

HOUSE BILL NO. 4498

May 02, 2023, Introduced by Reps. Bierlein, Beson, Markkanen, Cavitt, Alexander, Kunse, Outman, Schuette, Thompson, O'Neal, Farhat, Aragona, Roth and Prestin and referred to the Committee on Judiciary.

A bill to amend 1976 PA 220, entitled "Persons with disabilities civil rights act," by amending section 606 (MCL 37.1606), as amended by 1998 PA 20, and by adding section 606a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 606. (1) A person alleging a violation of this act **or of**
2 **another accessibility law, as that term is defined in section 606a,**
3 may bring a civil action for appropriate injunctive relief or
4 damages, or both.

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

6 (3) As used in subsection (1), "damages" means damages for
7 injury or loss caused by each violation of this act, including,
8 **subject to subsections (7) and (8)**, reasonable ~~attorneys'~~**attorney**
9 fees.

10 (4) The amount of compensation awarded for lost wages under
11 this act for an injury under article 2 ~~shall~~**must** be reduced by the
12 amount of compensation received for lost wages under the worker's
13 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
14 418.941, for that injury and by the present value of the future
15 compensation for lost wages to be received under the worker's
16 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
17 418.941, for that injury.

18 (5) A person with a disability may not bring a civil action
19 under subsection (1) for a failure to accommodate under article 2
20 unless ~~he or she~~**the person with a disability** has notified the
21 person **against whom the civil complaint is filed** of the need for
22 accommodation as required under section 210(18). This subsection
23 does not apply if the person **against whom the civil complaint is**
24 **filed** failed to comply with the requirements of section 210(19).

25 (6) **A person alleging a violation of an accessibility law, as**
26 **that term is defined in section 606a, shall not file a civil action**
27 **under subsection (1) unless the person alleging the violation has**
28 **served a notice as allowed under section 606a and 1 of the**
29 **following has occurred:**

1 (a) The person alleging a violation has received a response as
2 described in section 606a(3)(a) and the owner of the facility,
3 agent of the owner, or other responsible person has failed to make
4 the improvements or bring the facility into compliance with
5 accessibility laws within 120 days as required by section 606a(4)
6 and, in the opinion of the person alleging the violation, has
7 failed to provide a reasonable explanation for the failure.

8 (b) The person alleging a violation has received a response as
9 described in section 606a(3)(b).

10 (c) The person alleging a violation has received a response as
11 described in section 606a(3)(c), but the person alleging a
12 violation reasonably believes that the alleged violation continues
13 to exist.

14 (d) The owner of the facility, agent of the owner, or other
15 responsible person has failed to respond to the notice within 15
16 business days as required by section 606a(3).

17 (7) A person alleging a violation of an accessibility law, as
18 that term is defined in section 606a, that does not serve a notice
19 as allowed under section 606a is not entitled to attorney fees in
20 an action under subsection (1) unless the court determines that
21 attorney fees are appropriate because of the nature of the
22 violation, including their willfulness, duration, or severity.

23 (8) A person alleging a violation of an accessibility law, as
24 that term is defined in section 606a, that serves a notice as
25 allowed under section 606a is not entitled to attorney fees if all
26 of the following are true:

27 (a) The person alleging the violation filed the civil action
28 before the expiration of an allowable 120-day extension under
29 section 606a(4).

1 (b) The court determines that the defendant's explanation of
2 the necessity of the extension was reasonable.

3 (c) The defendant makes the improvements to bring the facility
4 into compliance with applicable accessibility laws during the
5 period of extension.

6 Sec. 606a. (1) Before filing a civil action alleging violation
7 of an accessibility law, the person alleging the violation may
8 notify the owner of the facility, agent of the owner, or other
9 responsible person by personal service, in accordance with
10 applicable state or federal laws, or by certified mail, of alleged
11 accessibility law violations for which an action may be filed by
12 the person alleging the violation.

13 (2) A notice under subsection (1) must furnish information or
14 be in a form substantially similar to the following:

15 This letter is to inform you that the facility located at
16 (address of facility) for which you are the owner, agent, or other
17 responsible person, may be in violation of federal or state
18 accessibility laws, or both, and the name of the person alleging
19 the violation is (name of person alleging the violation).

20 Specifically, the possible violation or violations have been
21 identified as follows:

22 (Notice must identify the specific facts that constitute the
23 alleged violation, including the approximate date on which the
24 alleged violation occurred or was observed and identification of
25 the location of the alleged violation with sufficient detail so
26 that the location can be identified by the owner of the facility,
27 agent of the owner, or other responsible person.)

28 You have 15 business days to respond to this notice by
29 personal service or certified mail. Your response must be addressed

1 to (address where personal service may be received or certified
2 mail may be sent).

3 Michigan law allows you to respond in 1 of 3 ways:

4 1. You may expressly state that improvements will be made to
5 bring the facility into compliance with applicable accessibility
6 laws. If you respond in this manner, you have a maximum of 120 days
7 to complete these improvements. The 120-day period begins on the
8 date your response to this notice is received at the address given
9 above. If the improvements necessary to bring the facility into
10 compliance with the applicable accessibility laws are not completed
11 within the 120-day period, a person alleging the violation may
12 bring a lawsuit against you. You may extend the 120-day period only
13 if you provide a reasonable explanation why improvements cannot be
14 made within the 120 days. A reasonable explanation includes a
15 demonstrated need for delay, such as problems related to
16 construction and permitting.

17 2. You may challenge the validity of the alleged violations.
18 If you respond in this manner, a person alleging the violation may
19 bring a lawsuit against you immediately.

20 3. If the violation or violations listed above are the same as
21 or similar to 1 or more previous violations that you believe have
22 been corrected, you may respond by stating that the necessary
23 improvements have been made to bring the facility into compliance
24 with the applicable accessibility laws. You must also attach
25 evidence that verifies those improvements.

26 If you have any questions about this notice or your rights
27 under federal or Michigan law, please contact your legal counsel.

28 (3) Within 15 business days after a person serves or sends a
29 notice under subsection (1), the owner of the facility, agent of

1 the owner, or other responsible person shall respond to the notice
2 by personal service on or certified mail to the person alleging the
3 violation. The response must do 1 of the following:

4 (a) Expressly state that improvements will be made to bring
5 the facility into compliance with applicable accessibility laws.

6 (b) Challenge the validity of the alleged violation. If the
7 owner of the facility, agent of the owner, or other responsible
8 person responds in this manner, the person alleging the violation
9 may file an action, subject to any applicable statutes of
10 limitations, any time after receipt of the response.

11 (c) State that the alleged violations identified by the person
12 alleging the violation have been corrected to comply with
13 applicable accessibility laws. The owner of the facility, agent of
14 the owner, or other responsible person shall attach evidence to the
15 response that verifies those improvements.

16 (4) If an owner of the facility, agent of the owner, or other
17 responsible person responds in the manner described in subsection
18 (3)(a), the owner, agent, or responsible person shall remedy the
19 alleged violation within 120 days. The 120-day period begins on the
20 date the person alleging the violation receives the response. The
21 owner, agent, or other responsible person may extend the 120-day
22 period by not more than 120 days by providing a reasonable
23 explanation why the improvement requires more than 120 days to
24 complete. A reasonable explanation includes a demonstrated need for
25 extension, such as a problem related to construction or permitting.

26 (5) If an owner of the facility, agent of the owner, or other
27 responsible person responds in the manner described in subsection
28 (3)(a) and makes the improvements to bring the facility into
29 compliance with applicable accessibility laws within the 120-day

1 period described in subsection (4) or provides a reasonable
2 explanation why the improvements are not completed, the response
3 must not be considered an admission of guilt and is not admissible
4 as evidence in any action based on the same facts filed against the
5 owner of the facility, agent of the owner, or other responsible
6 person.

7 (6) If the owner of the facility, agent of the owner, or other
8 responsible person makes the improvements to bring the facility
9 into compliance with the applicable accessibility laws within the
10 120-day period described in subsection (4) and provides evidence to
11 the person alleging the violation that the improvements have been
12 made, or if the owner of the facility, agent of the owner, or other
13 responsible person demonstrates to the court's satisfaction that
14 the explanation given for the necessity of an extension was
15 reasonable, the person alleging the violation is not entitled to
16 receive any damages or attorney fees in an action arising out of
17 the same or similar facts that served as a basis for the alleged
18 violation. The person alleging the violation may receive damages
19 and attorney fees for actions arising out of a recurrence of the
20 same or similar alleged accessibility law violation if it is
21 determined that the owner of the facility, agent of the owner, or
22 other responsible person failed to maintain accessibility following
23 the initial improvements.

24 (7) This section and section 606 do not limit an action for
25 recovery of special damages filed by a person who suffers an injury
26 in fact because the person was denied full and equal access to an
27 accommodation as required by federal or state law.

28 (8) This section does not apply to a complaint filed with the
29 commission under this act or deferred to the commission under

1 federal law. This section does not preclude the commission from
2 investigating charges of discrimination against a place of public
3 accommodation.

4 (9) As used in this section:

5 (a) "Accessibility law" means article 3 or any federal law
6 that ensures accessibility to services, programs, places of public
7 accommodation, public conveyances and modes of transportation,
8 streets, highways, sidewalks, walkways, buildings, medical
9 facilities, and other public places for a person with a disability.
10 Accessibility law does not include article 5.

11 (b) "Business day" means a day of the week excluding Sunday
12 and a legal holiday.