

FINAL BILL REPORT

SSB 5340

C 317 L 07
Synopsis as Enacted

Brief Description: Defining disability in the Washington law against discrimination.

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

Senate Committee on Judiciary
House Committee on Judiciary

Background: Washington's antidiscrimination law prohibits discrimination based on the presence of any sensory, mental, or physical disability. The "presence of any sensory, mental, or physical disability" is not defined by statute, but is defined in an administrative regulation to include a sensory, mental, or physical condition that is medically cognizable or diagnosable, exists as a record or history, or is perceived to exist, whether or not it actually exists. The regulation regards a condition as a "sensory, mental, or physical disability" if it is an abnormality and is a reason why the affected person suffered discrimination.

In *McClarty v. Totem Electric*, 157 Wn.2d 214, 137 P.2d 844 (2006), a majority of the Washington Supreme Court rejected this definition, and adopted the definition of "disability" as set forth in the federal Americans with Disabilities Act. The federal definition provides that a "disability" is a physical or mental impairment that substantially limits one or more major life activities, where a record of such impairment exists, or where the affected individual is regarded as having such impairment.

Summary: The Legislature finds that the *McClarty* decision failed to recognize that Washington's antidiscrimination law provides protections independent of federal law.

"Disability" is defined as a sensory, mental, or physical impairment that is medically cognizable or diagnosable, or exists as a record or history, or is perceived to exist, whether or not it actually exists. The "disability" exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether it limits the ability to work or engage in any other activity encompassed within Washington's anti-discrimination law. "Impairment" includes a physiological disorder, cosmetic disfigurement, anatomical loss affecting one or more of several specified body systems, and mental, developmental, traumatic, and psychological disorders.

For purposes of qualifying for reasonable accommodation in employment, the employee's impairment must be known by the employer, or be shown through an interactive process to exist in fact. The impairment must either have: (1) a substantially limiting effect upon the individual's ability to perform his or her job, to apply or be considered for a job, or to access equal benefits, privileges, or terms of employment; or (2) the reasonable likelihood that engaging in job functions without accommodation would aggravate the impairment to the

extent that it would create a substantially limiting effect. If the proposed basis for accommodation is the reasonable likelihood that without the accommodation the impairment would be aggravated, the employee must have notified the employer of the impairment. Also, medical documentation must establish this basis. A limitation is not substantial if it has only a trivial effect.

This act is retroactive, and applies to causes of action occurring before issuance of the *McClarty* decision on July 6, 2006, and to causes of action occurring on or after the effective date of this act.

Votes on Final Passage:

Senate	42	6	
House	66	32	(House amended)
Senate			(Senate refused to concur)
House	62	35	(House amended)
Senate	46	2	(Senate concurred)

Effective: July 22, 2007