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THE MARYLAND HOUSE OF DELEGATES ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB258

Right to Sit Act of 2022

Testimony by Delegate Vaughn Stewart

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What does the bill do?

The Right to Sit Act (HB256) requires large employers to provide a suitable seat for an employee if the nature of that employee's work can reasonably be performed while seated. Additionally, as part of the construction of a new facility or a major renovation, large employers would be prohibited from designing workspaces to negate the possibility of workers sitting while they're performing a job where they could reasonably do so.

The bill creates a more relaxed standard for small businesses with fewer than 15 employees. Smaller employers would be required to provide suitable seating only when a seat is requested by an employee, and only if the provision of a seat would not cause undue hardship to the employer.

Right to sit laws were once commonplace in the United States and, after about a century of neglect, have made a comeback. Between 1881 and 1917, every state except Mississippi passed legislation guaranteeing suitable seating for workers. However, the texts of these laws usually specified that they applied only to female workers. Currently, seven states have gender-neutral right to sit legislation, while others—including Pennsylvania to our north and West Virginia to our west—maintain gendered language referred to female workers only.

Maryland's right to sit law, enacted in 1896, provided that in "every retail, jobbing, or wholesale drygoods store, notion, millinery or any other business where any female salespeople are employed, a seat shall be provided for each one of such female help, and they shall not be forbidden to

avail themselves of any opportunity of rest not interfering with their duties." A 1904 report from the Maryland Bureau of Statistics and Information cited Maryland's right to sit law as an example of a law with a "remedial character . . . which, if properly enforced, might prove of great advantage to the masses of the people."

How would this law work?

The bill directs the Department of Labor to promulgate regulations to establish criteria for determining whether the nature of an employee's work reasonably allows the employee to perform the work while seated. These criteria shall include whether the employee's tasks can be performed while seated and whether allowing an employee to sit would interfere with job performance.

While I cannot predict exactly how the Department will regulate, we can look to how courts have handled this issue in California as a guide to how this law will affect Maryland. The first step of the analysis is to define the "nature of the work." Courts look at subsets of an employee's total tasks performed at a given location and consider whether it's feasible for the employee to perform each set of location-specific tasks while seated. The focus of the nature of the work analysis is on the actual tasks required by the employee's duties at a given location, not to abstract characterizations, job titles, or descriptions that may or may not reflect the actual work performed.

The longer or more frequently a task is performed at a given location, the more important that task is to determining whether the employee has a right to sit while performing it. For example, cashiers in many retail environments must be allowed to sit down because the nature of their work in ringing up sales reasonably permits them to sit during the performance of those job duties. However, a non-cashier retail associate whose job duties include customer service and restocking shelves on the sales floor might not have a right to sit.

The second part of the inquiry relates to reasonableness, where courts look at the totality of circumstances. Courts consider whether providing a seat would unduly interfere with other standing tasks, whether the frequency of transition from sitting to standing may interfere with the work, or whether seated work would impact the quality and effectiveness of overall job performance. Courts also consider the level of customer service, for example, may be considered when determining if seating is reasonably permitted. Employees who are expected to provide a certain level of customer service may be viewed by their employers or the customers as providing better customer service while standing.

This means that if the location where the employee is assigned during most of their day permits seating, the employee is entitled to a seat. Courts also consider the employer's business judgment, though employers are not generally permitted to arbitrarily define certain tasks as "standing" ones.

Why should the Committee vote favorably?

The inability to sit on the job harms workers' well-being and reduces their productivity.

First, prolonged standing at work has been shown to be associated with a number of potentially serious health outcomes, such as lower back and leg pain, cardiovascular problems, fatigue, discomfort, and pregnancy-related problems. A 2002 metastudy summarized findings from 17 studies that involved standing for more than 8 hours per day and identified chronic venous insufficiency, musculoskeletal pain of the lower back and feet, preterm birth, and spontaneous abortions as the major health risks.¹ A 2014 report from the Canadian Centre for Occupational Health and Safety found that prolonged standing effectively reduces the blood supply to the muscles resulting in the acceleration of the onset of fatigue and causes pain in the muscles of the legs, back and neck, as well as pooling of blood in the legs and feet which leads to varicose veins.² And according to a 2017 study, people whose job requires them to stand are twice as likely to develop heart disease as those whose work is primarily done while seated.³ Prolonged standing diminishes workers' quality of life and drives up health care costs for Marylanders.

This bill is especially important for disabled workers. Though workers with disabilities can legally request accommodations, including suitable seating, many do not exercise their rights. These workers are often skittish about revealing their disability and sometimes fear that their request will be rejected or even mocked. A broader right to suitable seating will allow all workers, regardless of ability, to fair treatment as a baseline condition of employment. Additionally, one legal reason employers cite for denying accommodations requests is that their workspace does not reasonably allow for the accommodations; HB258's provision related to construction of a workspace will allow more disabled Marylanders to secure their needed accommodations in order to work.

¹ McCulloch J. Health risks associated with prolonged standing. *Work*. 2002;19(2):201–205.

² Canadian Centre for Occupational Health and Safety (CCOHS) *Basic information on Standing at work*. 2014, http://www.ccohs.ca/oshanswers/ergonomics/standing/standing_basic/html.

³ Smith, P. et al. The Relationship Between Occupational Standing and Sitting and Incident Heart Disease Over a 12-Year Period in Ontario, Canada. *American Journal of Epidemiology*. 2017, <https://academic.oup.com/aje/article/187/1/27/4081581>.

Second, denying suitable seating for workers diminishes their productivity and hurts businesses' bottom lines. A 2016 study from researchers at Texas A&M found that productivity increases when people have the ability to sit and stand throughout the work day, and do so over a long enough period of time to figure out what combination works best.⁴

The productivity boost is why companies like Aldi—the German-owned grocery store—allow their cashiers to sit on a stool while ringing up customers. (Indeed, many, if not most, large European retailers do not require their cashiers to stand.) Aldi relentlessly tracks employees' ringing speed, and it turns out that employees can scan your items faster from a seated position. Their methods seem to be working, as Aldi is the fastest-growing grocery store, and one of the fastest retailers overall, in the United States. They're on track to be the country's third largest grocery retailer by the end of this year.

In the name of treating working Marylanders with dignity and respect, I urge a favorable report.

⁴ Gregory Garrett, Mark Benden, Ranjana Mehta, Adam Pickens, S. Camille Peres & Hongwei Zhao. Call Center Productivity Over 6 Months Following a Standing Desk Intervention, *IIE Transactions on Occupational Ergonomics and Human Factors*, 4:2-3, 188-195 (2016).