



**House
Legislative
Analysis
Section**

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HANDICAPPER ACCOMMODATION

House Bill 5250 with committee amendment
Second Analysis (6-14-88) **RECEIVED**

Sponsor: Rep. H. Lynn Jondahl
Committee: Civil Rights

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THE APPARENT PROBLEM:

The Michigan Handicappers' Civil Rights Act of 1976 sought to end job discrimination against handicappers in two ways: a) it prohibited discrimination, and b) it mandated that employers accommodate (by means of "adaptive devices or aids") handicappers in order to avoid discriminating against them, unless doing so would impose an undue hardship. For purposes of employment, the act included a definition of a handicap as a physical or mental characteristic that was unrelated to an individual's ability to perform the duties involved in a job, or was unrelated to an individual's qualification for employment or promotion. Simply stated, the act put forth the concept that a person should be evaluated according to his or her ability to actually perform a job. Whether an individual's handicap is related or unrelated to specific job requirements should not be controlling, as long as the employer can accommodate the handicap without undue hardship. On the other hand, a person who can perform a job with accommodation is entitled to accommodation even if the handicap is related to the specific job requirements. For years the courts interpreted the law to mean that employers had a responsibility both to allow and to provide accommodations.

In 1986, however, the Michigan Supreme Court, in Carr v. General Motors, ruled that a weight lifting requirement was related to a specific job description and that the employer had no duty to accommodate the employee. The court did not examine the job situation to determine whether an accommodation could be made for Mr. Carr. In interpreting the accommodation provision of the act, the court created a threshold issue which each person seeking the protection of the act must now meet: before a person is entitled to be accommodated under the act, he or she must first establish that the handicap is unrelated to the duties of the job in question. If a person cannot make such a showing, the duty to accommodate evaporates. Likewise, if the handicapper can show that the handicap does not interfere with his or her ability to do the required duties of the job, then the employer does have to accommodate that person, unless undue hardship can be established.

There is significant consensus among handicappers' organizations and agencies that the supreme court decision has the potential to severely limit handicappers' civil rights, that it will be interpreted to mean that accommodations need not even be considered if a handicap appears on its face to be related to a job requirement. Many handicappers now feel that they have lost the protection they were guaranteed under the Michigan Handicappers' Civil Rights Act. Both groups feel that, since the bill was intended to protect handicappers' rights, it should now be amended using language that can not be interpreted by courts to diminish those rights. What is needed, it is felt, is an amendment restating the original legislative intent of the act. The amendment should focus not on whether a handicap is related or unrelated to the ability to perform a specific task, or on the need of the individual for accommodation. It should focus on the ability of the handicapper to do the job, regardless of accommodation.

THE CONTENT OF THE BILL:

The Michigan Handicappers' Civil Rights Act of 1976 defines "handicap" as a determinable physical or mental characteristic of an individual which — for purposes of employment — is unrelated to an individual's ability to perform the duties of a particular job or position, or is unrelated to the individual's qualifications for employment or promotion. Under the bill, "unrelated to the individual's ability" would mean a handicap which, with or without accommodation, did not prevent an individual from performing the duties of a particular job or position, from utilizing and benefiting from a place of public accommodation or public service, from utilizing and benefiting from educational opportunities, programs, and facilities at an educational institution, or from acquiring, renting, or maintaining property. The bill would also suspend the running of the statute of limitations for a cause of action based on a violation of the act involving a handicap requiring accommodation from July 8, 1986, until the effective date of the bill. The bill would specify that it is curative and expresses the original intent of the legislature to protect the civil rights of handicappers, including those who require accommodation to perform job duties, benefit from places of public accommodation, take advantage of educational opportunities, and to acquire, rent or maintain property.

MCL 37.1103 et al.

BACKGROUND INFORMATION:

House Bill 5250 was originally reported from the House Civil Rights committee in essentially this form on March 1, 1988 and was returned to committee to rectify a procedural error. The bill was subsequently reported out of committee with an amendment that deleted a provision that would have made the requirements of the bill retroactive to 1976, and instead amended the bill to affirm that the bill is curative and expresses the original intent of the legislature to protect the civil rights of handicappers.

FISCAL IMPLICATIONS:

The Department of Civil Rights reports that there would be no additional cost to the state in implementation of the bill. As the state's enforcement agency for these cases, the department will continue to process handicapper accommodation complaints as before. (3-1-88)

ARGUMENTS:

For:

The Michigan Supreme Court decision in the case of Carr v. General Motors rendered the Michigan Handicappers' Civil Rights Act of 1976 meaningless. The potential for applying the Carr decision as a limitation could be harsh for many handicappers: accommodations will not be required or even considered if a job requirement appears on its face to be related somehow to an individual's handicap. As Justice Levin, in his separate opinion in the case, pointed out, whether the handicap is related or

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unrelated should not be controlling as long as the employer can accommodate the handicap without undue hardship. The bill — by linking “with or without accommodation” to the definition of handicapped and the concept of ability of an individual to perform a job — is necessary to make clear the original intent of the act.

For:

The House Civil Rights Committee added an amendment to the bill which would affirm that the bill is curative and expresses the original intent of the legislature in the Michigan Handicappers Civil Rights Act. The purpose of the amendment is to make it clear that failure to accommodate cases would not be thrown out of court on the basis of the Carr decision. Although the bill addresses this problem by removing the statute against handicapper discrimination from the time of the Carr decision on July 8, 1986, until the effective date of the bill, the committee felt that this would not address cases which were pending at the time of the *Carr v. General Motors* decision. Also, since the bill is intended to provide a legislative interpretation of the original act, it was felt that it should clearly state that it was to be applied retroactively to the date of enactment of the original act. (The Michigan Court of Appeals has recognized that amendments which are designed to clarify original legislative intent may be given retroactive effect, even in the absence of express language in the amendment. In *Harper v. Progressive Insurance Co.* (1977), an amendment to Michigan's no-fault insurance law was given retroactive effect even though the amendatory language was silent on whether retroactive application was intended.)

For:

Accommodation, and the employer's obligation to provide it in order to permit a qualified handicapped individual to successfully perform essential job tasks, is a basic premise of handicapper civil rights legislation. The bill would reinstate this basic right by focusing not on the need of the individual for accommodation and its relationship to his or her performance on the job, but rather by emphasizing the individual's right to accommodation.

For:

Government needs to assist handicappers in seeking gainful employment. The President's Committee on Employment of the Handicapped reported in 1986 that only one-third of handicappers are working. This figure is less than in 1970 and in 1980. A 1987 Harris survey showed that 66 percent of these persons wanted to work. Meanwhile, the federal government spent \$62 billion on programs for handicappers in 1985; of that figure, 93 percent was allocated to persons who are not working. The state spends approximately \$50 million in workers compensation and other benefits to persons classified as handicappers, many of whom want to work. The bill, by reinstating handicappers' basic rights, would allow for continued employment of numerous handicapped individuals for whom accommodation makes it possible for them to be active in the employment arena.

Against:

Some companies argue that the duty to accommodate is a potential business expense.

Response: The bill addresses this by indicating that “a person shall accommodate a handicapper . . . unless the person demonstrates that the accommodation would impose an undue hardship.” The idea behind the Handicappers' Civil Rights Act was to look at competence with accommodation. Studies have shown that employers

who apply this concept have been successful in employing significant numbers of handicappers. In return for minimal costs — if any — for accommodations, employers receive conscientious employees.

The experience of employers surveyed by the President's Committee on Employment of the Handicapped indicated that most accommodations have little or no financial cost. Further, there are a number of good resources for employers who want to explore different methods of accommodating individuals. The world of technology for the handicapped has moved so rapidly that there are many routes to follow to make a handicapper employable. For example, there are personal devices and adaptations which enable them to use computers, even though blind or multiply handicapped. Some of the more costly devices for handicappers are available on loan so that it can be determined whether or not they would be practical. Also, there are learning resource centers across the state which can assist employers with problems of adaptation. Further, there are tax breaks for employers who hire the handicapped. The Federal Targeted Jobs Credit, available to employers who hire economically disadvantaged or disabled workers, has been extended by the Tax Reform Act of 1986 for employees who begin work before 1989 (it had been scheduled to expire at the end of 1985). The credit is 40 percent for the first \$6,000 of first-year wages. In addition, section 190 of the Tax Reform Act allows employers up to \$35,000 annually in income tax savings for improvements to accommodate handicapped persons.

Against:

Some companies may argue that the bill is unfair because it will force them to hire “disabled workers,” thus causing an increase in their insurance and workers compensation insurance premiums.

Response: Insurance rates do not increase because handicappers are hired. Rates are based on job risks, not on employee characteristics. Insurance companies, in fact, have found that properly selected and properly placed persons with disabilities make excellent employees. They have fewer accidents, fewer absences, and at least equal production rates as able-bodied employees. according to a survey conducted by the President's Committee on Employment of the Handicapped, eight out of ten top managers found that the costs of employing handicappers were the same as for able-bodied persons. Insurers and employers know from experience that a person with a disability, when matched to the requirements of the job, is no longer “disabled.”

Against:

The bill violates the rights of employers because it would take away their prerogative to establish job duties. Instead, an employer would be forced to change a job description to conform to whatever type of physical disabilities a worker had, and/or hire additional help. Businesses would be run, not by standards of efficiency, but according to the needs of workers, at a time when the recent exodus of businesses from Michigan has pointed out the need for more efficiency and more productivity. Employers should not be made to carry this societal burden. Also, the bill's definition of “accommodation” is too vague. As a result, the issue will be decided on a case by case basis in court, at great expense to employers.

POSITIONS:

The Department of Social Services supports the bill. (6-10-88)

The Department of Natural Resources supports the bill. (6-10-88)

The United Auto Workers supports the bill. (6-10-88)

The American Federation of State, County and Municipal Employees supports the bill. (6-10-88)

The AFL-CIO supports the bill. (6-13-88)

The Teamsters Union supports the bill. (6-13-88)

The Commanders Group of Michigan, representing all chartered veterans groups in the state of Michigan, supports the bill. (6-9-88)

The Michigan Veterans Trust Fund supports the bill. (6-9-88)

The Paralyzed Veterans of America, Michigan Chapter, supports the bill. (6-9-88)

The Michigan Organization for Human Rights supports the bill. (6-10-88)

The Michigan Occupational Therapy Association supports the bill. (6-13-88)

The Hemophilia Foundation of Michigan supports the bill. (6-13-88)

The Michigan Protection and Advocacy Service supports the bill. (3-1-88)

The Michigan Commission for the Blind supports the bill. (3-1-88)

The Division of the Deaf and Deafened, Department of Labor, supports the bill. (3-1-88)

The Physically Impaired Association of Michigan supports the bill. (3-1-88)

The Handicapper Small Business Association supports the bill. (3-1-88)

The Michigan Association for Deaf, Hearing, and Speech Services supports the bill. (3-1-88)

Community Support Services supports the bill. (3-1-88)

The Association for Retarded Citizens - Michigan supports the bill. (3-1-88)

The Michigan Rehabilitation Services Division of the Department of Labor supports the bill. (3-1-88)

Representatives of the following testified before the House Civil Rights Committee in support of the bill. (3-1-88)

The Department of Civil Rights

The Department of Mental Health

The Michigan Trial Lawyers Association

The Michigan Rehabilitation Association

The Michigan Commission on Handicapper Concerns

The Michigan Handicapper Network, Inc.

The Human Rights Commission of Ann Arbor

The Ann Arbor Commission on Handicapper Concerns

The Bureau of Rehabilitation, Department of Education

Representatives of the following testified before the House Civil Rights Committee in support of the bill. (4-26-88)

The City of Lansing Human Resources Department

Citizens Alliance to Uphold Special Education

The Michigan Association of Handicappers' Higher Education

The Michigan Legislative Council Organization for the Handicapped

Office of Programs for Handicapper Students, Michigan State University

National Association for the Physically Handicapped - Michigan Chapters

The National Electrical Contractors Association - Michigan Chapter, and the Construction Association of Michigan oppose the bill, but would support an amendment more clearly defining the term, "undue hardship." (6-9-88)

The Michigan Manufacturers Association opposes the bill. (3-2-88)

The Greater Detroit Chamber of Commerce opposes the bill. (6-10-88)

The Michigan State Chamber of Commerce opposes the bill. (6-10-88)

General Motors Corporation opposes the bill. (6-9-88)

The Michigan Merchants Council opposes the bill. (6-9-88)

The National Federation of Independent Business/Michigan opposes the bill. (6-9-88)

The Michigan Retailers Association opposes the bill. (6-9-88)

The Michigan Grocers Association opposes the bill. (6-9-88)

The Michigan Truck Stop Operators Association opposes the bill. (6-9-88)

The Small Business Association of Michigan opposes the bill. (6-10-88)

The Michigan Trucking Association opposes the bill. (6-10-88)

The Michigan Food Processors Association opposes the bill. (6-10-88)

The Convenient Stores Association of Michigan opposes the bill. (6-10-88)

The Associated Builders and Contractors opposes the bill. (6-13-88)

The Opticians Association of Michigan opposes the bill. (6-13-88)

The Michigan Association of Home Builders opposes the bill. (6-13-88)