
SUBSTITUTE SENATE BILL 5340

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, Swecker, Fairley, Kohl-Welles, Shin, Pridemore, McAuliffe, Regala, Murray, Spanel, Franklin, Rockefeller, Kauffman and Keiser)

READ FIRST TIME 02/27/07.

1 AN ACT Relating to the definition of disability in the Washington
2 law against discrimination, chapter 49.60 RCW; amending RCW 49.60.040;
3 and creating new sections.

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

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

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

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

17 (1) "Person" includes one or more individuals, partnerships,
18 associations, organizations, corporations, cooperatives, legal

1 representatives, trustees and receivers, or any group of persons; it
2 includes any owner, lessee, proprietor, manager, agent, or employee,
3 whether one or more natural persons; and further includes any political
4 or civil subdivisions of the state and any agency or instrumentality of
5 the state or of any political or civil subdivision thereof;

6 (2) "Commission" means the Washington state human rights
7 commission;

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

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

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

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

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

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

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

35 (10) "Any place of public resort, accommodation, assemblage, or
36 amusement" includes, but is not limited to, any place, licensed or
37 unlicensed, kept for gain, hire, or reward, or where charges are made
38 for admission, service, occupancy, or use of any property or

1 facilities, whether conducted for the entertainment, housing, or
2 lodging of transient guests, or for the benefit, use, or accommodation
3 of those seeking health, recreation, or rest, or for the burial or
4 other disposition of human remains, or for the sale of goods,
5 merchandise, services, or personal property, or for the rendering of
6 personal services, or for public conveyance or transportation on land,
7 water, or in the air, including the stations and terminals thereof and
8 the garaging of vehicles, or where food or beverages of any kind are
9 sold for consumption on the premises, or where public amusement,
10 entertainment, sports, or recreation of any kind is offered with or
11 without charge, or where medical service or care is made available, or
12 where the public gathers, congregates, or assembles for amusement,
13 recreation, or public purposes, or public halls, public elevators, and
14 public washrooms of buildings and structures occupied by two or more
15 tenants, or by the owner and one or more tenants, or any public library
16 or educational institution, or schools of special instruction, or
17 nursery schools, or day care centers or children's camps: PROVIDED,
18 That nothing contained in this definition shall be construed to include
19 or apply to any institute, bona fide club, or place of accommodation,
20 which is by its nature distinctly private, including fraternal
21 organizations, though where public use is permitted that use shall be
22 covered by this chapter; nor shall anything contained in this
23 definition apply to any educational facility, columbarium, crematory,
24 mausoleum, or cemetery operated or maintained by a bona fide religious
25 or sectarian institution;

26 (11) "Real property" includes buildings, structures, dwellings,
27 real estate, lands, tenements, leaseholds, interests in real estate
28 cooperatives, condominiums, and hereditaments, corporeal and
29 incorporeal, or any interest therein;

30 (12) "Real estate transaction" includes the sale, appraisal,
31 brokering, exchange, purchase, rental, or lease of real property,
32 transacting or applying for a real estate loan, or the provision of
33 brokerage services;

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

1 (14) "Sex" means gender;

2 (15) "Sexual orientation" means heterosexuality, homosexuality,
3 bisexuality, and gender expression or identity. As used in this
4 definition, "gender expression or identity" means having or being
5 perceived as having a gender identity, self-image, appearance,
6 behavior, or expression, whether or not that gender identity, self-
7 image, appearance, behavior, or expression is different from that
8 traditionally associated with the sex assigned to that person at birth;

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

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

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

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

29 (20) "Families with children status" means one or more individuals
30 who have not attained the age of eighteen years being domiciled with a
31 parent or another person having legal custody of such individual or
32 individuals, or with the designee of such parent or other person having
33 such legal custody, with the written permission of such parent or other
34 person. Families with children status also applies to any person who
35 is pregnant or is in the process of securing legal custody of any
36 individual who has not attained the age of eighteen years;

37 (21) "Covered multifamily dwelling" means: (a) Buildings

1 consisting of four or more dwelling units if such buildings have one or
2 more elevators; and (b) ground floor dwelling units in other buildings
3 consisting of four or more dwelling units;

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

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

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

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

15 (i) Is medically cognizable or diagnosable; or

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

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

18 (b) A disability exists whether it is temporary or permanent,
19 common or uncommon, mitigated or unmitigated, or whether or not it
20 limits the ability to work generally or work at a particular job or
21 whether or not it limits any other activity within the scope of this
22 chapter.

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

25 (i) Any physiological disorder, or condition, cosmetic
26 disfigurement, or anatomical loss affecting one or more of the
27 following body systems: Neurological, musculoskeletal, special sense
28 organs, respiratory, including speech organs, cardiovascular,
29 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
30 and endocrine; or

31 (ii) Any mental, developmental, traumatic, or psychological
32 disorder, including but not limited to cognitive limitation, organic
33 brain syndrome, emotional or mental illness, and specific learning
34 disabilities.

35 (d) Only for the purposes of qualifying for reasonable
36 accommodation in employment, an impairment must have:

37 (i) A substantially limiting effect upon the individual's ability

1 to perform his or her job, the individual's ability to apply or be
2 considered for a job, or the individual's access to equal benefits,
3 privileges, or terms or conditions of employment; or

4 (ii) The reasonable likelihood that job-related factors will
5 aggravate it to the extent that it could create a substantially
6 limiting effect if not accommodated.

7 (e) For purposes of (d) of this subsection, a limitation is
8 substantial if it has more than a trivial effect.

9 NEW SECTION. Sec. 3. This act is remedial and retroactive, and
10 applies to all claims that are not time barred, as well as all claims
11 pending in any court or agency on the effective date of this act.

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