

SSB 5340 - H AMD
By Representative Lantz

ADOPTED 04/18/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the supreme
4 court, in its opinion in *McClarty v. Totem Electric*, 157 Wn.2d 214, 137
5 P.3d 844 (2006), failed to recognize that the Law Against
6 Discrimination affords to state residents protections that are wholly
7 independent of those afforded by the federal Americans with
8 Disabilities Act of 1990, and that the law against discrimination has
9 provided such protections for many years prior to passage of the
10 federal act.

11 **Sec. 2.** RCW 49.60.040 and 2006 c 4 s 4 are each amended to read as
12 follows:

13 The definitions in this section apply throughout this chapter
14 unless the context clearly requires otherwise.

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

22 (2) "Commission" means the Washington state human rights
23 commission;

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

28 (4) "Employee" does not include any individual employed by his or

1 her parents, spouse, or child, or in the domestic service of any
2 person;

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

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

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

12 (8) "National origin" includes "ancestry";

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

23 (10) "Any place of public resort, accommodation, assemblage, or
24 amusement" includes, but is not limited to, any place, licensed or
25 unlicensed, kept for gain, hire, or reward, or where charges are made
26 for admission, service, occupancy, or use of any property or
27 facilities, whether conducted for the entertainment, housing, or
28 lodging of transient guests, or for the benefit, use, or accommodation
29 of those seeking health, recreation, or rest, or for the burial or
30 other disposition of human remains, or for the sale of goods,
31 merchandise, services, or personal property, or for the rendering of
32 personal services, or for public conveyance or transportation on land,
33 water, or in the air, including the stations and terminals thereof and
34 the garaging of vehicles, or where food or beverages of any kind are
35 sold for consumption on the premises, or where public amusement,
36 entertainment, sports, or recreation of any kind is offered with or
37 without charge, or where medical service or care is made available, or
38 where the public gathers, congregates, or assembles for amusement,

1 recreation, or public purposes, or public halls, public elevators, and
2 public washrooms of buildings and structures occupied by two or more
3 tenants, or by the owner and one or more tenants, or any public library
4 or educational institution, or schools of special instruction, or
5 nursery schools, or day care centers or children's camps: PROVIDED,
6 That nothing contained in this definition shall be construed to include
7 or apply to any institute, bona fide club, or place of accommodation,
8 which is by its nature distinctly private, including fraternal
9 organizations, though where public use is permitted that use shall be
10 covered by this chapter; nor shall anything contained in this
11 definition apply to any educational facility, columbarium, crematory,
12 mausoleum, or cemetery operated or maintained by a bona fide religious
13 or sectarian institution;

14 (11) "Real property" includes buildings, structures, dwellings,
15 real estate, lands, tenements, leaseholds, interests in real estate
16 cooperatives, condominiums, and hereditaments, corporeal and
17 incorporeal, or any interest therein;

18 (12) "Real estate transaction" includes the sale, appraisal,
19 brokering, exchange, purchase, rental, or lease of real property,
20 transacting or applying for a real estate loan, or the provision of
21 brokerage services;

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

27 (14) "Sex" means gender;

28 (15) "Sexual orientation" means heterosexuality, homosexuality,
29 bisexuality, and gender expression or identity. As used in this
30 definition, "gender expression or identity" means having or being
31 perceived as having a gender identity, self-image, appearance,
32 behavior, or expression, whether or not that gender identity, self-
33 image, appearance, behavior, or expression is different from that
34 traditionally associated with the sex assigned to that person at birth;

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

1 (17) "Complainant" means the person who files a complaint in a real
2 estate transaction;

3 (18) "Respondent" means any person accused in a complaint or
4 amended complaint of an unfair practice in a real estate transaction;

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

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

25 (21) "Covered multifamily dwelling" means: (a) Buildings
26 consisting of four or more dwelling units if such buildings have one or
27 more elevators; and (b) ground floor dwelling units in other buildings
28 consisting of four or more dwelling units;

29 (22) "Premises" means the interior or exterior spaces, parts,
30 components, or elements of a building, including individual dwelling
31 units and the public and common use areas of a building;

32 (23) "Dog guide" means a dog that is trained for the purpose of
33 guiding blind persons or a dog that is trained for the purpose of
34 assisting hearing impaired persons;

35 (24) "Service animal" means an animal that is trained for the
36 purpose of assisting or accommodating a ~~((disabled person's))~~ sensory,
37 mental, or physical disability of a person with a disability;

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

3 (i) Is medically cognizable or diagnosable; or

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

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

6 (b) A disability exists whether it is temporary or permanent,
7 common or uncommon, mitigated or unmitigated, or whether or not it
8 limits the ability to work generally or work at a particular job or
9 whether or not it limits any other activity within the scope of this
10 chapter.

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

13 (i) Any physiological disorder, or condition, cosmetic
14 disfigurement, or anatomical loss affecting one or more of the
15 following body systems: Neurological, musculoskeletal, special sense
16 organs, respiratory, including speech organs, cardiovascular,
17 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
18 and endocrine; or

19 (ii) Any mental, developmental, traumatic, or psychological
20 disorder, including but not limited to cognitive limitation, organic
21 brain syndrome, emotional or mental illness, and specific learning
22 disabilities.

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

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

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

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

1 NEW SECTION. **Sec. 3.** This act is remedial and retroactive, and
2 applies to all causes of action occurring before July 6, 2006, and to
3 all causes of action occurring on or after the effective date of this
4 act."

5 Correct the title.

EFFECT: Adds to the House amendments to the Senate bill a
legislative findings section stating that the McClarty opinion fails to
recognize that Washington's antidiscrimination law provides protections
independent of federal law.

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