



**House  
Legislative  
Analysis  
Section**

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**MARK VAN ACCESS AREAS**

**House Bill 6238 as introduced  
First Analysis (11-7-02)**

**Sponsor: Rep. Andrew Richner  
Committee: Regulatory Reform**

***THE APPARENT PROBLEM:***

Under state and federal law, a certain number of accessible parking spaces are to be provided in public parking lots. The laws also specify that each accessible parking space have an adjacent access aisle to accommodate the use of wheelchairs and wheelchair lifts. Several years ago, it was brought to the attention of the legislature that people were parking their vehicles in the access aisles. Blocked access aisles mean that people cannot access the chairlifts in their vans and people driving cars cannot get their wheelchairs up to the car doors until the driver of the vehicle in the access aisle returns. As a result, Public Act 76 of 2000 was enacted to authorize police officers to ticket a vehicle parked in an access aisle and to have the vehicle towed at the owner's expense.

Apparently, this has not resolved the problem. Some believe that a contributing factor to the problem is that there is no uniformity in how these access aisles are to be marked. (See *Background Information*.) Some access aisles are marked with yellow diagonal stripes, some are painted in white or blue, some have only the outline painted, where other parking lots may write "no parking" within the access aisle. In short, some feel that the differences in how access aisles are marked may be confusing drivers. Therefore, to mitigate the problems associated with people parking vehicles in access aisles, legislation has been offered to require uniformity in designating these areas.

***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Vehicle Code to require that, upon new construction or resurfacing of existing handicapped van accessible parking spaces required by law or rule, parking spaces, curb cuts, and access aisles would have to conform to specifications for accessible and usable buildings and facilities prescribed in the American National Standard 1998, ICC/ANSI A117.1. Further, the area between each van accessible handicapped parking space would have to be painted with blue diagonal

stripes that are 4 inches wide and 24 inches center to center.

(Note: Section 901 of the Michigan Vehicle Code, MCL 257.901, specifies that it is a misdemeanor for a person to violate the code, unless the violation is designated as a felony or a civil infraction by the code or by another provision of state law. Punishment for a violation is a fine of not more than \$100 and/or imprisonment for not more than 90 days. Therefore, since the bill does not designate a violation as being a felony or a civil infraction, failure to comply with the striping provisions would constitute a misdemeanor offense.)

MCL 257.675e

***BACKGROUND INFORMATION:***

Federal law. The Americans with Disabilities Act (ADA) requires that whenever a business, state or local government agency, or other covered entity restripes a parking lot, it must provide accessible parking spaces for persons with disabilities. The ADA Standards for Accessible Design (28 CFR Part 36) specifies the minimum number of accessible parking spaces that a parking lot must provide (the number is based on the total number of spaces provided in a lot). It also requires that each accessible parking space have an access aisle adjacent to it to accommodate a person using a wheelchair or a wheelchair lift to exit and enter the vehicle. An accessible parking space for a car must have an access aisle that is at least 60 inches wide. The access aisle for a van-accessible space must be at least 96 inches wide. Though the act specifies that the parking space itself be clearly marked by a sign with the international symbol of accessibility mounted high enough so that it can be clearly seen while a vehicle is parked in the space, there are no rules or guidelines for marking the access aisles other than requiring that the boundary of the access aisle be marked and that the boundary be a curved or squared shape. A handout published by the U.S. Department

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of Justice, Civil Rights Division, Disability Rights Section on the restriping of parking lots does, however, contain an illustration of a van accessible access aisle that is painted around the perimeter and that has diagonal stripes.

Michigan law. Section 1 of the Uniform Traffic Code (MCL 257.951) allows local units of government to adopt by reference a code or ordinance for the regulation of traffic within those units that has been promulgated by the director of the Department of State Police. Notwithstanding the requirements of the Uniform Traffic Code, Section 1 also specifies that a sign designating a parking space for persons with disabilities be 12 inches by 18 inches or larger, and be either blue or white and at a minimum contain the international handicapped symbol in contrasting colors of either blue or white in the center of the sign. The act does not, however, speak to how the access aisles should be marked.

Another statute, Public Act 235 of 1969 (control of traffic in parking areas), requires local units of government to provide, by ordinance, for parking spaces specifically designated for persons with disabilities in numbers to conform with the requirements of Section 2 of Public Act 1 of 1966 (utilization of public facilities by physically limited) in each shopping center parking area within its jurisdiction. "Parking area" is defined in the act as "an area used by the public as a means of access to and egress from, and for the free parking of motor vehicles by patrons of a shopping center, business, factory, hospital, institution, or similar building or location" and "shopping center" is defined as a minimum area of three acres of land on which is located one or more stores or business establishments and where there is a parking area. This act also does not specify how access aisles are to be marked.

Section 2 of Public Act 1 of 1966 (utilization of public facilities by physically limited, MCL 125.1352) which is referenced in Public Act 235 of 1969, states that public facilities and facilities used by the public (both of which include "improved areas" - and improved areas include parking lots) must meet the barrier free design requirements contained in the state construction code. There is a state construction code statute (the Stille-DeRossett-Hale Single State Construction Code, MCL 125.1501-125.1531) but, generally those involved in enforcing construction issues agree that "the state construction code" referenced in various statutes is probably a set of rules promulgated every three years and published as the Michigan Building Code. The 2000 Michigan Building Code is used by members of

the construction industry to ensure that projects meet federal and state building standards. This code used to be promulgated by the State Construction Code Commission, but Public Act 245 of 1999 revised the statute to grant authority for rule promulgation to the director of the Department of Consumer and Industry Services. (When Public Act 245 of 1999 delegated the authority to promulgate rules from the commission to the director, not all of the corresponding provisions in the act were amended. Therefore, some provisions refer to the director as promulgating rules, and others refer to the commission.)

Chapter 11 of the 2000 Michigan Building Code, entitled "Accessibility", specifies that buildings and facilities must be designed and constructed to be accessible in accordance with the code and ICC/ANSI A117.1 (the same national standard referenced in the bill). The code also requires that buildings and structures, temporary or permanent, including their associated sites and facilities, be accessible to persons who have physical disabilities in accordance with Public Act 1 of 1966, MCL 125.1352 et seq. ("utilization of public facilities by physically limited", as described above). Though the building code contains a table regarding the number of accessible parking spaces per size of parking lot, it does not specifically mention access aisles or how to mark them.

In Chapter 5, entitled "General Site and Building Elements" of the ICC/ANSI A117.1-1998, accessible parking spaces and access aisles are addressed; however, with regard to marking access aisles, the standard simply states that "access aisles shall be marked so as to discourage parking in them."

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, since the bill does not impose any requirement to change existing parking spaces (prior to resurfacing), it would have no significant fiscal impact on the state or local units of governments. While the bill could impose enforcement costs on the state and/or on local units, these costs would be negligible and likely could be met out of existing resources. The existing provisions in the Michigan Vehicle Code that would make violations of the bill's provisions a misdemeanor punishable by a fine of not more than \$100 and/or imprisonment for up to 90 days could increase locally collected civil fine revenue and incarceration costs should violations occur. Again, these impacts are likely to be negligible. (10-02-02)

**ARGUMENTS:****For:**

When new parking lots are developed or when existing lots are repainted, current state and federal laws require that access aisles be made adjacent to accessible parking spaces. Access aisles serving cars must be 60 inches wide, and access aisles serving vans must be 60 inches wide. These access aisles are as important as the accessible parking spaces, as the access aisles allow wheelchair users to get into and out of their cars and provide the space necessary to deploy a wheelchair lift for those using vans. If a vehicle parks illegally in an access aisle, a person in a wheelchair may either be trapped within or outside of his or her vehicle until the driver of the car returns and moves it. Needless to say, this poses a significant hardship to the wheelchair user who is denied easy access to either get out of his or her vehicle or to get back in.

Though recent legislation allows a police officer to ticket a car parked in an access aisle and to have the car towed at the owner's expense, it would be more desirable and expedient for all if people did not park their vehicles in the access aisles to begin with. It would appear, however, that some unwittingly park in these areas because they think the access aisles are regular parking spaces. Though there are several state and federal provisions of law that deal with varying aspects of providing parking for the physically disabled, nothing in any of the laws directly addresses how the access aisles should be marked. As a result, the access aisles may be painted in any number of colors and in any manner. Some people have reported seeing access aisles painted in yellow, blue, white, and even pink. Some access aisles are painted with diagonal stripes, whereas other ones just have the outline of the aisle painted. Some contain the words "no parking", others do not.

Also, even though the Americans with Disabilities Act (ADA) states that business owners or privately owned facilities that provide goods or services to the public have an obligation to remove barriers to access in existing parking lots when it is readily achievable to do so (and the ADA states that restriping is readily achievable in most cases because it is relatively inexpensive), few do so unless the parking lot is part of a new development or the lot is being resurfaced. The overall effect is that not all parking lots even have access aisles adjacent to the accessible parking spaces, and the parking lots that do provide access aisles may mark them differently from each other.

The bill would provide a remedy. Under the bill, upon all new construction or restriping of an existing parking lot, all van accessible access aisles would have to be painted with blue, diagonal stripes. By putting such a requirement in statute, those in the building trades will become more aware of a uniform system of marking the van accessible access aisles. As more and more parking spaces are properly and uniformly marked, there should be fewer occurrences of drivers parking vehicles in the van accessible access aisles.

**Against:**

A number of questions have arisen:

- It seems unusual to place such a requirement in the vehicle code. The vehicle code primarily deals with the behavior of drivers. The 2000 legislation that makes it a ticketable and towable offense to park in the access aisle adjacent to a handicapped parking space rightfully belongs in the vehicle code as it is meant to change the behavior of a driver. The bill, however, would be addressing not drivers, but those who own or maintain parking lots or the contractors who develop or pave and paint parking lots. It is unlikely that persons in the building trades would be looking in the vehicle code for how to build or resurface a parking lot; it is more reasonable that the provision should be placed with statutes pertaining to building codes or handicapped accessible design standards. The bill should be amended or reintroduced to place it in a more appropriate statute.

- Since the bill contains no penalty, the provisions of the Michigan Vehicle Code specifying that a violation without a designated penalty is a misdemeanor would apply. So, under the bill, it would automatically be a misdemeanor offense to incorrectly stripe a van accessible access aisle. It seems inappropriate to criminalize the improper striping of an access aisle. Further, the code limits a fine to no more than \$100. That may make sense for the typical violation of the code which involves a single incident at a time, but if a property owner or contractor only faces a single fine of \$100, that may be an insufficient incentive to stripe the spaces according to the bill's provisions. A more appropriate penalty might be a civil fine for each day that a violation is not corrected, up to a statutory maximum.

- It is not clear who would enforce the bill or who would be subject to the bill. The Department of Consumer and Industry Services, which regulates the building trades, would have no authority to enforce a violation of the vehicle code. The secretary of state, which has authority to issue points on a driver's license and to restrict or suspend a driver's license, would have no authority over someone in the building trades who failed to properly stripe an access aisle. Would it be the local law enforcement agency, the state police, or local or state building inspectors who would track down the appropriate person to be charged with a violation? Also, who would be subject to arrest or a fine? Would it be the owner of the parking lot, or the contractor that the owner hired to construct or restripe the lot? The bill should be amended to address and clarify these issues.

- The requirement to paint handicapped parking access aisles in blue with diagonal stripes pertains only to the access aisles adjacent to the accessible parking spaces for vans. The bill should be amended to include the access aisles adjacent to the car spaces, too. After all, the intent of the bill is to discourage improper parking of vehicles in the access areas. Therefore, all access aisles, not just the ones next to van parking spaces, should be marked in blue with diagonal stripes. That way, drivers would associate areas marked in blue with accessible parking for persons with disabilities and would avoid parking in them.

- The bill's provisions concerning when the access areas are to be striped are more lenient than federal law; therefore, federal law would supercede the bill. The bill states that the area between each van accessible handicapped parking space would have to be painted with blue diagonal stripes upon new construction of a parking lot or when an existing lot were resurfaced. The ADA design guide for restriping parking lots says that businesses and privately owned facilities that provide goods and services to the public have a continuing obligation to remove barriers to access in existing parking lots when it is readily achievable to do so. In addition, the ADA guideline goes on to say that "because restriping is relatively inexpensive, it is readily achievable in most cases." Failure to provide accessible parking spaces as required by the ADA Standards for Accessible Design is a violation of the ADA. Therefore, the bill could inadvertently subject a person to penalties under the ADA because he or she thought – under the bill - that it was not necessary to restripe handicapped parking spaces in an existing parking lot until the lot was due for resurfacing, when

it appears that the ADA requires restriping of accessible parking spaces even if a resurfacing project is not in the works.

### ***POSITIONS:***

The Michigan Chapter of Paralyzed Veterans of America supports the bill. (9-24-02)

The Office of Secretary of State has no position on the bill. (10-01-02)

Analyst: S. Stutzky

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.