

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Revised

Senate Bill 68

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Deaf and Hard of Hearing, Office of the)

Judicial Proceedings

Health and Government Operations

State Government - Human Relations - Closed-Captioning Activation Required

This departmental bill requires a place of public accommodation, on request, to keep closed captioning activated on any closed-captioning television receiver that is in use during regular hours in any public area. Places of public accommodation are excluded from this requirement if: (1) no television receiver of any kind is available in the public area or (2) the only public television receiver available in the public area is not a closed-captioning receiver. A “closed-captioning television receiver” means a receiver of television programming that has the ability to display closed captioning, including a television, digital set top box, and any other technology capable of displaying closed captioning.

Fiscal Summary

State Effect: Any increase in the workload of the Maryland Commission on Human Relations (MCHR) can be handled with existing budgeted resources. Although MCHR is authorized under current law to seek civil penalties on a finding that a respondent has violated a prohibition against discrimination in public accommodations, any civil penalties as a result of this bill are not expected to significantly affect State finances.

Local Effect: None.

Small Business Effect: The Office of Deaf and Hard of Hearing has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: A “place of public accommodation” includes: (1) a hotel, motel, or other lodging establishment; (2) a facility serving food or alcoholic beverages, including facilities on the premises of a retail establishment or gasoline station; (3) entertainment, sports, or exhibition venues; and (4) a public or privately operated retail establishment offering goods, services, entertainment, recreation, or transportation. A separate establishment that represents itself as serving patrons of one of the above establishments is also included if: (1) it is physically located within the premises of one of the above establishments; or (2) it is within the premises of which one of the above establishments is physically located. (*See* State Government Article § 20-301.)

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

Background: In 1993, the Federal Communications Commission (FCC) required that all analog television receivers manufactured and sold in the United States with screens larger than 13 inches contain built-in decoder circuitry to display closed captions. In 2002, FCC imposed a similar requirement on digital television receivers. As a result it is likely that most televisions in use today have this capability. Under the FCC’s rules, since January 1, 2006, video program distributors have been required to add closed captioning to all new English language programming. A similar requirement was applied to Spanish language programming as of January 1, 2010. FCC also required video program distributors to add closed captioning to a certain percentage of their previously broadcasted programs. As a result, a high percentage of television programs that are broadcast today are likely to have closed captions.

Federal requirements under the Americans with Disabilities Act (ADA) are limited in this regard. While ADA requires places of public accommodation to ensure that disabled persons are not discriminated against and requires the provision of “auxiliary aids and services,” including closed-caption decoders, to promote equal and full access to programs and services, regulations promulgated by the Department of Justice only require the use of closed-captioned television receivers in hotels with five or more rooms and hospital waiting rooms. ADA, however, does not prevent the State from expanding the requirements of places of public accommodation in connection with using closed captioning on television receivers.

The Office of the Deaf and Hard of Hearing (ODHH) further advises that according to the National Institute on Deafness and Other Communication Disorders, approximately 17% of American adults say that they have some degree of hearing loss. These numbers are likely to increase as the baby boomer generation ages, as roughly one-third of Americans 65 to 74 years of age and 47% of those 75 and older have hearing loss.

ODHH also advises that the Department of Veterans Affairs reports that hearing damage is the most common disability for veterans. More than 59,000 veterans from Operation Enduring Freedom and Operation Iraqi Freedom have reported hearing loss, which is permanent for many veterans.

Small Business Effect: Although small businesses that do not comply with the bill’s provisions may be subject to civil penalties, the impact to small businesses is still expected to be minimal. Because the bill specifically exempts places of public accommodation from compliance if no television of any kind is available in a public area or if the only television available does not have closed-captioning capabilities, no business will be required to purchase a new television as a result of this bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1501 (Delegate Rice) – Health and Government Operations.

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

Fiscal Note History: First Reader - January 18, 2010
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Government – Human Relations – Closed Captioning
Activation Required

BILL NUMBER: SB 68

PREPARED BY: Office of the Deaf and Hard of Hearing - Responsibilities

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.