

Act No. 121  
Public Acts of 1990  
Approved by the Governor  
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**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1990**

Introduced by Reps. Jondahl, Gubow, Ciaramitaro, Jonker, Brown, Leland, DeMars, Emerson,  
Joe Young, Jr., Clack, Murphy, Perry Bullard and Profit

# **ENROLLED HOUSE BILL No. 4764**

AN ACT to amend sections 102, 103, 201, and 606 of Act No. 220 of the Public Acts of 1976, entitled as amended "An act to define the civil rights of individuals who have handicaps; to prohibit discriminatory practices, policies, and customs in the exercise of those rights; and to provide for the promulgation of rules," sections 102 and 103 as amended and section 606 as added by Act No. 478 of the Public Acts of 1980, being sections 37.1102, 37.1103, 37.1201, and 37.1606 of the Michigan Compiled Laws; and to add sections 210, 211, 212, 213, and 214.

*The People of the State of Michigan enact:*

Section 1. Sections 102, 103, 201, and 606 of Act No. 220 of the Public Acts of 1976, sections 102 and 103 as amended and section 606 as added by Act No. 478 of the Public Acts of 1980, being sections 37.1102, 37.1103, 37.1201, and 37.1606 of the Michigan Compiled Laws, are amended and sections 210, 211, 212, 213, and 214 are added to read as follows:

Sec. 102. (1) The opportunity to obtain employment, housing, and other real estate and full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a handicap is guaranteed by this act and is a civil right.

(2) Except as otherwise provided in article 2, a person shall accommodate a handicapper for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship.

Sec. 103. As used in this act:

(a) "Alcoholic liquor" means that term as defined in section 2 of the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.2 of the Michigan Compiled Laws.

(b) "Commission" means the civil rights commission established by section 29 of article V of the state constitution of 1963.

(c) "Controlled substance" means that term as defined in section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws.

(d) "Drug" means that term as defined in section 7105 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7105 of the Michigan Compiled Laws.

(e) Except as provided under subdivision (f), "handicap" means 1 or more of the following:

(i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

(A) For purposes of article 2, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion.

(B) For purposes of article 3, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service.

(C) For purposes of article 4, is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution.

(D) For purposes of article 5, is unrelated to the individual's ability to acquire, rent, or maintain property.

(ii) A history of a determinable physical or mental characteristic described in subparagraph (i).

(iii) Being regarded as having a determinable physical or mental characteristic described in subparagraph (i).

(f) For purposes of article 2, "handicap" does not include either of the following:

(i) A determinable physical or mental characteristic caused by the current illegal use of a controlled substance by that individual.

(ii) A determinable physical or mental characteristic caused by the use of an alcoholic liquor by that individual, if that physical or mental characteristic prevents that individual from performing the duties of his or her job.

(g) "Handicapper" means an individual who has a handicap.

(h) "Person" includes an individual, agent, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, this state, or any other legal, commercial, or governmental entity or agency.

(i) "Political subdivision" means a county, city, village, township, school district, or special district or authority of this state.

(j) "State average weekly wage" means the state average weekly wage as determined by the Michigan employment security commission under section 27 of Act No. 1 of the Public Acts of the Extra Session of 1931, being section 421.27 of the Michigan Compiled Laws.

(k) "Temporary employee" means an employee hired for a position that will not exceed 90 days in duration.

(l) "Unrelated to the individual's ability" means, with or without accommodation, an individual's handicap does not prevent the individual from doing 1 or more of the following:

(i) For purposes of article 2, performing the duties of a particular job or position.

(ii) For purposes of article 3, utilizing and benefiting from a place of public accommodation or public service.

(iii) For purposes of article 4, utilizing and benefiting from educational opportunities, programs, and facilities at an educational institution.

(iv) For purposes of article 5, acquiring, renting, or maintaining property.

Sec. 201. As used in this article:

(a) "Employee" does not include an individual employed in domestic service of any person.

(b) "Employer" means a person who has 1 or more employees or a person who as contractor or subcontractor is furnishing material or performing work for the state or a governmental entity or agency of the state and includes an agent of such a person.

(c) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) "Labor organization" includes:

(i) An organization of any kind, an agency or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(ii) A conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization.

(iii) An agent of a labor organization.

Sec. 210. (1) In an action brought pursuant to this article for a failure to accommodate, the handicapper shall bear the burden of proof. If the handicapper proves a prima facie case, the person shall bear the burden of producing evidence that an accommodation would impose an undue hardship on that person. If the person produces evidence that an accommodation would impose an undue hardship on that person, the handicapper shall bear the burden of proving by a preponderance of the evidence that an accommodation would not impose an undue hardship on that person.

(2) Except as provided in subsections (7), (13), and (17), if the person employs fewer than 4 employees and is required under this article to purchase any equipment or device to accommodate the handicapper, the total purchase cost required to be paid by that person for that equipment or device is limited to an amount equal to the state average weekly wage. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(3) Except as provided in subsections (7), (13), and (17), if the person employs 4 or more employees but fewer than 15 employees and is required under this article to purchase any equipment or device to accommodate the handicapper, the total purchase cost required to be paid by that person is limited to an amount equal to 1.5 times the state average weekly wage. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(4) Except as provided in subsections (6), (7), (13), and (17), if the person employs 15 or more employees but fewer than 25 employees and is required under this article to purchase any equipment or device to accommodate the handicapper, the total purchase cost required to be paid by that person is limited to an amount equal to 2.5 times the state average weekly wage. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(5) Except as provided in subsections (6), (7), (13), and (17), if the person employs 25 or more employees and the total purchase cost of any equipment or device required to accommodate an employee under this article is equal to or less than 2.5 times the state average weekly wage, the accommodation does not impose an undue hardship on that person.

(6) If Senate Bill No. 933 or House Bill No. 2273 of the 101st Congress of the United States is enacted into law, and beginning 2 years after the effective date of that law, except as provided in subsections (7), (13), and (17), if the person employs 15 or more employees and the total purchase cost of any equipment or device required to accommodate an employee under this article is equal to or less than 2.5 times the state average weekly wage, the accommodation does not impose an undue hardship on that person.

(7) Subsections (2) to (6) do not limit the cost of reasonable routine maintenance or repair of equipment or devices needed to accommodate a handicapper under this article.

(8) Except as provided in subsections (13) and (17), if the person employs fewer than 4 employees and is required to hire or retain 1 or more individuals as readers or interpreters to accommodate the handicapper in performing the duties of his or her job, the cost required to be paid by that person is limited to an amount equal to 7 times the state average weekly wage for the first year the handicapper is hired, promoted, or transferred to that job, and 5 times the state average weekly wage for each year after the first year the handicapper is hired, promoted, or transferred to that job. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(9) Except as provided in subsections (13) and (17), if the person employs 4 or more employees but fewer than 15 employees and is required to hire or retain 1 or more individuals as readers or interpreters to accommodate the handicapper in performing the duties of his or her job, the cost required to be paid by that person is limited to an amount equal to 10 times the state average weekly wage for the first year the handicapper is hired, promoted, or transferred to that job, and 7 times the state average weekly wage for each year after the first year the handicapper is hired, promoted, or transferred to that job. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(10) Except as provided in subsections (12), (13), and (17), if the person employs 15 or more employees but fewer than 25 employees and is required to hire or retain 1 or more individuals as readers or interpreters to accommodate the handicapper in performing the duties of his or her job, the cost required to be paid by that

person is limited to an amount equal to 15 times the state average weekly wage for the first year the handicapper is hired, promoted, or transferred to that job, and 10 times the state average weekly wage for each year after the first year the handicapper is hired, promoted, or transferred to that job. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(11) Except as provided in subsections (12), (13), and (17), if the person employs 25 or more employees and the cost required to hire or retain 1 or more individuals as readers or interpreters to accommodate the handicapper in performing the duties of his or her job is less than or equal to 15 times the state average weekly wage for the first year the handicapper is hired, promoted, or transferred to that job, and is less than or equal to 10 times the state average weekly wage for each year after the first year the handicapper is hired, promoted, or transferred to that job, the accommodation does not impose an undue hardship on that person.

(12) If Senate Bill No. 933 or House Bill No. 2273 of the 101st Congress of the United States is enacted into law, and beginning 2 years after the effective date of that law, except as provided in subsections (13) and (17), if the person employs 15 or more employees and the cost required to hire or retain 1 or more individuals as readers or interpreters to accommodate the handicapper in performing the duties of his or her job is less than or equal to 15 times the state average weekly wage for the first year the handicapper is hired, promoted, or transferred to that job, and is less than or equal to 10 times the state average weekly wage for each year after the first year the handicapper is hired, promoted, or transferred to that job, the accommodation does not impose an undue hardship on that person.

(13) If the handicapper is a temporary employee, the limitations established for accommodations under subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), and (12) are reduced by 50%.

(14) A person who employs fewer than 15 employees is not required to restructure a job or alter the schedule of employees as an accommodation under this article.

(15) Job restructuring and altering the schedule of employees under this article applies only to minor or infrequent duties relating to the particular job held by the handicapper.

(16) If a person can accommodate a handicapper under this article only by purchasing equipment or devices and hiring or retaining 1 or more individuals as readers or interpreters, the person shall, subject to subsections (2) to (13) and subsection (17), purchase the equipment or devices and hire or retain 1 or more individuals as readers or interpreters to accommodate that handicapper. However, if the person can accommodate that handicapper by purchasing equipment or devices or by hiring or retaining 1 or more individuals as readers or interpreters, the person shall consult the handicapper and, subject to subsections (2) to (13) and subsection (17), choose whether to purchase equipment or devices or hire or retain 1 or more individuals as readers or interpreters.

(17) Subsections (2) to (16) do not apply to either of the following:

(a) A public employer. As used in this subdivision, "public employer" means this state or a political subdivision of this state.

(b) An organization exempt from taxation under section 501(c)(3) of the internal revenue code.

(18) A handicapper may allege a violation against a person regarding a failure to accommodate under this article only if the handicapper notifies the person in writing of the need for accommodation within 182 days after the date the handicapper knew or reasonably should have known that an accommodation was needed.

(19) A person shall post notices or use other appropriate means to provide all employees and job applicants with notice of the requirements of subsection (18).

Sec. 211. A person may, under this article, do 1 or more of the following:

(a) Establish employment policies, programs, procedures, or work rules regarding the use of alcoholic liquor or the illegal use of drugs.

(b) Apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, transfer system, scheduling system, assignment system, or attendance plan if those standards of compensation or terms, conditions, or privileges of employment are not a subterfuge to evade the purposes of this article.

(c) Establish uniform policies requiring employees who have been absent from work because of illness or injury to submit evidence of the ability to return to work. This subdivision does not allow a person to establish a policy requiring only handicappers to submit evidence of the ability to return to work.

(d) Either of the following:

(i) Prohibit an employee who is being compensated under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, for an injury arising out of and in the course of his or her employment with that person from returning to work in a restructured job.

(ii) Require an employee who is being compensated under Act No. 317 of the Public Acts of 1969 for an injury arising out of and in the course of his or her employment with that person to return to work as provided by law, if the person accommodates the employee as required under this article.

Sec. 212. The department of civil rights shall offer education and training programs to employers, labor organizations, and employment agencies to assist employers, labor organizations, and employment agencies in understanding the requirements of this article.

Sec. 213. Nothing in this article shall be construed to conflict with the Elliott-Larsen civil rights act, Act No. 453 of the Public Acts of 1976, being sections 37.2101 to 37.2804 of the Michigan Compiled Laws.

Sec. 214. For purposes of this act, an accommodation required under this article shall not be construed to be preferential treatment or an employee benefit.

Sec. 606. (1) A person alleging a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his or her principal place of business.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorneys' fees.

(4) The amount of compensation awarded for lost wages under this act for an injury under article 2 shall be reduced by the amount of compensation received for lost wages under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, for that injury and by the present value of the future compensation for lost wages to be received under Act No. 318 of the Public Acts of 1969 for that injury.

(5) A handicapper may not bring a civil action under subsection (1) for a failure to accommodate under article 2 unless he or she has notified the person of the need for accommodation as required under section 210(18). This subsection does not apply if the person failed to comply with the requirements of section 210(19).

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.