

SSB 5340 - H AMD 649

By Representative Lantz

ADOPTED 04/10/2007

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

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

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

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

14 (2) "Commission" means the Washington state human rights  
15 commission;

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

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

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

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

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

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

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

14 (10) "Any place of public resort, accommodation, assemblage, or  
15 amusement" includes, but is not limited to, any place, licensed or  
16 unlicensed, kept for gain, hire, or reward, or where charges are made  
17 for admission, service, occupancy, or use of any property or  
18 facilities, whether conducted for the entertainment, housing, or  
19 lodging of transient guests, or for the benefit, use, or accommodation  
20 of those seeking health, recreation, or rest, or for the burial or  
21 other disposition of human remains, or for the sale of goods,  
22 merchandise, services, or personal property, or for the rendering of  
23 personal services, or for public conveyance or transportation on land,  
24 water, or in the air, including the stations and terminals thereof and  
25 the garaging of vehicles, or where food or beverages of any kind are  
26 sold for consumption on the premises, or where public amusement,  
27 entertainment, sports, or recreation of any kind is offered with or  
28 without charge, or where medical service or care is made available, or  
29 where the public gathers, congregates, or assembles for amusement,  
30 recreation, or public purposes, or public halls, public elevators, and  
31 public washrooms of buildings and structures occupied by two or more  
32 tenants, or by the owner and one or more tenants, or any public library  
33 or educational institution, or schools of special instruction, or  
34 nursery schools, or day care centers or children's camps: PROVIDED,  
35 That nothing contained in this definition shall be construed to include  
36 or apply to any institute, bona fide club, or place of accommodation,  
37 which is by its nature distinctly private, including fraternal  
38 organizations, though where public use is permitted that use shall be

1 covered by this chapter; nor shall anything contained in this  
2 definition apply to any educational facility, columbarium, crematory,  
3 mausoleum, or cemetery operated or maintained by a bona fide religious  
4 or sectarian institution;

5 (11) "Real property" includes buildings, structures, dwellings,  
6 real estate, lands, tenements, leaseholds, interests in real estate  
7 cooperatives, condominiums, and hereditaments, corporeal and  
8 incorporeal, or any interest therein;

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

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

18 (14) "Sex" means gender;

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

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

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

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

34 (19) "Credit transaction" includes any open or closed end credit  
35 transaction, whether in the nature of a loan, retail installment  
36 transaction, credit card issue or charge, or otherwise, and whether for  
37 personal or for business purposes, in which a service, finance, or  
38 interest charge is imposed, or which provides for repayment in

1 scheduled payments, when such credit is extended in the regular course  
2 of any trade or commerce, including but not limited to transactions by  
3 banks, savings and loan associations or other financial lending  
4 institutions of whatever nature, stock brokers, or by a merchant or  
5 mercantile establishment which as part of its ordinary business permits  
6 or provides that payment for purchases of property or service therefrom  
7 may be deferred;

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

16 (21) "Covered multifamily dwelling" means: (a) Buildings  
17 consisting of four or more dwelling units if such buildings have one or  
18 more elevators; and (b) ground floor dwelling units in other buildings  
19 consisting of four or more dwelling units;

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

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

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

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

- 31 (i) Is medically cognizable or diagnosable; or
- 32 (ii) Exists as a record or history; or
- 33 (iii) Is perceived to exist whether or not it exists in fact.

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

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

3 (i) Any physiological disorder, or condition, cosmetic  
4 disfigurement, or anatomical loss affecting one or more of the  
5 following body systems: Neurological, musculoskeletal, special sense  
6 organs, respiratory, including speech organs, cardiovascular,  
7 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,  
8 and endocrine; or

9 (ii) Any mental, developmental, traumatic, or psychological  
10 disorder, including but not limited to cognitive limitation, organic  
11 brain syndrome, emotional or mental illness, and specific learning  
12 disabilities.

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

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

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

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

27 NEW SECTION. Sec. 2. This act is remedial and retroactive, and  
28 applies to all causes of action occurring before July 6, 2006, and to  
29 all causes of action occurring on or after the effective date of this  
30 act."

31 Correct the title.

EFFECT: Removes the legislative findings section from the bill.

Provides for purposes of reasonable accommodations in employment that an impairment must exist in fact and may not merely be perceived as an impairment. Also provides for those same reasonable accommodations purposes that an impairment will not meet the "substantially limiting effect" requirement if it has only a trivial effect on the individual's ability to perform his or her job.

Provides for purposes of requiring reasonable accommodations in employment that an impairment must be currently substantially limiting, or that the employee must have notified the employer of an impairment which medical documentation will show presents a reasonable likelihood of being aggravated to the point of being substantially limiting if the impairment is not accommodated. Replaces a standard in the substitute bill that did not include the requirement for notice to the employer or for medical documentation.

Changes the application of the act from complete retroactivity with respect to all claims not time-barred by making the act apply to causes of action that occurred before the McClarty (July 6, 2006) or after the effective date of the act. The act does not apply to causes of action occurring between McClarty and the effective date of the act.

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