

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bill 4764 (Substitute H-5)  
Sponsor: Representative H. Lynn Jondahl  
House Committee: Mental Health  
Senate Committee: Education and Mental Health

Date Completed: 5-23-90

SUMMARY OF HOUSE BILL 4764 (Substitute H-5) as passed by the House:

The bill would amend the Michigan Handicappers' Civil Rights Act to:

- Redefine "handicap".
- Extend the Act to all employers, rather than those with four or more employees.
- Place limits on the amount an employer would be required to spend to accommodate a handicapper. The limits would depend upon the number of employees, the State average weekly wage, whether Federal handicapper legislation was enacted, and whether the employer was purchasing equipment or devices or hiring a reader or interpreter.
- Specify employer rights.
- Place the burden of proof on a handicapper suing for failure to accommodate, and then shift the burden to the employer to prove an undue hardship if the handicapper proved a prima facie case.
- Require the Department of Civil Rights to offer educational and training programs.

Definitions

Currently, "handicap" is defined as a determinable mental or physical characteristic, or a history of such a characteristic, unrelated to an individual's qualifications for employment or promotion, or to an individual's ability to perform a particular job, use and benefit from public accommodations or services, and educational opportunities, programs, and facilities at an educational institution, or acquire, rent, or maintain property. The Act defines "mental characteristic" as mental retardation or "a mentally ill restored condition".

The bill would redefine "handicap" to mean one or more of the following:

- A determinable mental or physical characteristic that a) substantially limits one or more major life activities of an individual and is unrelated to the individual's qualifications for employment or promotion or to his or her ability to perform the duties of a particular job or position; b) is unrelated to an individual's ability to use and benefit from public accommodations and services and educational opportunities, programs, and facilities at an educational institution; and/or c) is unrelated to an individual's ability to acquire, rent, or maintain property.
- A history of a determinable physical or mental characteristic.

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-- "Being regarded as having" a determinable physical or mental characteristic.

The term "handicap" would not include a determinable physical or mental characteristic caused by the use of an alcoholic liquor, if the characteristic prevented the individual from performing his or her job, or by the illegal use of a controlled substance.

The bill would delete the definition of "mental characteristic" and define "unrelated to the individual's ability" to mean that, with or without accommodation, a person's handicap would not prevent him or her from doing his or her job; using and benefiting from public accommodations or services; using and benefiting from educational programs, opportunities, and facilities at an educational institution; or acquiring, renting or maintaining property.

#### Accommodation by Employers

Currently, the Act requires a person to accommodate a handicapper for purposes of employment, housing, education, public accommodation or services unless the person can demonstrate that the accommodation would impose an "undue hardship". The Act, however, does not define "undue hardship" or "accommodation". The Act also applies only to employers with four or more employees.

The bill would define "employer" to include anyone who had one or more employees and would put a cap (based on a formula involving the number of employees and the State average weekly wage) on the amount an employer would be required to spend on equipment, devices, readers, or interpreters to accommodate a handicapper. Public employers (State or local) and Federally tax-exempt organizations would be exempted from the caps.

Specifically, if a person employed fewer than four employees and were required under the Act to purchase any equipment or device to accommodate a handicapper, the maximum total purchase cost that the person would be required to pay for the equipment or device would be limited to an amount equal to the State average weekly wage. If the cost of an accommodation exceeded the limitation, the accommodation would constitute an undue hardship on the employer. For employers with more than four employees, the following formula for determining the maximum total purchase cost would apply:

- For employers with at least four but fewer than 15 employees, the maximum expenditure required would be limited to 1.5 times the State average weekly wage.
- For employers with at least 15, but fewer than 25 employees, the maximum expenditure required would be limited to 2.5 times the State average weekly wage.
- For employers with 25 or more employees, a total purchase cost equal to or less than 2.5 times the State average weekly wage would not constitute an undue hardship on the employer.

These provisions would not limit the cost of reasonable routine maintenance or repair of equipment or devices needed to accommodate a handicapper.

Further, the bill specifies that if a person employed fewer than four employees and were required to hire or retain readers or interpreters to accommodate a handicapper in the performance of his or her duties, the maximum cost the employer would have to pay would be seven times the State average weekly wage

for the first year the handicapper was hired, promoted, or transferred to the job, and five times the State average weekly wage for each year thereafter. If the cost of the accommodation exceeded the limit, the accommodation would constitute an undue hardship for the employer. For employers with more than four employees, the following formula for determining the maximum cost for hiring readers and interpreters would apply:

- For employers with at least four but fewer than 15 employees, the cost would be limited to 10 times the State average weekly wage for the first year and seven times the State average weekly wage for each subsequent year.
- For employers with at least 15 but fewer than 25 employees, the cost would be limited to 15 times the State average weekly wage for the first year and 10 times the State average weekly wage for each subsequent year.
- For employers with 25 or more employees, a cost less than or equal to 15 times the State average weekly wage for the first year and less than or equal to 10 times the State average weekly wage for each subsequent year would not constitute an undue hardship.

If the handicapper were a temporary employee, i.e., hired for a position that would not last longer than 90 days, the limits on the maximum cost of providing equipment or devices or hiring readers or interpreters would be reduced by 50%.

If proposed Federal legislation concerning handicappers (the "Americans with Disabilities Act") were enacted, then beginning two years after the date of enactment, an employer with 15 or more employees would not experience an undue hardship if the total cost of equipment or devices to accommodate an employee were equal to or less than 2.5 times the State average weekly wage or if the total cost of hiring or retaining interpreters or readers were equal to or less than 15 times the State average weekly wage for the first year and equal to or less than 10 times the State average weekly wage for each subsequent year.

If an employer could accommodate a handicapper only by purchasing equipment or devices as well as hiring readers or interpreters, he or she would have to do both. If an employer could accommodate a handicapper by either purchasing equipment or devices or hiring readers or interpreters, he or she would have to consult with the handicapper and choose whether to purchase the equipment or hire readers or interpreters.

Any job restructuring and altering of employees' schedules would apply only to minor or infrequent duties relating to the particular job held by the handicapper. A person who employed fewer than 15 employees would not be required to restructure a job or alter the schedule of employees to accommodate a handicapper.

The bill specifies that a required accommodation could not be construed as preferential treatment or an employee benefit, and nothing in the Act could be construed to conflict with the Elliott-Larsen Civil Rights Act.

#### Employers' Rights

The bill explicitly would allow employers to:

- Establish employment policies, programs, or procedures regarding the use of alcohol or illegal drugs.
- Apply different standards of compensation or terms of employment under a

seniority or merit system, transfer system, scheduling system, assignment system, or attendance plan, if it were not just an attempt to avoid meeting the Act's accommodation requirements.

- Require employees absent from work because of illness or injury to submit evidence of their ability to return to work (but employers could not single out only handicappers for this requirement).
- Either prohibit an employee receiving workers' disability compensation from returning to work in a restructured job or require that employee to return to work if the employer provided an accommodation.

### Legal Action

The bill would put the burden of proof on handicappers who wished to sue an employer for failure to accommodate. If the handicapper proved a prima facie case, then the employer being sued would have to prove that an accommodation would impose an undue hardship. If the employer produced evidence that an accommodation would impose an undue hardship, the burden of proof would once again shift to the handicapper to show by a preponderance of the evidence that an accommodation would not impose an undue hardship on the employer.

Under the bill, there could be no civil action against an employer for failure to accommodate unless the handicapper had notified the employer in writing of the need for accommodation within 182 days after the handicapper knew that one was needed. Employers would be required to notify appropriately all employees and job applicants about the bill's requirement that written notice be given of the need for accommodation.

The Act currently specifies that a person alleging a violation of the Act may sue for appropriate injunctive relief and/or damages for injury or loss (including reasonable attorney fees). The bill specifies that any amount of compensation awarded for lost wages for an injury would be reduced by the amount received for lost wages under the Worker's Disability Compensation Act for the injury and by the present value of future compensation to be received for the injury.

### Other Provisions

The bill would require the Department of Civil Rights to offer educational and training programs to employers, labor organizations, and employment agencies to help them understand the requirements of the Act.

MCL 37.1102 et al.

Legislative Analyst: L. Burghardt

### FISCAL IMPACT

The bill would have a minimal fiscal impact on the State and no fiscal impact on local units of government. Costs associated with processing complaints in the Department of Civil Rights could increase if more complaints were filed due to the new definition of "handicap" under this bill.

Fiscal Analyst: F. Sanchez

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.