexual Harassment of Homosexuals Under Title VII*, 27 Rutgers L.J. 383, 413–14 (1996).

Doe by Doe v. City of Belleville, Ill., 119 F.3d 563, 578–80 (7th Cir. 1997), *abrogated on other grounds by Oncale*, 523 U.S. at 75.

Accordingly, cases interpreting federal civil rights statutes have roundly rejected the District’s contention that “conduct targeting both men and women is not based on sex.” *See, e.g., Steiner*, 25 F.3d at 1463 (“The district court erred in endorsing Showboat’s argument that Trenkle’s conduct was not sexual harassment because he consistently abused men and women alike. In the first place, that argument mischaracterizes his actual behavior. The numerous depositions of Showboat employees reveal that Trenkle was indeed abusive to men, but that his abuse of women was different. It relied on sexual epithets, offensive, explicit references to women’s bodies and sexual conduct.”).

Nor do the only two Washington cases cited by the District, *Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 401, 693 P.2d 708 (1985) and *Doe v. Wash. Dep’t of Transp.*, 85 Wn. App. 143, 193 P.2d 196, *rev.*

denied, 132 Wn.2d 1012 (1997), support its sweeping proposition that harassing conduct directed at both genders can never be gender based. *Glasgow*, a hostile workplace environment gender harassment case that looked to federal Title VII cases for guidance, did state that an employee must show that she would not “have been singled out and caused to suffer the embarrassment if [she] had been of a different sex.” 103 Wn.2d at 406. However, in subsequently interpreting Title VII, the United States Supreme Court has held that demonstrating disparate treatment between genders in a mixed-gender setting is but one means of demonstrating gender-based discrimination. *Oncale*, 523 U.S. at 80. Demonstrating facially discriminatory conduct is another. *Id.*

Moreover, in *Doe*, even the plaintiff conceded that he “was singled out not because of his sex but because of his sensitivity to his supervisor’s conduct.” 85 Wn. App. at 149. In other words, the *Doe* plaintiff conceded that his gender was ***not a factor at all*** underlying the harassment. *Doe* in no way held that “conduct targeting both men and women” categorically cannot be “based on sex,” as the District contends.

Ultimately, however, the Court need not reach the factual question of whether, in this case, Plaintiffs’ gender was a substantial factor motivating their sexual abuse by District employee Gary Shafer. These certified questions before the Court arise from a determination of the legal sufficiency of Plaintiffs’ pleadings regarding their WLAD claims, not from an evidentiary motion; and Plaintiffs alleged that their gender was a substantial factor motivating their abuse. Dkt. 75 at 28 (¶ 57); 32 (¶ 68).

Indeed, whether Shafer even abused male students—the sole “fact” on which the District premises its flawed legal argument—remains to be proven by the District, given its complete lack of support in the certified record. As the federal court correctly observed, the “substantial factor” element of Plaintiffs’ WLAD claims awaits further discovery and evidentiary phases of the case, such as summary judgment. At most, the Court need only dispense with the District’s argument that “conduct targeting both men and women” can *never* be gender-based discrimination as a matter of law.

Second, Legal Voice aptly points out that, particularly in the context of school desegregation, courts have recognized school buses’ critical role in providing an equal, public education. Legal Voice Br. at 15-20. The United States Supreme Court long has recognized that “[b]us transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school.” *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15, 91 S. Ct. 1267, 1275, 28 L. Ed. 2d 554 (1971). In so doing, the Supreme Court also has acknowledged that school buses have been at the forefront of efforts to create a public educational system ““in which . . . discrimination would be eliminated root and branch,”” *Swann*, 402 U.S. at 15 (quoting *Green v. County School Board*, 391 U.S. 430, 437-38, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968)), and play a critical role in arriving at ““the day when a completely unified, unitary, nondiscriminatory school system becomes a

reality instead of a hope.” *Swann*, 402 U.S. at 20, 29 (quoting *United States v. Montgomery County Board of Education*, 365 U.S. 225, 235-36, 89 S. Ct. 1670, 23 L. Ed. 2d 263 (1969)). Given school buses’ historical role in public education and combatting discrimination, accepting the District’s argument that school buses themselves are places *entirely* excluded from Washington State’s liberally construed mandate to “eradicate discrimination” in *any* place of public accommodation, such as schools and public transportation, is an impermissible result. *Floeting v. Grp. Health Coop.*, 192 Wn.2d 848, 852, 434 P.3d 39 (2019).

Finally, like *amicus curiae* Crime Victims, Legal Voice also cites materials detailing the devastating, intersectional impacts of sexual abuse, as well as Washington State statistics for school bus ridership. Again, the Court may properly consider these materials in liberally construing WLAD consistent with effectuating its purpose of eradicating discrimination in public accommodations. *See Taylor*, 193 Wn.2d at 630.

D. Plaintiffs’ Answer to *Amicus Curiae* Defense Trial Lawyers

Defense Trial Lawyers primarily devotes its brief to establishing the fact that WLAD’s public accommodation provisions do not include “age” as a protected characteristic. Defense Trial Lawyers’ Br. at 1-16. But this is not even at issue in these certified question proceedings. Plaintiffs allege discrimination on the basis of gender, not age.

However, Defense Trial Lawyers appears to suggest at times—as the District openly contends—that the legislature intended to categorically exclude “children” from protection from discrimination on the basis of any

other protected characteristic, such as gender, race, disability, sexual orientation, or religion. To the extent that it does so, it offers an interpretation of WLAD contrary to its plain language and leading to impermissibly absurd results.

First, Defense Trial Lawyers suggests that, because the legislature added “age” as a protected characteristic in WLAD except for its public accommodation provisions, it intended to categorically exclude “children” as a “class” protected from other prohibited bases for public accommodation discrimination. Defense Trial Lawyers’ Br. at 8-11. But this interpretation would turn WLAD’s mandate of liberal construction on its head by using the *absence* of one characteristic—“age”—to exclude an entire “class” of people from different forms of discrimination expressly prohibited by WLAD. In essence, Defense Trial Lawyers asks the Court to add the terms “except children” to RCW 49.60.215’s list of protected characteristics based on the absence of “age” from that list—something the law does not permit. *See Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). Nor does it logically follow that the legislature specifically intended to exclude “children” from forms of prohibited discrimination by generally declining to include “age” as a protected characteristic; “age” is not synonymous with “children,” as it is a term that necessarily includes adults and the elderly. Thus, under Defense Trial Lawyers’ interpretation of the statute, seemingly anyone of any “age” would be excluded from protection from prohibited forms of discrimination, an impermissible result.

Second, Defense Trial Lawyers suggests that the legislature’s limitation of prohibited “age” discrimination to individuals 40 years or older under WLAD’s workplace antidiscrimination provisions, as well as not including “children” as a specific “protected class,” evidences legislative intent to categorically exclude children from protection from non-“age” based forms of discrimination prohibited under WLAD’s public accommodation provisions. Defense Trial Lawyers’ Br. at 11-19. But such an interpretation contradicts the legislative intent evidenced by the plain language of WLAD and its predecessors to protect all “persons” from discrimination based on protected characteristics. In enacting Washington’s original, penal statute prohibiting public accommodation discrimination, the State’s first legislature guaranteed “the full and equal enjoyment” of public accommodations to “*all persons* within the jurisdiction of the State of Washington” and “*all citizens* of whatever race, color or nationality.” LAWS OF 1889, Ch. 16, § 1 (emphases added); **Appendix C**. Similarly, it prohibited “denying to *any* citizen” the “full enjoyment” of public accommodations. *Id.* at § 2. Since 1889, the legislature has consistently maintained its protection of “any” person from discrimination on the basis of a protected characteristic in *every* subsequent version of the statute. *See* LAWS OF 1909, ch. 249, § 434 (“any other person”); LAWS OF 1953, ch. 87, § 1 (“any other person”); RCW 9.91.010(d)(2) (“any other person”); **Appendix D, E**.

Likewise, Washington’s original “Law Against Discrimination in Employment” declared that its purpose was to address “practices of

discrimination against *any* [of the state's] inhabitants,” and the legislature has retained that language in each subsequent iteration of the statute, including WLAD. LAWS OF 1949, ch. 183, § 1; LAWS OF 1957, ch. 37, § 1; RCW 49.60.010; **Appendix A, F**.

Moreover, since the 1957 enactment of WLAD's public accommodations provisions, the legislature has prohibited public accommodation discrimination against “*any* person” based on protected characteristics and permitted “[*a*]ny person claiming to be aggrieved by an alleged unfair practice” to seek administrative relief. LAWS OF 1957, ch. 37, §§ 14, 16; RCW 49.60.215; RCW 49.60.230(1)(a) (emphases added); **Appendix A**. Likewise, since 1973, WLAD has permitted “[*a*]ny person” deeming themselves “injured by any act in violation of this chapter” to pursue a private civil action. LAWS OF 1973, ch. 141, § 3; RCW 49.60.030(2); **Appendix B**. Finally, since 1957, WLAD has defined “person” to mean “one or more individuals.” LAWS OF 1957, ch. 37, § 4; RCW 49.60.040(19); **Appendix A**.

Taken altogether, WLAD's plain language has *never* evidenced any legislative intent to categorically exclude “children” or any other age group from its protections from prohibited forms of public accommodation discrimination. To the contrary, with *every* amendment to WLAD and its predecessor statutes the legislature has maintained that *any* person is entitled to protection from such discrimination. Any interpretation to the contrary impermissibly ignores this overwhelming evidence of legislative intent.

E. Plaintiffs' Answer to *Amicus Curiae* Risk Pool

The Risk Pool argues that: (1) RCW 4.08.120 “controls” over RCW 49.60.215 in governing public corporations’ liability; (2) school buses are not “places” of public accommodation; (3) the Court should utilize RCW 49.60.040(11)’s definition of the term “employer” to import the common law principles of vicarious liability and agency rejected in *Floeting* back into RCW 49.60.215’s public accommodation provisions; (4) Plaintiffs erroneously rely on “employment law” in arguing that sexual abuse and assault constitutes gender-based public accommodation discrimination; and (5) various public policy considerations weigh against recognizing sexual abuse and assault as gender-based discrimination subject to strict liability under RCW 49.60.215. None of these arguments are well-taken.

First, echoing the District’s arguments, the Risk Pool contends that RCW 4.08.120 permits an “either-or” choice of contract or tort causes of action against public corporations that is exclusive to other remedies, such as RCW 49.60.215. Risk Pool Br. at 4. Essentially, the Risk Pool argues that use of the term “may” in the statute means that a plaintiff may pursue one of the remedies under the statute but may also choose not to pursue an action at all. But “it is unlikely the Legislature used a permissive term simply to tell a worker he or she may choose *not* to seek redress” *Wilmot*, 118 Wn.2d at 56 (emphasis in original). Indeed, as discussed above, Washington courts consistently interpret permissively phrased statutes such as RCW 4.08.120 as non-exclusive in the absence of any

exclusivity language.

Second, the Risk Pool argues that school buses are a “service” provided to the public, not a “place” of public accommodation, such as an “educational institution.” Risk Pool Br. at 6-7. As a threshold issue, the District argues only that school buses are not “public” in nature—not that they are not a “place” at all. The Court does not address issues or arguments raised solely by an amicus. *Harris v. Dep’t of Labor & Indus.*, 120 Wn.2d 461, 469–70, 843 P.2d 1056 (1993). Even if the Court addressed this argument, it ignores that WLAD’s definition of “public accommodation” encompasses “any place . . . for public conveyance or transportation on land, water, or in the air,” language that clearly includes public school buses, especially given the legislature’s inclusion of schools within the same definition. RCW 49.60.040(2).² Plaintiffs’ Reply Br. at 4-8.

Third, the Risk Pool invites the Court, contrary to *Floeting*, to bootstrap agency and vicarious liability concepts back into RCW 49.60.215 for public corporations under RCW 49.60.040(11)’s definition of the term “employer.”³ Risk Pool Br. at 5, 7-8. However, unlike RCW

² Relatedly, the Risk Pool argues that the Court should not extend public accommodation liability to “off-campus locations” such as school buses because “by definition, no-fault strict liability means the district had no reason to know the driver posed a danger.” Risk Pool Br. at 7. But even under common law principles of liability, a plaintiff is not required to show that a school district knew a particular employee posed a danger to students. Rather, under the common law liability extends to harms falling within a foreseeable “general field of danger”; knowledge of a specific employee’s dangerous propensities is not required. *N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 175 Wn. App. 517, 525-526, 307 P.3d 730 (2013), *review denied*, 179 Wn.2d 1005.

³ The Risk Pool also offers no rationale limiting its interpretation to public corporations as opposed to all employers. In reality, it requests that the Court overturn its

49.60.180's workplace antidiscrimination provision, RCW 49.60.215 utilizes the term "person," not "employer," in defining the standard of liability for public accommodation discrimination. Indeed, this distinction in the statutes' terms was the Court's *primary* basis for rejecting application of common law vicarious liability or agency principles in the public accommodation context. *Floeting*, 192 Wn.2d at 854-55. As the Court observed, WLAD's definition of "employer" has no application to the public accommodation statute. *Id.*

Fourth, the Risk Pool contends that Plaintiffs erroneously rely on "employment law" in arguing that sexual assault and abuse constitute gender-based public accommodation discrimination because the Court "expressly rejected" such an approach in *Floeting*. Risk Pool Br. at 11. But, as discussed above, *Floeting* rejected employment law principles of vicarious liability and agency where the terms of WLAD's public accommodation provisions materially differed from those of its workplace discrimination provision. 192 Wn.2d at 854-55. Here, the issue involves the meaning of a term *common* to both provisions: "discrimination." Thus, looking to WLAD workplace discrimination precedent to define this common term properly "promote[s] harmony in our discrimination law jurisprudence" and avoids absurd results, such as holding that sexual assault and abuse constitute gender-based discrimination in the workplace but not in public accommodations. *Fell v. Spokane Transit Auth.*, 128

opinion in *Floeting*.

Wn.2d 618, 640, 911 P.2d 1319 (1996).

Finally, relying on largely non-Washington sexual abuse jury verdict studies, insurance and risk pool industry articles, and excerpts from the Risk Pool's own insurance policy, the Risk Pool speculates that recognizing sexual assault and abuse as gender-based discrimination subject to strict liability under RCW 49.60.215 may render school districts unable to obtain liability insurance or "jeopardize[]" their ability to "collectively purchase excess insurance above certain exposure levels" through joint risk pooling. Risk Pool Br. at 15-20. But when offered to support a restrictive reading of WLAD that necessarily would involve evidentiary weighing of these materials and factfinding, the Court should not consider such materials. See *Rousso v. State*, 170 Wn.2d 70, 87, 239 P.3d 1084 (2010). Ultimately, the Court is "in no position to analyze the large-scale impacts of accepting or rejecting" Plaintiffs' position. *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 421, 334 P.3d 529 (2014). "The legislature, not this court, is in the best position to assess policy considerations." *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 109, 285 P.3d 34 (2012).

However, even if the Court considered these materials, they undermine the premises of the Risk Pool's policy arguments more than they support them. For example, the Risk Pool cites its own insurance policy for the proposition that "sexual abuse insurance coverage currently available to Washington schools typically includes an explicit exclusion for the actual behavior of the perpetrator." Risk Pool Br. at 17. But the

policy's plain language only excludes coverage for "Member Institution[s]" whose administrators or board members fail to report known sexual abuse or for "any natural person" who actually engages in sexual abuse or fails to report known sexual abuse. Risk Pool Br. Appendix I at 6. In other words, the policy does not appear to exclude *school districts* from coverage for liability for an employee's sexual abuse of a student outside those circumstances.

Finally, and perhaps most importantly, the Risk Pool argues that recognizing sexual abuse and assault of students as gender-based discrimination subject to strict liability under RCW 49.60.215 "would not lessen the incidence of sexual abuse." Risk Pool Br. at 18. But the jury verdict studies cited by the Risk Pool inherently reflect community judgments that school districts can do more to prevent student sexual abuse and are failing to do so. As *Floeting* observed, imposition of strict liability fully incentivizes employers such as school districts to prevent such discrimination: "if employers know that the only way they can prevent lawsuits is by preventing their employees from discriminating at all, they will try even harder to make sure that their employees are well trained, are well supervised, and do not discriminate." *Floeting*, 192 Wn.2d at 861.

For example, in the school bus context, such liability may incentivize school districts to require video cameras on all buses; GPS monitoring of buses for unexpected or prolonged stops; adult monitors on school buses in addition to bus drivers; strict regulations regarding when

and where adults may sit with students on buses, such as avoiding blind spots; recordation and monitoring of instances in which adults other than bus drivers ride on a school bus; tracking bus drivers' assigned routes for suspicious behavior, such as frequent route changing; better responsiveness by school district officials to reports of inappropriate interactions between bus drivers and students; or any number of means of better monitoring and supervising bus drivers.

Acceptance of the Risk Pool's position that school districts should be exempted from RCW 49.60.215's imposition of strict liability because "there is no action school districts can take that will eliminate all sexual abuse in schools" is simply antithetical to WLAD's "legislative goal of eradicating discrimination in places of public accommodation." *Floeting*, 192 Wn.2d at 861. Instead, as *Floeting* observed, such liability "better further[s]" WLAD's legislative goal by "encourag[ing] employers to focus on preventing discrimination." *Id.* So it is here.

RESPECTFULLY SUBMITTED this 28th day of February, 2019.

PFAU COCHRAN VERTETIS AMALA, PLLC

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CERTIFICATE OF SERVICE

Sarah Awes, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on February 28, 2020, I delivered via Email a true and correct copy of the above document, directed to:

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APPENDIX A

received under this chapter in the log patrol revolving fund.

Passed the House January 31, 1957.

Passed the Senate February 21, 1957.

Approved by the Governor March 1, 1957.

CHAPTER 37.

[H. B. 25.]

CIVIL RIGHTS—LAW AGAINST DISCRIMINATION.

AN ACT relating to civil rights, amending section 1, chapter 183, Laws of 1949 and RCW 49.60.010; amending section 12, chapter 183, Laws of 1949 and RCW 49.60.020; amending section 2, chapter 183, Laws of 1949 and RCW 49.60.030; amending section 3, chapter 183, Laws of 1949 and RCW 49.60.040; amending section 2, chapter 270, Laws of 1955 and RCW 49.60.050; amending section 6, chapter 270, Laws of 1955 and RCW 49.60.090; amending section 8, chapter 270, Laws of 1955 and RCW 49.60.120; amending section 7, chapter 183, Laws of 1949 and RCW 49.60.180 through 49.60.220; amending section 15, chapter 270, Laws of 1955 and RCW 49.60.230; amending section 16, chapter 270, Laws of 1955 and RCW 49.60.240; amending section 17, chapter 270, Laws of 1955 and RCW 49.60.250; section 9, chapter 183, Laws of 1949 and RCW 49.60.260 through 49.60.300; amending section 10, chapter 183, Laws of 1949 and RCW 49.60.310; and adding three new sections to chapter 183, Laws of 1949 and chapter 49.60 RCW.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 1, chapter 183, Laws of 1949 and RCW 49.60.010 are each amended to read as follows:

RCW 49.60.010 amended.

This chapter shall be known as the "Law Against Discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of

Short title—
Purpose of
chapter.

discrimination against any of its inhabitants because of race, creed, color, or national origin are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in places of public resort, accommodation or amusement, and in publicly-assisted housing because of race, creed, color, or national origin; and the board established hereunder is hereby given general jurisdiction and power for such purposes.

RCW 49.60.020 amended.

SEC. 2. Section 12, chapter 183, Laws of 1949 and RCW 49.60.020 are each amended to read as follows:

Construction of chapter—Election of other remedies.

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, or national origin. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his civil rights. However, the election of a person to pursue such a remedy shall preclude him from pursuing those administrative remedies created by this act.

RCW 49.60.030 amended.

SEC. 3. Section 2, chapter 183, Laws of 1949 and RCW 49.60.030 are each amended to read as follows:

Freedom from discrimination—Declaration of civil rights.

The right to be free from discrimination because of race, creed, color, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

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

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

(3) The right to secure publicly-assisted housing without discrimination.

SEC. 4. Section 3, chapter 183, Laws of 1949 and RCW 49.60.040 are each amended to read as follows: RCW 49.60.040 amended.

As used in this chapter:

“Person” includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof; Definitions.
“Person.”

“Employer” includes any person acting in the interest of an employer, directly, or indirectly, who has eight or more persons in his employ, and does not include any religious or sectarian organization, not organized for private profit; “Employer.”

“Employee” does not include any individual employed by his parents, spouse or child, or in the domestic service of any person; “Employee.”

“Labor organization” includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment; “Labor organization.”

“Employment agency” includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer; “Employment agency.”

“National origin” includes “ancestry”; “Natural origin.”

“Full enjoyment of” includes the right to pur- “Full enjoyment of.”

Definitions.

chase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited;

"Any place of public resort, accommodation, assemblage or amusement."

"Any place of public resort, accommodation, assemblage or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods, merchandise, services or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: *Provided*, That nothing herein contained shall be construed to include or apply to any institute, bona fide club, or place of accom-

Proviso.

modation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this act; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution;

Definitions.

“Publicly-assisted housing” includes any building, structure or portion thereof which is used or occupied or is intended to be used or occupied as the home, residence or sleeping place of one or more persons, and the acquisition, construction, rehabilitation, repair or maintenance of which is financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions, or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly-assisted only during the life of such loan and such guarantee or insurance, or if a commitment, issued by a government agency, is outstanding that the acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions, or any agency thereof;

“Publicly-assisted housing.”

“Owner” includes the owner, lessee, sublessee, assignee, agent, creditor, lender or other person having the right to ownership or possession of housing, or to have housing pledged as security for a debt.

“Owner.”

SEC. 5. Section 2, chapter 270, Laws of 1955 and RCW 49.60.050 are each amended to read as follows:

RCW 49.60.050 amended.

There is created the “Washington state board against discrimination,” which shall be composed of five members to be appointed by the governor,

Board created.

one of whom shall be designated as chairman by the governor.

RCW 49.60.090 amended.

SEC. 6. Section 6, chapter 270, Laws of 1955 and RCW 49.60.090 are each amended to read as follows:

Offices of the board.

The principal office of the board shall be in the city of Olympia, but it may meet and exercise any or all of its powers at any other place in the state, and may establish such district offices as it deems necessary.

RCW 49.60.120 amended.

SEC. 7. Section 8, chapter 270, Laws of 1955 and RCW 49.60.120 are each amended to read as follows:

Certain powers and duties of board.

The board shall have the functions, powers and duties:

(1) To appoint an executive secretary and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the board in connection therewith.

(4) To receive, investigate and pass upon complaints alleging unfair practices as defined in this act because of race, creed, color, or national origin.

(5) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, creed, color, or national origin.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

Division and amendment.

SEC. 8. Section 7, chapter 183, Laws of 1949 (heretofore divided and codified as RCW 49.60.180

through 49.60.220) is amended to read as set forth in sections 9 through 13 of this amendatory act.

SEC. 9. (RCW 49.60.180) It is an unfair practice for any employer: RCW 49.60.180 amended.

(1) To refuse to hire any person because of such person's race, creed, color, or national origin, unless based upon a bona fide occupational qualification. Unfair practices of employer defined

(2) To discharge or bar any person from employment because of such person's race, creed, color, or national origin.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of such person's race, creed, color, or national origin.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language. Proviso.

SEC. 10. (RCW 49.60.190) It is an unfair practice for any labor union or labor organization: RCW 49.60.190 amended.

(1) To deny membership and full membership rights and privileges to any person because of such person's race, creed, color, or national origin. Unfair practice of labor union defined.

(2) To expel from membership any person because of such person's race, creed, color, or national origin.

(3) To discriminate against any member, employer, or employee because of such person's race, color, or national origin.

RCW 49.60.200 amended.

Unfair practices of employment agencies defined.

SEC. 11. (RCW 49.60.200) It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, any individual because of his race, creed, color, or national origin, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language.

Proviso.

RCW 49.60.210 amended.

Unfair to discriminate against person opposing unfair practice.

SEC. 12. (RCW 49.60.210) It is an unfair practice for any employer, employment agency, or labor union to discharge, expel, or otherwise discriminate against any person because he has opposed any practices forbidden by this chapter, or because he has filed a charge, testified, or assisted in any proceeding under this chapter.

RCW 49.60.220 amended.

Unfair practice to aid violation.

SEC. 13. (RCW 49.60.220) It is an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying with the provisions of this chapter or any order issued thereunder.

New section.

SEC. 14. There is added to chapter 183, Laws of 1949 and chapter 49.60 RCW, a new section to read as follows:

Unfair practices of places of public resort, accommodation, assemblage, amusement.

It shall be an unfair practice for any person or his agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination or the requiring of any person to pay a larger sum than the uniform rates

charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, or national origin.

SEC. 15. There is added to chapter 183, Laws of 1949 and chapter 49.60 RCW, a new section to read as follows: New section.

It shall be an unfair practice:

(1) For the owner of publicly-assisted housing to refuse to sell, rent, or lease to any person or persons such housing because of the race, creed, color, or national origin of such person or persons;

Unfair practices with respect to publicly-assisted housing.

(2) For the owner of any publicly-assisted housing to segregate, separate or discriminate against any person or persons because of the race, creed, color, or national origin of such person or persons, in the terms, conditions, or privileges of any such housing or in the furnishing of facilities or services in connection therewith;

(3) For any person to make or cause to be made any written or oral inquiry concerning the race, creed, color, or national origin of a person or group of persons seeking to purchase, rent, or lease publicly-assisted housing accommodations;

(4) For any person to print or publish or cause to be printed or published any notice or advertisement relating to the sale, rental, or leasing of any publicly-assisted housing accommodation which indicates any preference, limitation, specification, or discrimination based on race, creed, color, or national origin;

(5) For any person, bank, mortgage company or other financial institution to whom application is made for financial assistance for the acquisition, con-

Unfair practices with respect to publicly-assisted housing.

struction, rehabilitation, repair or maintenance of any publicly-assisted housing to make or cause to be made any written or oral inquiry for the purpose of discrimination concerning the race, creed, color, or national origin of a person or group of persons seeking such financial assistance, or concerning the race, creed, color, or national origin of prospective occupants or tenants of such housing, or to discriminate against, any person or persons because of the race, creed, color, or national origin of such person or persons, or prospective occupants or tenants, in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance.

Nothing herein shall be deemed to prevent a bona fide religious, sectarian institution, or fraternal organization from selecting as tenants or occupants of any housing operated by such organization, as part of its religious, sectarian or fraternal activities, adherents or members of such religion, sect, or fraternal organization exclusively, or from giving preference in such selection to such adherents or members.

RCW 49.60.230 amended

SEC. 16. Section 15, chapter 270, Laws of 1955 and RCW 49.60.230 are each amended to read as follows:

Who may file a complaint.

Who may file a complaint:

(1) Any person claiming to be aggrieved by an alleged unfair practice may, by himself or his attorney, make, sign, and file with the board a complaint in writing under oath. The complaint shall state the name and address of the person alleged to have committed the unfair practice and the particulars thereof, and contain such other information as may be required by the board.

(2) Whenever it has reason to believe that any person has been engaged or is engaging in an unfair practice, the board may issue a complaint.

(3) Any employer or principal whose employees,

or agents, or any of them, refuse or threaten to refuse to comply with the provisions of this chapter may file with the board a written complaint under oath asking for assistance by conciliation or other remedial action.

Any complaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination.

SEC. 17. Section 16, chapter 270, Laws of 1955 and RCW 49.60.240 are each amended to read as follows:

RCW 49.60.240 amended.

After the filing of any complaint, the chairman of the board shall refer it to the appropriate section of the board's staff for prompt investigation and ascertainment of the facts. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be furnished to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

Complaint investigated.

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

Conference conciliation.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the board setting forth the terms of said agreement. No order shall be entered by the board at this stage of the proceedings except upon such written agreement.

Agreement, findings.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing,

with a copy thereof furnished to the complainant and the respondent.

RCW 49.60.250
amended.

SEC. 18. Section 17, chapter 270, Laws of 1955 and RCW 49.60.250 are each amended to read as follows:

Hearing of
complaint by
tribunal—
Order.

In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairman of the board. The chairman of the board shall thereupon appoint a hearing tribunal of three persons, who shall be members of the board or a panel of hearing examiners, acting in the name of the board, to hear the complaint and shall cause to be issued and served in the name of the board a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before such tribunal, at a time and place to be specified in such notice.

Proviso.

The place of any such hearing may be the office of the board or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the board: *Provided*, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the board who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall he participate in the deliberations of the tribunal in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

The respondent may file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard.

The tribunal conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

Hearing of
complaint by
tribunal—
Order.

If, upon all the evidence, the tribunal finds that the respondent has engaged in any unfair practice it shall state its findings of fact and shall issue and file with the board and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the tribunal, will effectuate the purposes of this chapter, and including a requirement for report of the matter on compliance.

If, upon all the evidence, the tribunal finds that the respondent has not engaged in any alleged unfair practice, it shall state its findings of fact and shall similarly issue and file an order dismissing the complaint.

The board shall establish rules of practice to govern, expedite and effectuate the foregoing procedure.

SEC. 19. There is added to chapter 183, Laws of 1949 and chapter 49.60 RCW, a new section to read as follows:

New section.

If the complainant is dissatisfied with the agreement reached as provided in section 17 hereof, or if the finding is made as provided for in this chapter, that there is no reasonable cause for believing that an unfair practice has been or is being committed, the complainant may within thirty days of approval by the board of such agreement or from receipt of a copy of said finding file a petition for reconsideration by the board and he shall have the right to ap-

Reconsideration.

pear before the board at its next regular meeting in person or by counsel and present such facts, evidence and affidavits of witnesses as may support the complaint.

The board shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure.

Division and amendment.

SEC. 20. Section 9, chapter 183, Laws of 1949 (heretofore divided and codified as RCW 49.60.260 through 49.60.300) is divided and amended as set forth in sections 21 through 25.

RCW 49.60.260 amended.

Court may enforce orders of tribunal.

SEC. 21. (RCW 49.60.260) (1) The board shall petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business, for the enforcement of any order which is not complied with and is issued by a tribunal under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court a transcript of the entire record of the proceedings, including the pleadings and testimony upon which such order was made and the finding and orders of the hearing tribunal. Within five days after filing such petition in court the board shall cause a notice of the petition to be sent by registered mail to all parties or their representatives.

The court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to issue such orders and grant such relief by injunction or otherwise, including temporary relief, as it deems just and suitable and to make and enter, upon the pleadings, testimony and proceedings set forth in such transcript, a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part any order of the board or hearing tribunal.

(2) The findings of the hearing tribunal as to the facts, if supported by substantial and competent evidence shall be conclusive. The court, upon its own motion or upon motion of either of the parties to the proceeding, may permit each party to introduce such additional evidence as the court may believe necessary to a proper decision of the cause.

(3) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to a review by the supreme court, on appeal, by either party, irrespective of the nature of the decree or judgment. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the supreme court, and the record so certified shall contain all that was before the lower court.

Appeal from court order.

SEC. 22. (RCW 49.60.270) Any respondent or complainant aggrieved by a final order of a hearing tribunal may obtain a review of such order in the superior court for the county where the unfair practice is alleged to have occurred or in the county wherein such person resides or transacts business by filing with the clerk of the court, within two weeks from the date of receipt of such order, a written petition in duplicate praying that such order be modified or set aside. The clerk shall thereupon mail the duplicate copy to the board. The board shall then cause to be filed in the court a certified transcript of the entire record in the proceedings, including the pleadings, testimony and order. Upon such filing the court shall proceed in the same manner as in the case of a petition by the board and shall have the same exclusive jurisdiction to grant to any party such temporary relief or restraining order as it deems just and suitable, and in like manner to make and enter a decree enforcing or modifying and enforcing

RCW 49.60.270 amended.

Appeal from order of tribunal.

as so modified or setting aside, in whole or in part, the order sought to be reviewed.

Unless otherwise directed by the court, commencement of review proceedings under this section shall operate as a stay of any order.

RCW 49.60.280 enacted without amendment.

SEC. 23. (RCW 49.60.280) Petitions filed under RCW 49.60.260 and 49.60.270 shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the court under this chapter shall take precedence over all other matters, except matters of the same character.

RCW 49.60.290 amended.

Court may not restrain or enjoin board.

SEC. 24. (RCW 49.60.290) No court of this state shall have jurisdiction to issue any restraining order or temporary or permanent injunction preventing the board from performing any function vested in it by this chapter.

RCW 49.60.300 enacted without amendment.

SEC. 25. (RCW 49.60.300) RCW 49.60.260 to 49.60.290, inclusive, shall not be applicable to orders issued against any political or civil subdivision of the state, or any agency, office, or employee thereof.

RCW 49.60.310 amended.

Misdemeanor to interfere with or resist board.

SEC. 26. Section 10, chapter 183, Laws of 1949 and RCW 49.60.310 are each amended to read as follows:

Any person that wilfully resists, prevents, impedes, or interferes with the board or any of its members or representatives in the performance of duty under this chapter, or that wilfully violates an order of the board, is guilty of a misdemeanor; but procedure for the review of the order shall not be deemed to be such wilful conduct.

Severability.

SEC. 27. If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or cir-

cumstances other than those to which it is held invalid shall not be affected thereby.

Passed the House February 25, 1957.

Passed the Senate February 23, 1957.

Approved by the Governor March 2, 1957.

CHAPTER 38.

[Sub. H. B. 68.]

STATE DEPARTMENT OF NATURAL RESOURCES.

AN ACT relating to state government; providing for administration of laws pertaining to the natural resources of the state; establishing a new department of natural resources consisting of a board, an administrator and a supervisor; abolishing certain offices, departments, boards, commissions and committees; transferring powers, duties and functions of the abolished agencies and others to the new department; prescribing the powers, duties and functions of the board, administrator and the supervisor; providing for the financing of the new agency; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. The purpose of this act is to provide for more effective and efficient management of the forest and land resources in the state by consolidating into a department of natural resources certain powers, duties and functions of the division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board, all state sustained yield forest committees, director of conservation and development, state capitol committee, director of licenses, secretary of state, tax commission and commissioner of public lands.

Purpose
of act.

SEC. 2. For the purpose of this act, except where a different interpretation is required by the context:

Definitions.

(1) "Department" means the department of natural resources;

"Department."

APPENDIX B

The outer envelopes to which must be attached the corresponding original absentee voters' certificates shall be sealed securely in one package and shall be kept by the auditor for future use in case any question should arise as to the validity of the vote.

NEW SECTION. Sec. 2. There is added to chapter 29.36 RCW a new section to read as follows:

As an alternative to the procedure set forth in section 1 of this 1973 amendatory act, the county canvassing board, or its duly authorized representatives, may elect not to initial the inner envelope but instead place all such envelopes in containers that can be secured with a numbered metal seal and such sealed containers shall be stored in the most secure vault available within the courthouse until after 8:00 o'clock p.m. of the day of the primary or election: PROVIDED, That in the instance of punchcard absentee ballots, such ballots may be taken from the inner envelopes and all the normal procedural steps performed necessary to prepare punchcard ballots for computer count and then placed in said sealed containers.

Passed the House March 3, 1973.

Passed the Senate February 28, 1973.

Approved by the Governor March 20, 1973.

Filed in Office of Secretary of State March 20, 1973.

CHAPTER 141

[House Bill No. 404]

DISCRIMINATION--SEX BASIS--CREDIT--
INSURANCE--PROHIBITED

AN ACT Relating to the laws against discrimination; amending section 1, chapter 183, Laws of 1949 as last amended by section 1, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.010; amending section 12, chapter 183, Laws of 1949 as amended by section 2, chapter 37, Laws of 1957 and RCW 49.60.020; amending section 2, chapter 183, Laws of 1949 as last amended by section 2, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.030; amending section 3, chapter 183, Laws of 1949 as last amended by section 3, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.040; amending section 8, chapter 270, Laws of 1955 as last amended by section 1, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.120; amending section 9, chapter 270, Laws of 1955 as amended by section 2, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.130; amending section 1, chapter 68, Laws of 1959 and RCW 49.60.175; amending section 9, chapter 37, Laws of 1957 as last amended by section 3, chapter 81,

Laws of 1971 ex. sess. and RCW 49.60.180; amending section 10, chapter 37, Laws of 1957 as last amended by section 4, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.190; amending section 11, chapter 37, Laws of 1957 as last amended by section 5, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.200; amending section 4, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.222; amending section 7, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.225; and adding new sections to chapter 49.60 RCW.

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

Section 1. Section 1, chapter 183, Laws of 1949 as last amended by section 1, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.010 are each amended to read as follows:

This chapter shall be known as the "law against discrimination". It is an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, ~~((or))~~ national origin, sex, marital status or age are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation or amusement, and in real property transactions because of race, creed, color, ~~((or))~~ national origin, sex, marital status or age; and the board established hereunder is hereby given general jurisdiction and power for such purposes.

Sec. 2. Section 12, chapter 183, Laws of 1949 as amended by section 2, chapter 37, Laws of 1957 and RCW 49.60.020 are each amended to read as follows:

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, ~~((or))~~ nation origin, sex, marital status or age, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained by construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his civil rights. ~~((However, the election of a person to pursue such a remedy shall preclude him from pursuing those~~

administrative remedies created by this chapter.)

Sec. 3. Section 2, chapter 183, Laws of 1949 as last amended by section 2, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.030 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, ~~((or))~~ national origin, or sex is recognized as and declared to be a civil right. This right shall include, but not be limited to:

~~((1))~~ (a) The right to obtain and hold employment without discrimination;

~~((2))~~ (b) The right to the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement;

~~((3))~~ (c) The right to engage in real estate transactions without discrimination;

(d) The right to engage in credit or insurance transactions without discrimination;

(2) Any person deeming himself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover the actual damages sustained by him, or both, together with the cost of suit including a reasonable attorney's fees or any other remedy authorized by this chapter or the United States Civil Rights Act of 1964; and

(3) Notwithstanding any other provisions of this chapter, any act prohibited by this chapter which is committed in the course of trade or commerce in the state of Washington as defined in the Consumer Protection Act, chapter 19.86 RCW, shall be deemed an unfair practice within the meaning of RCW 19.86.020 and subject to all the provisions of chapter 19.86 RCW as now or hereafter amended.

Sec. 4. Section 3, chapter 183, Laws of 1949 as last amended by section 3, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.040 are each amended to read as follows:

As used in this chapter:

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

"Employer" includes any person acting in the interest of an employer, directly, or indirectly, who has eight or more persons in his employ, and does not include any religious or sectarian organization, not organized for private profit;

"Employee" does not include any individual employed by his parents, spouse or child, or in the domestic service of any person;

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

"Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

"National origin" includes "ancestry";

"Full enjoyment of" includes the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited;

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

mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

"Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

"Real estate transaction" includes the sale, exchange, purchase, rental or lease of real property.

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

NEW SECTION. Sec. 5. There is added to chapter 49.60 RCW a new section to read as follows:

(1) It is an unfair practice for any person whether acting for himself or another in connection with any credit transaction because of race, creed, color, national origin, sex or marital status:

(a) To deny credit to any person;

(b) To increase the charges or fees for or collateral required to secure any credit extended to any person;

(c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;

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

(2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon.

NEW SECTION. Sec. 6. There is added to chapter 49.60 RCW a new section to read as follows:

It is an unfair practice for any person whether acting for himself or another in connection with an insurance transaction to fail or refuse to issue or renew insurance to any person because of

sex, marital status, race, creed, color or national origin. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060.

The fact that rates charged may have been filed and approved pursuant to Title 48 RCW does not constitute a defense to an action under this section and the fact that such unfair practice may also be a violation of chapter 48.30 RCW does not constitute a defense to an action brought under this section.

Sec. 7. Section 8, chapter 270, Laws of 1955 as last amended by section 1, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.120 are each amended to read as follows:

The board shall have the functions, powers and duties:

(1) To appoint an executive secretary and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the board in connection therewith.

(4) To receive, investigate and pass upon complaints alleging unfair practices as defined in this chapter because of sex, race, creed, color, or national origin.

(5) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, race, creed, color, ~~((or))~~ national origin, sex, marital status, or age.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

Sec. 8. Section 9, chapter 270, Laws of 1955 as amended by section 2, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.130 are each amended to read as follows:

The board has power to create such advisory agencies and conciliation councils, local, regional or state-wide, as in its judgment will aid in effectuating the purposes of this chapter. The board may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color ~~((or))~~, national origin, or marital status; to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the board for the development of policies and

procedures in general and in specific instances, and for programs of formal and informal education which the board may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses, and the board may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The board may use organizations specifically experienced in dealing with questions of discrimination.

Sec. 9.. Section 1, chapter 68, Laws of 1959 and RCW 49.60.175 are each amended to read as follows:

It shall be an unfair practice to use or require designation of the sex, race, creed, color or national origin of any person on (~~credit applications of banks, loan companies, insurance companies or any other financial institution~~) any document concerning an application for credit in any credit transaction.

Sec. 10. Section 9, chapter 37, Laws of 1957 as last amended by section 3, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.180 are each amended to read as follows:

It is an unfair practice for any employer:

(1) To refuse to hire any person because of such person's age, sex, marital status, race, creed, color, or national origin, unless based upon a bona fide occupational qualification.

(2) To discharge or bar any person from employment because of such person's age, sex, marital status, race, creed, color, or national origin.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of such person's age, sex, marital status, race, creed, color, or national origin: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the board by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, marital status, race, creed, color, or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.

Sec. 11. Section 10, chapter 37, Laws of 1957 as last amended by section 4, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.190 each amended to read as follows:

It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of ((such person's)) age, sex, marital status, race, creed, color, or national origin.

(2) To expel from membership any person because of ((such person's)) age, sex, marital status, race, creed, color, or national origin.

(3) To discriminate against any member, employer, or employee because of ((such person's)) age, sex, marital status, race, creed, color, or national origin.

Sec. 12. Section 11, chapter 37, Laws of 1957 as last amended by section 5, chapter 81, Laws of 1971 ex. sess. and RCW 49.60.200 are each amended to read as follows:

It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, race, creed, color, or nation origin, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, creed, color, or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.

Sec. 13. Section 4, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.222 are each amended to read as follows:

It is an unfair practice for any person, whether acting for himself or another, because of sex, marital status, race, creed, color or national origin:

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

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

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

(4) To refuse to negotiate for a real estate transaction with a person;

(5) To represent to a person that real property is not

available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;

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

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

(8) To expel a person from occupancy of real property; or

(9) To discriminate in the course of negotiating, executing of financing a real estate transaction whether by mortgage, deed of trust, contract or other instrument imposing a lien or other security in real property or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of section 5 of this 1973 amendatory act relating to unfair practices in credit transactions.

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

Sec. 14. Section 7, chapter 167, Laws of 1969 ex. sess. and RCW 49.60.225 are each amended to read as follows:

When a determination has been made under RCW 49.60.250 that an unfair practice involving real property has been committed, the board or its successor may, in addition to other relief authorized by RCW 49.60.250, award the complainant up to one thousand dollars for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040 and 49.60.222 through 49.60.226 as now or hereafter amended to be free from discrimination in real property transactions because of sex, marital status, race, creed, color or national origin. Enforcement of the order and appeal therefrom by the complainant or respondent shall be made as provided in RCW 49.60.260 and 49.60.270.

Passed the House February 19, 1973.

Passed the Senate March 1, 1973.

Approved by the Governor March 20, 1973.

Filed in Office of Secretary of State March 20, 1973.

APPENDIX C

SESSION LAWS
OF THE
STATE OF WASHINGTON,

ENACTED BY THE
FIRST STATE LEGISLATURE,

SESSION OF 1889-90.

[COMPILED IN CHAPTERS, WITH MARGINAL NOTES AND INDEX, BY
ALLEN WEIR, SECRETARY OF STATE.]

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:
O. C. WHITE, STATE PRINTER.
1890.

CHAPTER XVI.—MISCELLANEOUS.

SEAT OF GOVERNMENT; TO PROVIDE FOR ELECTION OF.

AN ACT to provide for submitting the question of the permanent location of the seat of government to a vote of the people.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. At the general election to be holden on the first Tuesday after the first Monday in November, 1890, the qualified electors of the state shall vote for the location of the permanent seat of government, in accordance with article XIV of the constitution, and, at said election, each elector shall be restricted in his choice of location to one of the three following named places, viz.: Olympia, North Yakima and Ellensburg, and no vote cast for any other than one of said places shall be counted or returned on said subject. Choice re-
stricted.

SEC. 2. The votes cast at the several polling places of the state shall be canvassed and returned, and the result determined in all respects substantially as is or may be required by law for the election of state officers.

SEC. 3. In case neither of the three places herein named shall receive a majority of all the legal votes cast in the state at said election, the question shall be re-submitted to the qualified electors of the state at the next succeeding general election, to be holden on the first Tuesday after the first Monday in November, 1892; but at said last mentioned election each elector shall be restricted in his choice of location to one of the two places receiving the highest number of votes at the said election in the year 1890, and the place receiving the majority of all the votes cast on said question at the election in 1892 shall be the perma- When re-sub-
mitted.

the person in charge of such engine to come to a full stop and remain standing until the team has passed.

SEC. 2. Any person violating the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than ten nor more than fifty dollars.

Approved February 14, 1890.

CIVIL AND LEGAL RIGHTS.

AN ACT to protect all citizens in their civil and legal rights.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That all persons within the jurisdiction of the State of Washington shall be entitled to the full and equal enjoyment of the public accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theatres and other places of public amusement and restaurants, subject only to the conditions and limitations established by law and applicable alike to all citizens of whatever race, color or nationality.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of whatever race, color or nationality, the full enjoyment of any of the public accommodations, advantages, facilities or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than fifty dollars nor more than three hundred dollars, or shall be imprisoned not less than thirty days nor more than six months.

Approved March 27, 1890.

APPENDIX D

CHAPTER 249.

[S. B. 300.]

CRIMINAL CODE.

[The Criminal Code was taken largely from New York and Minnesota.]

AN ACT relating to crimes and punishments and the rights and custody of persons accused or convicted of crime, and repealing certain acts.

Be it enacted by the Legislature of the State of Washington:

CHAPTER 1.

GENERAL PROVISIONS.

SECTION 1. *Classification of Crimes.*

Classification of crimes.

A crime is an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline. Every crime which may be punished by death or by imprisonment in the state penitentiary is a felony. Every crime punishable by a fine of not more than two hundred and fifty dollars, or by imprisonment in a county jail for not more than ninety days, is a misdemeanor. Every other crime is a gross misdemeanor.

SEC. 2. *Persons Punishable.*

Persons punishable.

The following persons are liable to punishment:

1. A person who commits in the state any crime, in whole or in part.
2. A person who commits out of the state any act which, if committed within it, would be larceny, and is afterward found in the state with any of the stolen property.
3. A person who, being out of the state, counsels, causes, procures, aids or abets another to commit a crime in this state.
4. A person who, being out of the state, abducts or kidnaps, by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends or conveys such person into this state.
5. A person who commits an act without the state which affects persons or property within the state, or the public health, morals or decency of the state, which, if committed within the state, would be a crime.

dispose of, any article constructed wholly or in part of gold, or of an alloy of gold, and marked, stamped or branded in such manner as to indicate that the gold or alloy of gold in such article is of a greater degree or carat of fineness, by more than one carat, than the actual carat or fineness of such gold or alloy of gold, shall be guilty of a gross misdemeanor.

SEC. 433. *"Marked, Stamped or Branded," Defined.*

An article shall be deemed to be "marked, stamped or branded" whenever such article, or any box, package, cover or wrapper in which the same is enclosed, encased or prepared for sale or delivery, or any card, label or placard with which the same may be exhibited or displayed, is so marked, stamped or branded. Terms defined.

SEC. 434. *Protecting Civil Public Rights.*

Every person who shall deny to any other person because of race, creed or color, the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, shall be guilty of a misdemeanor. Denying civil rights.

SEC. 435. *Master of Vessel Bringing Foreign Convict.*

Every person who, being the master or commander of any vessel or boat arriving from a foreign country, shall knowingly bring into this state a person who has been or is a foreign convict of any offense, which, if committed in this state would be punishable under the laws thereof, shall be guilty of a misdemeanor. Bringing in foreign convict.

SEC. 436. *Vagrancy.*

Every—

1. Person who asks or receives any compensation, gratuity or reward for practising fortune telling, palmistry or clairvoyance; or, Vagrancy.
2. Person who keeps a place where lost or stolen property is concealed; or,
3. Person practicing or soliciting prostitution or keeping a house of prostitution; or,
4. Common drunkards found in any place where intox-

APPENDIX E

Terms of office.

shall receive any compensation. The first commissioners shall determine by lot whose term of office shall expire each year, and a new commissioner shall be appointed annually to serve for a term of years corresponding in number to the number of commissioners in order that one term shall expire each year. Such board of park commissioners shall have only such powers and authority with respect to the management, supervision, and control of parks and recreational facilities and programs as are granted to it by the legislative body of cities of the second, third, and fourth class.

Powers of board.

Passed the House February 5, 1953.

Passed the Senate March 9, 1953.

Approved by the Governor March 17, 1953.

CHAPTER 87.

[H. B. 128.]

CIVIL RIGHTS—PUBLIC ACCOMMODATIONS.

AN ACT relating to civil rights; defining terms; and amending section 9.91.010, RCW.

Be it enacted by the Legislature of the State of Washington:

Amendment.

SECTION 1. Section 9.91.010, RCW, as derived from section 434, chapter 249, Laws of 1909, is amended to read as follows:

Definitions.

Terms used in this section shall have the following definitions:

"Every person."

1. (a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising

control over the operation of any place of public resort, accommodation, assemblage or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed or color. "Deny."

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited. "Full enjoyment of."

(d) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in "Any place of public resort, accommodation, assemblage or amusement."

the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this act; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in *loco parentis* to direct the education and upbringing of a child under his control is hereby affirmed.

Denial of
civil rights is
misde-
meanor.

2. Every person who denies to any other person because of race, creed, or color, the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement, shall be guilty of a misdemeanor.

Passed the House February 17, 1953.

Passed the Senate March 10, 1953.

Approved by the Governor March 17, 1953.

APPENDIX F

CHAPTER 183

[S. B. 12.]

DISCRIMINATION IN EMPLOYMENT.

AN ACT to prevent and eliminate discrimination in employment against persons because of race, creed, color or national origin; creating in the executive department a state board against discrimination; defining its functions, powers and duties and providing for the appointment and compensation of its officers and employees.

Be it enacted by the Legislature of the State of Washington:

Title of act.

SECTION 1. This law shall be known as the "Law Against Discrimination in Employment." It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights; and the Legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color or national origin are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is hereby created with powers with respect to elimination and prevention of discrimination in employment because of race, creed, color or national origin, as herein provided; and the Board established hereunder is hereby given general jurisdiction and power for such purposes.

Civil rights.

SEC. 2. The opportunity to obtain employment without discrimination because of race, creed, color or national origin is hereby recognized as and declared to be a civil right.

Definitions.
"Person."

SEC. 3. As used herein: (a) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees in bankruptcy, receivers or any group of persons,

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