

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 852 (Senator Ready)
Education, Health, and Environmental Affairs

Public Safety - Maryland Accessibility Code - Applicability

This bill clarifies that the Maryland Accessibility Code (MAC) does not apply to a change of use that is not a “change of occupancy” as defined by the International Existing Building Code (IEBC).

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Current Law: Under IEBC, “change of occupancy” is a change in the use of the building or a portion of a building. The term includes any change of occupancy classification, any change from one group to another group within an occupancy classification, or any change in use within a group for a specific occupancy classification.

The Department of Housing and Community Development (DHCD) must adopt by regulation a State building code to make buildings and facilities accessible and usable by individuals with disabilities to the extent feasible. MAC is enforceable by local governments or any other governmental units with authority over buildings or facilities. DHCD must decide interpretations of the code and may authorize waivers or exemptions under the code.

Pursuant to current regulations, unless otherwise specified, MAC applies to all new construction, additions, alterations, and changes of use of buildings and facilities in the State. Among other exceptions, residential buildings consisting of less than four dwelling units are not covered under the code. DHCD regulations specify that MAC is not intended to grant or imply a private cause of action to an individual against the State, DHCD, its employees, agents, or assignees for violations of the code.

If DHCD determines that a violation of MAC exists, the department may resolve any issue related to the violation by mediation and conciliation. DHCD may also bring an action for equitable or other appropriate relief in a court in the jurisdiction in which the violation occurred, including an action to enjoin the construction, renovation, or occupancy of a building or facility that violates MAC. The Attorney General may prosecute civil cases that arise under the bill that are referred to the Attorney General by DHCD.

A person who violates MAC is guilty of a misdemeanor and is subject to a maximum penalty of a \$500 fine for each day the violation exists and/or three months imprisonment. A penalty imposed under these provisions is in addition to and not a substitute for any other penalty imposed under federal, State, or local law.

Subject to specified notification requirements, an occupant, a dependent of an occupant, or a prospective tenant who otherwise meets the requirements for tenancy may commence a civil action in District Court or circuit court to obtain relief for a violation of MAC with regard to a building of four or more dwelling units that is subject to MAC, except for specified “historic properties.” If the court finds that a violation of MAC has occurred, the court may (1) grant relief as the court considers appropriate, including injunctive relief; (2) award the prevailing party reasonable attorney’s fees and costs; and (3) award the prevailing party actual damages. This provision does not apply to an aggrieved individual who has an existing private right of action against a housing authority to enforce accessibility requirements under specified federal laws.

Background: There is also federal law governing many of the buildings and facilities covered by MAC. DHCD regulations specify that, to the extent that federal law is more restrictive, federal law applies. Federal law also governs some buildings and facilities which are not covered by MAC. For example, the Americans with Disabilities Act requires owners of existing buildings to make changes that are “readily achievable to accommodate individuals with disabilities.”

Maryland Building Rehabilitation Code

The Maryland Building Rehabilitation Code Program encourages private investment in existing buildings and communities through a construction code that streamlines and harmonizes the code requirements for rehabilitation work. The Building Rehabilitation

Code became effective on June 1, 2001, and applies to buildings of all types more than one year old. Based on the recommendations of the Maryland Building Rehabilitation Code Advisory Council, the Secretary of Housing and Community Development adopted by regulation the 2015 IEBC as the Maryland Building Rehabilitation Code. The 2015 IEBC took effect April 11, 2016.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 203 (Delegate Krebs, *et al.* - Environment and Transportation) is different.

Information Source(s): Department of Housing and Community Development; Department of Legislative Services

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mm/mcr

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