

# HOUSE BILL 1493

I4

7lr3070  
CF 7lr3051

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By: **Delegate C. Wilson**

Introduced and read first time: February 10, 2017

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Assertions Made in Bad Faith – Prohibition**

3 FOR the purpose of prohibiting a person from making in bad faith a certain assertion  
4 regarding a Web site or other electronic communication failing to comply with the  
5 federal Americans with Disabilities Act; authorizing a court to consider certain  
6 factors as evidence of whether a person has made a certain assertion in bad faith or  
7 in good faith; altering the authority of the Division of Consumer Protection of the  
8 Office of the Attorney General to take certain actions; authorizing certain  
9 individuals, under certain circumstances, to bring a civil action in a certain court to  
10 recover for certain injuries or losses sustained as a result of a violation of certain  
11 provisions of this Act; altering the circumstances under which a court may award  
12 certain damages and remedies under certain circumstances; altering certain  
13 definitions; defining certain terms; and generally relating to bad faith assertions  
14 regarding failure to comply with the Americans with Disabilities Act.

15 BY repealing and reenacting, with amendments,  
16 Article – Commercial Law  
17 Section 11–1601  
18 Annotated Code of Maryland  
19 (2013 Replacement Volume and 2016 Supplement)

20 BY adding to  
21 Article – Commercial Law  
22 Section 11–1603.1  
23 Annotated Code of Maryland  
24 (2013 Replacement Volume and 2016 Supplement)

25 BY repealing and reenacting, without amendments,  
26 Article – Commercial Law  
27 Section 11–1604 and 11–1605  
28 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That the Laws of Maryland read as follows:

**Article – Commercial Law**

11–1601.

(a) In this subtitle the following words have the meanings indicated.

**(B) “AMERICANS WITH DISABILITIES ACT” MEANS TITLE III OF THE  
FEDERAL AMERICANS WITH DISABILITIES ACT OF 1990 AND ANY RELATED  
REGULATIONS.**

**[(b)] (C)** “Claim” means the scope of the patent owner’s exclusive rights to the  
use and control of the patent owner’s invention.

**[(c)] (D)** “Demand letter” means a letter, an electronic mail, or any other written  
communication asserting that a person **[has]**:

**(1) HAS engaged in patent infringement; OR**

**(2) MAINTAINS A WEB SITE OR OTHER ELECTRONIC  
COMMUNICATION THAT FAILS TO COMPLY WITH THE AMERICANS WITH  
DISABILITIES ACT.**

**[(d)] (E)** “Division” means the Division of Consumer Protection of the Office of  
the Attorney General.

**[(e)] (F)** “Target” means a person:

(1) Who has received a demand letter or against whom an assertion of  
patent infringement has been made;

(2) Who has been threatened with litigation or against whom a lawsuit has  
been filed alleging patent infringement; **[or]**

(3) Who has at least one customer who has received a demand letter  
asserting that the person’s product, service, or technology has infringed a patent;

**(4) WHO HAS RECEIVED A DEMAND LETTER OR AGAINST WHOM AN  
ASSERTION THAT A WEB SITE OR OTHER ELECTRONIC COMMUNICATION FAILS TO  
COMPLY WITH THE AMERICANS WITH DISABILITIES ACT HAS BEEN MADE; OR**

1           **(5) WHO HAS BEEN THREATENED WITH LITIGATION OR AGAINST**  
2 **WHOM A LAWSUIT HAS BEEN FILED ALLEGING FAILURE OF A WEB SITE OR OTHER**  
3 **ELECTRONIC COMMUNICATION TO COMPLY WITH THE AMERICANS WITH**  
4 **DISABILITIES ACT.**

5           **(G) "WEB GUIDELINES" MEANS THE WEB CONTENT ACCESSIBILITY**  
6 **GUIDELINES DEVELOPED BY THE WORLD WIDE WEB CONSORTIUM.**

7 **11-1603.1.**

8           **(A) A PERSON MAY NOT MAKE AN ASSERTION AGAINST ANOTHER IN BAD**  
9 **FAITH THAT A WEB SITE OR OTHER ELECTRONIC COMMUNICATION FAILS TO**  
10 **COMPLY WITH THE AMERICANS WITH DISABILITIES ACT.**

11           **(B) (1) A COURT MAY CONSIDER THE FOLLOWING FACTORS AS EVIDENCE**  
12 **THAT A PERSON HAS MADE AN ASSERTION IN BAD FAITH THAT A WEB SITE OR OTHER**  
13 **ELECTRONIC COMMUNICATION FAILS TO COMPLY WITH THE AMERICANS WITH**  
14 **DISABILITIES ACT:**

15                   **(I) THE DEMAND LETTER SENT BY THE PERSON DOES NOT**  
16 **CONTAIN:**

17                           **1. A DESCRIPTION OF THE TOOL USED BY THE PERSON**  
18 **TO ANALYZE THE WEB SITE OR OTHER ELECTRONIC COMMUNICATION FOR**  
19 **ACCESSIBILITY;**

20                           **2. THE NAME AND ADDRESS OF ANY PERSON THAT**  
21 **ASSISTED IN ANALYZING THE WEB SITE OR OTHER ELECTRONIC COMMUNICATION**  
22 **FOR ACCESSIBILITY; AND**

23                           **3. FACTS RELATING TO THE SPECIFIC AREAS OF A WEB**  
24 **SITE OR OTHER ELECTRONIC COMMUNICATION THAT AN INDIVIDUAL WITH**  
25 **DISABILITIES IS UNABLE TO ACCESS;**

26                   **(II) THE TARGET REQUESTED THE INFORMATION DESCRIBED IN**  
27 **ITEM (I) OF THIS PARAGRAPH AND THE PERSON FAILED TO PROVIDE THE**  
28 **INFORMATION WITHIN A REASONABLE PERIOD OF TIME;**

29                   **(III) BEFORE SENDING THE DEMAND LETTER, THE PERSON DID**  
30 **NOT CONDUCT AN ANALYSIS OF THE WEB SITE OR OTHER ELECTRONIC**  
31 **COMMUNICATION TO DETERMINE THE LEVEL OF ACCESSIBILITY BY THE INDIVIDUAL**  
32 **WHO IS ALLEGED TO HAVE SUFFERED DISCRIMINATION;**

1 (IV) THE DEMAND LETTER DEMANDED A RESPONSE OR  
2 PAYMENT OF A FEE WITHIN AN UNREASONABLY SHORT PERIOD OF TIME;

3 (V) THE PERSON OFFERED TO REMEDY THE ALLEGED FAILURE  
4 TO COMPLY FOR AN AMOUNT THAT IS NOT BASED ON A REASONABLE ESTIMATE OF  
5 THE VALUE OF THE PERSON'S SERVICES;

6 (VI) THE ASSERTION THAT A WEB SITE OR OTHER ELECTRONIC  
7 COMMUNICATION FAILS TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT  
8 IS WITHOUT MERIT, AND THE PERSON KNEW, OR SHOULD HAVE KNOWN, THAT THE  
9 ASSERTION IS WITHOUT MERIT;

10 (VII) THE ASSERTION THAT A WEB SITE OR OTHER ELECTRONIC  
11 COMMUNICATION FAILS TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT  
12 IS DECEPTIVE;

13 (VIII) 1. THE PERSON, OR A SUBSIDIARY OR AN AFFILIATE OF  
14 THE PERSON, PREVIOUSLY HAS FILED OR THREATENED TO FILE ONE OR MORE  
15 LAWSUITS BASED ON THE SAME OR A SIMILAR ASSERTION; AND

16 2. A. THE THREATS OR LAWSUITS DID NOT PROVIDE  
17 THE INFORMATION DESCRIBED IN ITEM (I) OF THIS PARAGRAPH; AND

18 B. A COURT FOUND THE PERSON'S ASSERTION TO BE  
19 WITHOUT MERIT; AND

20 (IX) ANY OTHER FACTOR THE COURT DETERMINES TO BE  
21 RELEVANT.

22 (2) THE COURT MAY CONSIDER THE FOLLOWING FACTORS AS  
23 EVIDENCE THAT A PERSON HAS MADE AN ASSERTION IN GOOD FAITH THAT A WEB  
24 SITE OR OTHER ELECTRONIC COMMUNICATION FAILS TO COMPLY WITH THE  
25 AMERICANS WITH DISABILITIES ACT:

26 (I) IF THE DEMAND LETTER SENT BY THE PERSON DOES NOT  
27 CONTAIN THE INFORMATION DESCRIBED IN PARAGRAPH (1)(I) OF THIS  
28 SUBSECTION, THE PERSON PROVIDES THE INFORMATION TO THE TARGET WITHIN A  
29 REASONABLE PERIOD OF TIME;

30 (II) THE PERSON HAS:

31 1. ENGAGED IN A GOOD FAITH EFFORT TO ESTABLISH  
32 THAT THE TARGET HAS A WEB SITE OR OTHER ELECTRONIC COMMUNICATION THAT

1 FAILS TO COMPLY WITH AN ACCEPTABLE LEVEL OF ACCESSIBILITY RECENTLY USED  
2 BY THE WEB GUIDELINES; AND

3 2. ATTEMPTED TO NEGOTIATE A REMEDY AS PROVIDED  
4 BY THE AMERICANS WITH DISABILITIES ACT;

5 (III) THE PERSON HAS:

6 1. DEMONSTRATED GOOD FAITH BUSINESS PRACTICES  
7 IN PREVIOUS EFFORTS TO ASSERT THAT A WEB SITE OR OTHER ELECTRONIC  
8 COMMUNICATION FAILS TO COMPLY WITH THE AMERICANS WITH DISABILITIES  
9 ACT; OR

10 2. SUCCESSFULLY LITIGATED THAT A WEB SITE OR  
11 OTHER ELECTRONIC MODE OF COMMUNICATION FAILS TO COMPLY WITH THE  
12 AMERICANS WITH DISABILITIES ACT; AND

13 (IV) ANY OTHER FACTOR THE COURT DETERMINES TO BE  
14 RELEVANT.

15 11-1604.

16 The Attorney General and the Division shall have the same authority under this  
17 subtitle to adopt regulations, conduct investigations, and bring civil and criminal actions  
18 as provided in Title 13 of this article.

19 11-1605.

20 (a) In addition to any action by the Division or Attorney General authorized by  
21 Title 13 of this article, a target may bring an action in an appropriate court to recover for  
22 injury or loss sustained as a result of a violation of this subtitle.

23 (b) If a target prevails in an action brought under this subtitle and is awarded  
24 damages, the court also may award:

25 (1) Court costs and fees, including reasonable attorney's fees;

26 (2) Exemplary damages in an amount not to exceed the greater of:

27 (i) \$50,000; or

28 (ii) Three times the total of damages, costs, and fees; and

29 (3) Any equitable relief that the court considers appropriate.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2017.