

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 737

(Senator Raskin, *et al.*)

Judicial Proceedings

State Government - Human Relations - Discrimination by Business
Establishments Against Individuals with Disabilities

This bill prohibits a business establishment from denying or abridging the right of an individual with a disability to full and equal access to a business establishment. The bill establishes definitions for “business establishment” and “disability” and establishes relief for aggrieved individuals.

Fiscal Summary

State Effect: Any increase in the workload for the Maryland Commission on Human Relations (MCHR) or the Judiciary can be handled with existing budgeted resources.

Local Effect: Any increase in the workload for the circuit courts can be handled with existing budgeted resources.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A business establishment is defined as an entity or sole proprietorship engaged in providing goods, services, benefits, accommodations, advantages, facilities, and privileges of any kind, whether directly, by the Internet, or by electronic, telephonic, or other means. Business establishments include public, private, for-profit, and nonprofit entities. The bill specifies that the definition of disability is to be the same as that in the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102.

The bill establishes that individuals with disabilities have the right to full and equal access to goods, services, benefits, accommodations, advantages, facilities, and privileges provided to the general public by a business establishment. A business establishment is prohibited from denying or abridging the rights of full and equal access to an individual with a disability. Each denial or abridgment of the rights of an individual constitutes a separate violation. The bill specifies that a violation by a business establishment of the rights of an individual under the Americans with Disabilities Act (ADA) also constitutes a violation of this bill's provisions. However, the bill does not require a business establishment to provide its customers, clients, or participants with personal devices, individually prescribed devices, or services of a personal nature.

An individual who is aggrieved by a violation of the provisions established under this subtitle may file a complaint with MCHR or may pursue a private right of action. Relief may include: (1) compensatory and punitive damages and (2) an injunction or other equitable relief that prohibits the violation alleged by the individual and orders affirmative steps to prevent future violations. The court may also award to the prevailing party the costs of investigation, costs of the action, expert witness fees, and reasonable attorney's fees. If a business establishment cures a violation within 90 days after an aggrieved individual gives written notice of the violation, it establishes a defense to an award of damages.

The bill specifies that the subtitle is to be interpreted and construed liberally to effectuate its purpose and does not limit the scope of, administrative procedures of, or relief available under any other provision of law.

Current Law: A disability is defined in the ADA as a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Under Title 2 of the ADA, no qualified individual with a disability may, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by the entity. Public entities include State and local governments.

Under Title 3 of the ADA, no individual may be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

Under State law, an owner or operator of a place of public accommodation may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person's

race, sex, age, color, creed, national origin, marital status, sexual orientation, or disability. Governmental units, officers, and employees are prohibited from discrimination in public accommodations. Any changes or modifications that are necessary to accommodate an individual with a disability must be reasonable. A reasonable accommodation is defined as making a place of public accommodation suitable for access, use, and patronage by an individual with a disability without danger to the individual's health or safety and undue hardship or expense to the person making the accommodation. (See State Government Article § 20-304, 20-305, and 20-901.)

On a finding that a respondent has engaged in a discriminatory act in relation to the prohibition against discrimination in public accommodations, MCHR may issue an order for corrective relief and/or assess a civil penalty against a respondent. (See State Government Article § 20-1009 and 20-1016.)

Small Business Effect: Small businesses held liable under the bill's provisions may be subject to compensatory and punitive damages, expert witness fees, reasonable attorney's fees, and the costs of investigation and lawsuits.

Additional Information

Prior Introductions: None.

Cross File: HB 417 (Delegate Benson, *et al.*) - Health and Government Operations.

Information Source(s): Office of the Deaf and Hard of Hearing, Department of Disabilities, Maryland Commission on Human Relations, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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