
HOUSE BILL 1322

State of Washington

60th Legislature

2007 Regular Session

By Representatives McCoy, Grant, Sells, Cody, Conway, Schual-Berke, Roberts, Pettigrew, Lantz, Kagi, Moeller, Chase, Green, Kenney, Simpson, Darneille, Dickerson, Hankins, Santos, Ormsby and Flannigan

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the Washington
6 state supreme court, in *McClarty v. Totem Electric*, 157 Wn.2d 214, 137
7 P.3d 844 (2006), overstepped its constitutional role of deciding cases
8 and controversies before it, and engaged in judicial activism by
9 significantly rewriting the state law against discrimination. By
10 failing to answer the question upon which the court had granted review,
11 by disregarding a properly adopted state rule, by needlessly
12 overturning the court's own recent precedent, and by importing into
13 state law a substantive rule adapted from federal statute, the court
14 has effectively legislated from the bench. The legislature further
15 finds that the law changed by the court is of significant importance to
16 the citizens of the state, in that it determines the scope of
17 application of the law against discrimination, and that the court's
18 deviation from settled law was substantial in degree. The legislature
19 reaffirms its intent that the law against discrimination affords to

1 Washington residents protections that are wholly independent of those
2 afforded by the federal Americans with disabilities act of 1990, and
3 rejects the opinion stated by the majority in *McClarty v. Totem*
4 *Electric*.

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

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

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

16 (2) "Commission" means the Washington state human rights
17 commission;

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

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

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

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

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

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

35 (9) "Full enjoyment of" includes the right to purchase any service,
36 commodity, or article of personal property offered or sold on, or by,
37 any establishment to the public, and the admission of any person to

1 accommodations, advantages, facilities, or privileges of any place of
2 public resort, accommodation, assemblage, or amusement, without acts
3 directly or indirectly causing persons of any particular race, creed,
4 color, sex, sexual orientation, national origin, or with any sensory,
5 mental, or physical disability, or the use of a trained dog guide or
6 service animal by a disabled person, to be treated as not welcome,
7 accepted, desired, or solicited;

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

37 (11) "Real property" includes buildings, structures, dwellings,

1 real estate, lands, tenements, leaseholds, interests in real estate
2 cooperatives, condominiums, and hereditaments, corporeal and
3 incorporeal, or any interest therein;

4 (12) "Real estate transaction" includes the sale, appraisal,
5 brokering, exchange, purchase, rental, or lease of real property,
6 transacting or applying for a real estate loan, or the provision of
7 brokerage services;

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

13 (14) "Sex" means gender;

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

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

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

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

29 (19) "Credit transaction" includes any open or closed end credit
30 transaction, whether in the nature of a loan, retail installment
31 transaction, credit card issue or charge, or otherwise, and whether for
32 personal or for business purposes, in which a service, finance, or
33 interest charge is imposed, or which provides for repayment in
34 scheduled payments, when such credit is extended in the regular course
35 of any trade or commerce, including but not limited to transactions by
36 banks, savings and loan associations or other financial lending
37 institutions of whatever nature, stock brokers, or by a merchant or

1 mercantile establishment which as part of its ordinary business permits
2 or provides that payment for purchases of property or service therefrom
3 may be deferred;

4 (20) "Families with children status" means one or more individuals
5 who have not attained the age of eighteen years being domiciled with a
6 parent or another person having legal custody of such individual or
7 individuals, or with the designee of such parent or other person having
8 such legal custody, with the written permission of such parent or other
9 person. Families with children status also applies to any person who
10 is pregnant or is in the process of securing legal custody of any
11 individual who has not attained the age of eighteen years;

12 (21) "Covered multifamily dwelling" means: (a) Buildings
13 consisting of four or more dwelling units if such buildings have one or
14 more elevators; and (b) ground floor dwelling units in other buildings
15 consisting of four or more dwelling units;

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

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

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

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

27 (i) Is medically cognizable or diagnosable; or

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

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

30 (b) A disability exists whether it is temporary or permanent,
31 common or uncommon, mitigated or unmitigated, or whether or not it
32 limits the ability to work generally or work at a particular job, and
33 whether or not it limits any other activity within the scope of this
34 chapter.

35 (c) For purposes of this subsection, "impairment" includes, but is
36 not limited to:

37 (i) Any physiological disorder, or condition, cosmetic
38 disfigurement, or anatomical loss affecting one or more of the

1 following body systems: Neurological, musculoskeletal, special sense
2 organs, respiratory (including speech organs), cardiovascular,
3 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin and
4 endocrine; or

5 (ii) Any mental, developmental, traumatic, or psychological
6 disorder, including, but not limited to cognitive limitation, organic
7 brain syndrome, emotional or mental illness, and specific learning
8 disabilities.

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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