
SENATE BILL 5340

State of Washington

60th Legislature

2007 Regular Session

By Senators Kline, Swecker, Fairley, Kohl-Welles, Shin, Pridemore, McAuliffe, Regala, Murray, Spanel, Franklin, Rockefeller, Kauffman and Keiser

Read first time 01/17/2007. Referred to Committee on Judiciary.

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), overstepped the court's constitutional role of
8 deciding cases and controversies before it, and engaged in judicial
9 activism by significantly rewriting the state law against
10 discrimination. The legislature further finds that the law changed by
11 the court is of significant importance to the citizens of the state, in
12 that it determines the scope of application of the law against
13 discrimination, and that the court's deviation from settled law was
14 substantial in degree. The legislature reaffirms its intent that the
15 law against discrimination affords to Washington residents protections
16 that are wholly independent of those afforded by the federal Americans
17 with Disabilities Act of 1990, and rejects the opinion stated in
18 *McClarty v. Totem Electric*.

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

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

12 (2) "Commission" means the Washington state human rights
13 commission;

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

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

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

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

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

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

31 (9) "Full enjoyment of" includes the right to purchase any service,
32 commodity, or article of personal property offered or sold on, or by,
33 any establishment to the public, and the admission of any person to
34 accommodations, advantages, facilities, or privileges of any place of
35 public resort, accommodation, assemblage, or amusement, without acts
36 directly or indirectly causing persons of any particular race, creed,
37 color, sex, sexual orientation, national origin, or with any sensory,

1 mental, or physical disability, or the use of a trained dog guide or
2 service animal by a (~~disabled~~) person with a disability, to be
3 treated as not welcome, accepted, desired, or solicited;

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

33 (11) "Real property" includes buildings, structures, dwellings,
34 real estate, lands, tenements, leaseholds, interests in real estate
35 cooperatives, condominiums, and hereditaments, corporeal and
36 incorporeal, or any interest therein;

37 (12) "Real estate transaction" includes the sale, appraisal,

1 brokering, exchange, purchase, rental, or lease of real property,
2 transacting or applying for a real estate loan, or the provision of
3 brokerage services;

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

9 (14) "Sex" means gender;

10 (15) "Sexual orientation" means heterosexuality, homosexuality,
11 bisexuality, and gender expression or identity. As used in this
12 definition, "gender expression or identity" means having or being
13 perceived as having a gender identity, self-image, appearance,
14 behavior, or expression, whether or not that gender identity, self-
15 image, appearance, behavior, or expression is different from that
16 traditionally associated with the sex assigned to that person at birth;

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

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

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

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

37 (20) "Families with children status" means one or more individuals
38 who have not attained the age of eighteen years being domiciled with a

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

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

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

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

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

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

22 (i) Is medically cognizable or diagnosable; or

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

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

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

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

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

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

5 NEW SECTION. **Sec. 3.** This act is remedial and retroactive and
6 shall apply to all claims which are not time barred, as well as all
7 claims pending in any court or agency at the time of enactment.

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