

HOUSE BILL 417

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By: **Delegates Benson, Ali, Anderson, Elmore, Gaines, Haynes, Healey, Hixson, Kaiser, Kipke, Malone, Manno, Montgomery, Nathan-Pulliam, Reznik, Tarrant, Taylor, F. Turner, and V. Turner**

Introduced and read first time: February 2, 2009

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Human Relations – Discrimination by Business**
3 **Establishments Against Individuals with Disabilities**

4 FOR the purpose of guaranteeing individuals with disabilities full and equal access to
5 business establishments; prohibiting a business establishment from denying or
6 abridging the right to full and equal access of an individual with a disability;
7 establishing that each individual denial or abridgement of rights constitutes a
8 violation of the requirements of this Act; prohibiting a business establishment
9 from violating the Americans with Disabilities Act; providing a certain
10 exception; providing an administrative remedy for an aggrieved individual;
11 providing a private right of action for an aggrieved individual; providing for
12 certain damages and other relief that may be awarded to an aggrieved
13 individual; authorizing a court to award certain costs and reasonable fees to the
14 prevailing party; providing for the construction of this Act; defining certain
15 terms; and generally relating to disability discrimination by business
16 establishments.

17 BY repealing and reenacting, with amendments,
18 Article – State Government
19 Section 20–101(d)
20 Annotated Code of Maryland
21 (2004 Replacement Volume and 2008 Supplement)
22 (As enacted by Chapter ___ (H.B. 51) of the Acts of the General Assembly of
23 2009)

24 BY adding to
25 Article – State Government

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 20–5A–01 through 20–5A–05 to be under the new subtitle “Subtitle 5A.
2 Discrimination by Business Establishments Against Individuals with
3 Disabilities”
4 Annotated Code of Maryland
5 (2004 Replacement Volume and 2008 Supplement)
6 (As enacted by Chapter ___ (H.B. 51) of the Acts of the General Assembly of
7 2009)

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

10 **Article – State Government**

11 20–101.

12 (d) “Discriminatory act” means an act prohibited under:

13 (1) Subtitle 3 of this title (Discrimination in Places of Public
14 Accommodation);

15 (2) Subtitle 4 of this title (Discrimination by Persons Licensed or
16 Regulated by Department of Labor, Licensing, and Regulation);

17 (3) Subtitle 5 of this title (Discrimination in Leasing of Commercial
18 Property);

19 (4) **SUBTITLE 5A OF THIS TITLE (DISCRIMINATION BY BUSINESS
20 ESTABLISHMENTS AGAINST INDIVIDUALS WITH DISABILITIES);**

21 ~~[(4)] (5)~~ Subtitle 6 of this title (Discrimination in Employment);

22 ~~[(5)] (6)~~ Subtitle 7 of this title (Discrimination in Housing); or

23 ~~[(6)] (7)~~ Subtitle 8 of this title (Aiding, Abetting, or Attempting
24 Discriminatory Act; Obstructing Compliance).

25 **SUBTITLE 5A. DISCRIMINATION BY BUSINESS ESTABLISHMENTS AGAINST
26 INDIVIDUALS WITH DISABILITIES.**

27 **20–5A–01.**

28 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
29 INDICATED.**

30 (B) (1) **“BUSINESS ESTABLISHMENT” MEANS AN ENTITY OR SOLE
31 PROPRIETORSHIP ENGAGED IN PROVIDING GOODS, SERVICES, BENEFITS,**

1 ACCOMMODATIONS, ADVANTAGES, FACILITIES, AND PRIVILEGES OF ANY KIND,
2 WHETHER DIRECTLY, BY THE INTERNET, OR BY ELECTRONIC, TELEPHONIC, OR
3 OTHER MEANS.

4 (2) "BUSINESS ESTABLISHMENT" INCLUDES:

5 (I) A PUBLIC OR PRIVATE ENTITY; AND

6 (II) A FOR-PROFIT OR NONPROFIT ENTITY.

7 (C) "DISABILITY" HAS THE MEANING STATED IN THE AMERICANS WITH
8 DISABILITIES ACT OF 1990, 42 U.S.C. § 12102.

9 20-5A-02.

10 THIS SUBTITLE:

11 (1) SHALL BE INTERPRETED AND CONSTRUED LIBERALLY TO
12 EFFECTUATE ITS PURPOSES; AND

13 (2) DOES NOT LIMIT THE SCOPE OF, THE ADMINISTRATIVE
14 PROCEDURES OF, OR THE RELIEF AVAILABLE UNDER ANY OTHER PROVISION OF
15 LAW.

16 20-5A-03.

17 (A) INDIVIDUALS WITH DISABILITIES HAVE THE RIGHT TO FULL AND
18 EQUAL ACCESS TO THE GOODS, SERVICES, BENEFITS, ACCOMMODATIONS,
19 ADVANTAGES, FACILITIES, AND PRIVILEGES PROVIDED TO THE GENERAL
20 PUBLIC BY A BUSINESS ESTABLISHMENT.

21 (B) (1) A BUSINESS ESTABLISHMENT MAY NOT, BY ACT OR OMISSION,
22 DENY OR ABRIDGE THE RIGHT OF AN INDIVIDUAL WITH A DISABILITY TO FULL
23 AND EQUAL ACCESS SET FORTH IN (A) OF THIS SECTION.

24 (2) FOR THE PURPOSES OF THIS SECTION, EACH DENIAL OR
25 ABRIDGEMENT OF THE RIGHT OF AN INDIVIDUAL WITH A DISABILITY TO FULL
26 AND EQUAL ACCESS CONSTITUTES A SEPARATE VIOLATION OF THIS SECTION.

27 (3) A VIOLATION BY A BUSINESS ESTABLISHMENT OF THE RIGHTS
28 OF AN INDIVIDUAL UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990,
29 42 U.S.C. § 12101, ET SEQ., CONSTITUTES A VIOLATION OF THIS SUBTITLE.

1 **(C) THIS SECTION DOES NOT REQUIRE A BUSINESS ESTABLISHMENT TO**
2 **PROVIDE ITS CUSTOMERS, CLIENTS, OR PARTICIPANTS WITH:**

3 **(1) PERSONAL DEVICES, SUCH AS WHEELCHAIRS;**

4 **(2) INDIVIDUALLY PRESCRIBED DEVICES, SUCH AS**
5 **PRESCRIPTION EYEGLASSES OR HEARING AIDS; OR**

6 **(3) SERVICES OF A PERSONAL NATURE, INCLUDING ASSISTANCE**
7 **IN EATING, TOILETING, OR DRESSING.**

8 **20-5A-04.**

9 **AN INDIVIDUAL WITH A DISABILITY WHO IS AGGRIEVED BY A VIOLATION**
10 **OF § 20-5A-03 OF THIS SUBTITLE MAY:**

11 **(1) PURSUE AN ADMINISTRATIVE DETERMINATION OF THE**
12 **VIOLATION BY FILING A COMPLAINT WITH THE COMMISSION UNDER SUBTITLE**
13 **10, PART I OF THIS TITLE; OR**

14 **(2) FILE A CIVIL ACTION UNDER § 20-5A-05 OF THIS SUBTITLE.**

15 **20-5A-05.**

16 **(A) AN INDIVIDUAL WITH A DISABILITY WHO IS AGGRIEVED BY A**
17 **VIOLATION OF § 20-5A-03 OF THIS SUBTITLE HAS A PRIVATE RIGHT OF ACTION.**

18 **(B) FOR EACH VIOLATION OF § 20-5A-03 OF THIS SUBTITLE, AN**
19 **AGGRIEVED INDIVIDUAL IS ENTITLED TO RELIEF, INCLUDING:**

20 **(1) COMPENSATORY DAMAGES FOR FUTURE PECUNIARY LOSSES,**
21 **EMOTIONAL PAIN AND SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS**
22 **OF ENJOYMENT OF LIFE, OR OTHER NONPECUNIARY LOSSES, IN AN AMOUNT**
23 **NOT LESS THAN \$1,000;**

24 **(2) PUNITIVE DAMAGES; AND**

25 **(3) AN INJUNCTION OR OTHER EQUITABLE RELIEF:**

26 **(I) PROHIBITING THE VIOLATION ALLEGED BY THE**
27 **AGGRIEVED INDIVIDUAL; AND**

28 **(II) ORDERING AFFIRMATIVE STEPS TO PREVENT FUTURE**
29 **VIOLATIONS.**

1 **(C) THE COURT MAY AWARD TO THE PREVAILING PARTY THE COSTS OF**
2 **INVESTIGATION, COSTS OF THE ACTION, EXPERT WITNESS FEES, AND**
3 **REASONABLE ATTORNEY’S FEES.**

4 **(D) IT SHALL BE A DEFENSE TO AN AWARD OF DAMAGES UNDER**
5 **SUBSECTION (B) OF THIS SECTION THAT, WITHIN 90 DAYS AFTER AN AGGRIEVED**
6 **INDIVIDUAL GAVE WRITTEN NOTICE TO A BUSINESS ESTABLISHMENT OF A**
7 **VIOLATION OF § 20-5A-03 OF THIS SUBTITLE, THE BUSINESS ESTABLISHMENT**
8 **CURED THE VIOLATION.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2009.