UTILIZATION OF PUBLIC FACILITIES BY PHYSICALLY LIMITED

Act 1 of 1966

AN ACT to provide for the accessibility and the utilization by the physically limited persons of public facilities and facilities used by the public; to create a barrier free design board and to prescribe its powers and duties; to prescribe the powers and duties of certain other state and local authorities; to provide remedies; and to provide for the enforcement of this act.

History: 1966, Act 1, Eff. July 1, 1966 ;-- Am. 1970, Act 243, Eff. July 1, 1971 ;-- Am. 1974, Act 190, Imd. Eff. July 2, 1974 ;-- Am. 1975, Act 177, Imd. Eff. July 20, 1975
Compiler's Notes: For transfer of powers and duties relating to promulgation of rules by the barrier free design board from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

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The People of the State of Michigan enact:

125.1351 Definitions.

Sec. 1.

As used in this act:

(a) "Administrative authority" means the state or local official responsible for the administration and enforcement of this act.

(b) "Barrier free design" means those architectural designs which eliminate the type of barriers and hindrances that deter physically limited persons from having access to and free mobility in and around a building, structure, or improved area.

(c) "Building" means a building as defined in section 2 of Act No. 230 of the Public Acts of 1972, as amended, being section 125.1502 of the Michigan Compiled Laws.

(d) "Facility used by the public" means a building, structure, or improved area utilized for purposes of education, employment, housing other than a privately owned 1 or 2 family dwelling, transportation, or recreation and for the purchase, rental, or acquisition of goods or services. A facility used by the public does not include a public facility.

(e) "Improved area" includes parking lots, harbors, parks, beaches, public telephones, and drinking fountains.

(f) "Physically limited" means a temporary or permanent impairment or condition which causes a person to use a wheelchair; causes a person to walk with difficulty or insecurity; affects sight or hearing to the extent that a person is insecure or exposed to danger; or causes faulty coordination or reduces mobility, flexibility, coordination, or perceptiveness; and means persons who are limited in ambulation.

(g) "Public facility" means a building, structure, or improved area utilized for purposes of education, employment, housing other than a privately owned 1 or 2 family dwelling, transportation, or recreation and for the purchase, rental, or acquisition of goods or services, which is not a facility used by the public as defined in subdivision (d), and which is:

(i) Owned by, or on behalf of, the state or its political subdivisions.

(ii) Leased or rented in whole or in part by the state or its political subdivisions after June 30, 1974, and after construction or alteration is in accordance with the plans and specifications of the lessee. A public facility which is the subject of a lease or rental agreement on June 30,

1974, shall not be required to meet barrier free design requirements contained in the state construction code for the term of the existing lease or rental agreement but shall be brought into compliance before a lease or rental agreement is renewed.

(iii) Financed in whole or in part by a grant or a loan made or guaranteed by the state or its political subdivisions after June 30, 1974.

(iv) Constructed, purchased, leased, or rented in whole or in part by the use of federal funds except as otherwise provided by federal law.

(h) "Structure" means a structure as defined in section 2 of Act No. 230 of the Public Acts of 1972, as amended, being section 125.1502 of the Michigan Compiled Laws.

History: 1966, Act 1, Eff. July 1, 1966 ;-- Am. 1970, Act 243, Eff. July 1, 1971 ;-- Am. 1974, Act 190, Imd. Eff. July 2, 1974 ;-- Am. 1975, Act 177, Imd. Eff. July 20, 1975

Compiler's Notes: For transfer of powers and duties relating to promulgation of rules by the barrier free design board from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

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125.1352 Compliance of public facility with barrier free design requirements; leases and rentals by state or political subdivisions; approval of state or local administrative authority as condition of construction, lease, building permit, or certificate of occupancy; displaying, issuing, making, and distributing symbols of access; "building" defined; penalty.

Sec. 2.

(1) A public facility or facility used by the public the contract for construction of which or the first contract for construction of a portion of which is made after July 2, 1974, shall meet the barrier free design requirements contained in the state construction code.

(2) An existing public facility or facility used by the public undergoing a change in use group or occupancy load, or an alteration other than ordinary maintenance, after July 20, 1975, shall meet the barrier free design requirements contained in the state construction code according to the following:

(a) If the change in use group or occupancy load, or alteration, involves less than 50% of the floor area of the public facility or facility used by the public which can be used by the public or employees, only the area affected, and areas necessary to provide a continuous and unobstructed route of travel to and from the affected areas from and including the nearest entrance, shall be required to meet the barrier free design requirements of the state construction code.

(b) If the change in use group or occupancy load, or alteration, involves 50% or more of the floor area of the public facility or facility used by the public which can be occupied by the public or employees, the entire public facility or facility used by the public shall meet the barrier free design requirements of the state construction code.

(3) If a building, structure, or improved area is a public facility solely by reason of lease or rental of a portion thereof by the state or its political subdivisions, the portion not so leased or rented shall not be required to be altered to meet the barrier free design requirements unless required by subsection (2) or unless the portion rented by the state or its political subdivisions, or a combination thereof, represents 50% or more of the floor area of the public facility that can be occupied by the public or employees.

(4) Approval of the appropriate state administrative authority shall be secured before the award of a construction contract or the execution by the lessee of a lease for a public facility to be owned or occupied by the state or its political subdivisions, and the approval of the

appropriate local or state administrative authority shall be secured before the issuance of a building permit or certificate of occupancy for a facility used by the public or a public facility which will not be owned or occupied by the state or its political subdivisions.

(5) A building which meets the requirements of this act shall display the symbol of access as provided for in the general rules of the state construction code. The appropriate administrative authority, under section 3, upon certification that the building, structure or improved area has met the requirements of section 2 of this act and the barrier free design requirements contained in the state construction code, shall issue symbols as are required to the facility manager for display. The department of corrections shall make the symbols available to the administrative authorities. Methods of distribution of the symbols shall be developed by the issuing bodies. When used in this section, the term "building" notwithstanding its definition in Michigan Compiled Laws 125.1502 section 2(e) of the state construction code, shall include, in addition to those buildings otherwise included, those buildings constructed in whole or in part with funds of the state or any of its political subdivisions.

(6) A person who displays or causes to be displayed a symbol of access on a facility used by the public which symbol of access does not comply with this act is subject to a fine of $250.00.

History: 1966, Act 1, Eff. July 1, 1966 ;-- Am. 1970, Act 243, Eff. July 1, 1971 ;-- Am. 1974, Act 190, Imd. Eff. July 2, 1974 ;-- Am. 1975, Act 177, Imd. Eff. July 20, 1975 ;-- Am. 1979, Act 137, Imd. Eff. Nov. 7, 1979

Admin Rule: R 408.30427 et seq. of the Michigan Administrative Code.

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125.1353 Administration and enforcement of act.

Sec. 3.

(1) The administration and enforcement of this act in respect to all public facilities owned or leased by the state, except for school buildings or facilities other than facilities at institutions of higher education as defined in section 4, article 8 of the state constitution of 1963, are vested in the department of management and budget.

(2) The administration and enforcement of this act in respect to school buildings as defined in section 1a of Act No. 306 of the Public Acts of 1937, as amended, being section 388.851a of the Michigan Compiled Laws, are vested in the department of education.

(3) The administration and enforcement of this act in respect to public facilities for which the administration and enforcement is not provided for in subsection (1) or (2), are vested in the local or state unit of government responsible for issuing a building permit, and if a permit is not required, in the department of labor.

(4) The administration and enforcement of this act in respect to facilities used by the public are vested in the building and inspection departments or agencies of local administrative authority with the responsibility and duty of issuing building permits.

History: 1966, Act 1, Eff. July 1, 1966 ;-- Am. 1970, Act 243, Eff. July 1, 1971 ;-- Am. 1974, Act 190, Imd. Eff. July 2, 1974 ;-- Am. 1975, Act 177, Imd. Eff. July 20, 1975

125.1354 Rules.

Sec. 4.

The barrier free design board shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to implement this act.

History: 1966, Act 1, Eff. July 1, 1966 ;-- Am. 1970, Act 243, Eff. July 1, 1971 ;-- Am. 1974, Act 190, Imd. Eff. July 2, 1974 ;-- Am. 1975, Act 177, Imd. Eff. July 20, 1975
Admin Rule: R 18.301 et seq. and R 125.1001 et seq. of the Michigan Administrative Code.

125.1355 Barrier free design board; creation; appointment, qualifications, and terms of members; vacancy; quorum; action by board; meetings; conducting business at public meeting; notice of meeting; powers and duties of board; recommendations; exception to rule; technical interpretation of rule; compensation and expenses; supportive services.

Sec. 5.

(1) The barrier free design board is created within the department of labor. The board consists of 9 members who shall be appointed by the governor with the advice and consent of the senate. At least 4 members shall be physically limited of which 1 shall be a wheelchair user, 1 shall be a severely mobility limited person, 1 shall be visually impaired, and 1 shall have impaired hearing. Of the remaining members, 1 of which may be physically limited and may be a wheelchair user, 1 shall be from the construction industry, 1 shall be a building inspector of a local unit of government, 1 shall be a registered architect, 1 shall be a professional engineer, and 1 shall be from the general public.

(2) The members shall serve for a term of 3 years except of those initially appointed, 3 shall be appointed for a term of 1 year, 3 for a term of 2 years, and 3 for a term of 3 years. A vacancy shall be filled in the same manner as the original appointment for the balance of the unexpired term.

(3) Five members of the board constitute a quorum. The board shall not take action without the concurrence of a majority of the members present at a meeting.

(4) The board shall meet not less than 6 times annually. Meetings shall be held in Lansing or in any other appropriate location as determined by the board.

(5) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(6) The board may perform the following:

(a) Receive, review, process, grant, or deny requests for exceptions to the barrier free design requirements contained in Act No. 230 of the Public Acts of 1972, as amended, being sections 125.1501 to 125.1531 of the Michigan Compiled Laws, or rules promulgated under Act No. 230 of the Public Acts of 1972, as amended. The power to grant exceptions shall include the power to grant an exception to any or all of the barrier free design requirements contained in Act No. 230 of the Public Acts of 1972, as amended, for a stated time period and upon stated conditions.

(b) Require alternatives when exceptions are granted.

(c) Receive, process, review, and act on complaints of noncompliance.

(7) The barrier free design board shall make recommendations to the construction code commission created pursuant to section 3 of Act No. 230 of the Public Acts of 1972, as amended, being section 125.1503 of the Michigan Compiled Laws, for barrier free design rules.

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(8) An exception to a rule promulgated by the construction code commission relative to barrier free design may not be made by a local governmental unit, state department or agency, or person except as provided in subsection (6).

(9) The technical interpretation of a rule promulgated by the construction code commission relative to barrier free design is subject to the interpretation of the construction code commission.

(10) Members of the barrier free design board shall receive a per diem compensation and shall be reimbursed for actual and necessary expenses incurred in the performance of board duties. The per diem compensation of the board and the schedule for reimbursement of expenses shall be established annually by the legislature.

(11) The principal department to which the barrier free design board is assigned shall provide the board with the necessary personnel, materials, and other supportive services as shall be provided by appropriation.

History: 1966, Act 1, Eff. July 1, 1966 ;-- Am. 1974, Act 190, Imd. Eff. July 2, 1974 ;-- Am. 1975, Act 177, Imd. Eff. July 20, 1975 ;-- Am. 1977, Act 189, Imd. Eff. Nov. 17, 1977 ;-- Am. 1978, Act 363, Imd. Eff. July 22, 1978

Compiler's Notes: For the abolishment of the membership requirements for representatives of specific physical limitations under subsection (1), see E.R.O. No. 2024-2, compiled at MCL 16.735.

Admin Rule: R 408.30101 et seq. of the Michigan Administrative Code.

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125.1355a Granting request for exception to barrier free design requirement; finding of compelling need; "compelling need" defined.

Sec. 5a.

(1) Consistent with section 5(6), the barrier free design board shall grant a request for an exception to a barrier free design requirement contained in the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being sections 125.1501 to 125.1531 of the Michigan Compiled Laws, only upon a finding by the board of compelling need for the exception. The board may find compelling need if the literal application of the barrier free design requirement would result in exceptional, practical difficulty to the applicant.

(2) As used in subsection (1), "compelling need" includes, but is not limited to, 1 or more of the following:

(a) Structural limitations.

(b) Site limitations.

(c) Economic limitations.

(d) Technological limitations.

(e) Jurisdictional conflicts.

(f) Historical structures, under conditions prescribed by rule of the construction code commission.

History: Add. 1985, Act 196, Imd. Eff. Dec. 20, 1985

Admin Rule: R 408.30428 of the Michigan Administrative Code.

125.1356 Injunction; venue.

Sec. 6.

The barrier free design board or the administrative authority charged with responsibility for enforcement may seek an injunction to halt construction or prevent the use of the public facility or facility used by the public until compliance with this act is obtained. An action

against the state or an agency or department of the state shall be brought in the circuit court for the county of Ingham. All other actions shall be brought in the circuit court for the county in which the public facility or facility used by the public, or the portion thereof that is not in compliance, is situated.

History: 1966, Act 1, Eff. July 1, 1966 ;-- Am. 1970, Act 243, Eff. July 1, 1971 ;-- Am. 1974, Act 190, Imd. Eff. July 2, 1974 ;-- Am. 1975, Act 177, Imd. Eff. July 20, 1975

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