

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1463

(Delegate Kelly, *et al.*)

Economic Matters

Rachel's Law - Closed Captioning in Movie Theaters

This bill requires a movie theater exhibiting motion pictures on five or more screens at a single location to provide access to closed-captioning technology for deaf and hard of hearing individuals. The Department of Labor, Licensing, and Regulation (DLLR) in consultation with the Governor's Office of the Deaf and Hard of Hearing (ODHH) must adopt regulations to implement the bill.

Fiscal Summary

State Effect: General fund expenditures increase by \$62,500 in FY 2011 only, for contractual staff to assist with identifying and approving appropriate technologies, drafting regulations, and determining the number of movie theaters that would be affected by the bill. Future year expenditures are unaffected as DLLR is not responsible for the bill's enforcement. Revenues are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	62,500	0	0	0	0
Net Effect	(\$62,500)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: DLLR in consultation with ODHH must identify and approve the appropriate technology in which closed captioning can be utilized to provide reasonable accommodation for individuals who are deaf and hard of hearing, including a predetermined reasonable cost for the technology, and must also set the minimum number of showings a movie theater must provide with closed-captioning technology.

Current Law: The Maryland Commission on Human Relations (MCHR) is the State agency charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting. MCHR works to ensure equal opportunity to all citizens of Maryland by engaging in the investigation, mediation, and litigation of discrimination complaints in administrative and State court proceedings. MCHR comprises nine members. They are appointed to six-year terms by the Governor with the advice and consent of the Senate. The Governor appoints the executive director from a list of names submitted by the commission.

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. Maximum civil penalties range from \$500 to \$2,500 depending on whether or not the respondent has committed prior discriminatory acts. (*See* State Government Article § 20-1009 and 20-1016.)

Background: Federal requirements under the Americans with Disabilities Act (ADA) are limited in regards to movie theaters. While ADA requires a place of public accommodation to ensure that a person with a disability is not discriminated against and requires the provision of “auxiliary aids and services,” to promote equal and full access to programs and services, regulations promulgated by the U.S. Department of Justice (DOJ) are not clear. The regulations state that movie theaters are not required to present open-captioned films. However, other public accommodations that impart verbal information through soundtracks on films, video tapes, or slide shows are required to make information accessible to individuals who are deaf and hard of hearing.

In 2004, a lawsuit in Washington, DC was settled with the movie theater chains involved agreeing to install specified closed-captioning technologies in at least 12 metro DC area theaters. This was the first time a movie theater was forced to provide access through court involvement.

In 2006, the state of Arizona and two individuals sued a movie theater chain alleging that it violated ADA for failing to provide movie showings with closed-captioning and video descriptions. In 2008, the Arizona District Court dismissed the case and ruled that ADA

does not require movie theaters to provide auxiliary aids and that changing audio elements to a visual format or visual elements to an audio format alters the content of a movie theater's services. An appeal of this decision was filed with the U.S. Court of Appeals for the Ninth Circuit.

In February 2009 DOJ filed a "friends of the court" brief, arguing that closed captioning and audio description do not fundamentally alter the service provided by movie theaters. DOJ cited that closed captions and video descriptions are auxiliary aids that permit individuals with sensory disabilities to enjoy a movie theater's service of exhibiting movies. While similar court cases have been filed regarding closed captioning in movie theaters, this is the first time any U.S. Court of Appeals has considered a movie theater case for people who are deaf, hard of hearing, blind, or visually impaired. The defendant movie theater chain filed a motion in February 2010 asking the appeals court to defer issuing a decision in the case while the parties try to reach a settlement; a court ruling is still pending.

ODHH advises numerous closed-captioning technologies can be employed to accommodate deaf and hard of hearing individuals at movie theaters. Open-captioned film prints project white captions on screen and are generally the preferred option of people who are deaf and hard of hearing. However, theater owners have found that open-captioned showings uniformly draw fewer viewers, resulting in a potential revenue loss for theaters. This is true even when showings are limited to the least-attended times such as weekday afternoons. No additional equipment is needed to display or view open-captioned film prints.

Screened-based caption projection systems, also known as on-screen technologies, project captions on the screen with the use of a second projector that superimposes captions onto the screen. On-screen technologies require additional equipment that costs up to \$12,000. When on-screen and open-captioned technologies are used, everyone in the audience can see the captions.

In comparison, seat-based caption display systems, such as rear window captioning (RWC), display captions in reverse on an LED text display mounted on the rear wall of the theater. Only those viewers who have a transparent acrylic reflector panel at their seats are able to view these captions. The estimated cost for RWC is about \$10,000 per screen. Reflector panels cost an additional \$75 to \$95 each.

Similar legislation has been introduced in Kentucky. The Kentucky bill would require all cinemas with at least five screens to have at least one screen with a closed-captioning service.

ODHH advises that 12 theaters in Maryland show movies with captions.

State Fiscal Effect: General fund expenditures increase by an estimated \$62,500 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. This estimate reflects the cost of hiring two part-time contractual employees to assist DLLR with identifying and approving appropriate technologies, drafting regulations, and determining the number of movie theaters that would be affected by the bill. Future year expenditures are unaffected as DLLR is not responsible for the bill's enforcement. Instead, complaints resulting from violations of the bill's provisions will be investigated by MCHR. Assuming complaints are minimal, the commission can handle enforcement with existing resources.

Small Business Effect: Since the bill exempts theaters with fewer than five screens, it is likely the majority of theaters that are considered small businesses will not be affected by the bill's provisions. However, small businesses that have at least five screens will likely incur additional expenditures and may experience a decrease in revenues, depending on the type of technology adopted.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Described and Captioned Media Program; National Association for the Deaf; U.S. Department of Justice; Office of the Deaf and Hard of Hearing; Maryland Human Relations Commission; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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