



Maryland Chamber of Commerce

Legislative Statement

**SB 670
Health &
Government
Operations
Committee
04/1/09**

SB 670

Discrimination in Employment - Expansion of Disability Rights

Brief Summary of Bill:

SB 670 expands the definition of disability for provisions of law relating to employment discrimination. Under the bill, "disability" includes a record of having a physical or mental impairment or being regarded as having a physical or mental impairment. The bill prohibits an employer from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee; however, an employer is not required to make reasonable accommodations for an employee's disability if the accommodation would cause undue hardship on the conduct of the employer's business. The bill prohibits an employer or labor organization from retaliation against any employee, applicant, or member who has opposed any prohibited employment practice or participated in an investigation, proceeding, or hearing relating to a discrimination charge.

Maryland Chamber's Position:

The Maryland Chamber of Commerce submitted a position statement previously expressing concerns about the Disability Expansion Act, principally centering on the apparent mismatch between the goal (conform Maryland's anti-discrimination law to the recently expanded rights for disabled individuals under the Americans with Disabilities Act) and the proposed language to achieve the goal. (A copy of our position statement is attached to this letter at Tab 1.) Subsequent to our raising these concerns, Delegate Rosenberg requested an opinion from the Maryland Attorney General's office concerning whether the amendments we proposed were necessary. The Attorney General's Office issued an Opinion Letter on March 30, 2009 (hereinafter "AG's Opinion Letter"). A copy of that opinion letter is attached to this letter at Tab 2. In summary terms, the AG's Opinion Letter concludes that the amendments we suggested are unnecessary because Human Relation Commission regulations and prior promulgations from the Attorney General's office already reflect interpretations consistent with the amendments that the Maryland Chamber offered. The AG's Opinion Letter reasoned that the General Assembly has acquiesced in these interpretations and, thus, the proposed amendments are not required.

The Maryland Chamber's goal is to ensure that the General Assembly promulgates laws that clearly define rights and obligations so that individuals and courts are not required, through time consuming and expensive litigation, to determine what the laws actually

require. We understand that the amendments we sought will not, in light of the AG's Opinion Letter, be further considered. We nonetheless appreciate Delegate Rosenberg's diligence in following up on the concerns raised on behalf of Maryland employers and willingness to consider them. We trust that the reasoning expressed by the AG's March 30, 2009 Opinion Letter will be helpful guidance in the future if there is a dispute about the intent of the legislature with respect to the Disability Expansion Act.

Previously Proposed Amendments:

On page 2 Add to the definitions in of disability "and that substantially limit the individual in one or more major life activities"

On page 4 Add the definition of "qualified individual with a disability" to provide "for purposes of this law, the term qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs."

On page 5 Replace on line 18 "for the known disability of an otherwise qualified employee" with "for a qualified individual with a disability when doing so will permit the individual to perform the essential functions of his/her job duties."

Add after line 18: "the duty to provide a reasonable accommodation shall not be required if the qualified individual with a disability cannot perform the essential functions of the job without posing a direct threat to the individual or others."

If questions please contact Allyson Black, ablack@mdchamber.org