

CRS Report for Congress

The Americans with Disabilities Act (ADA): A Comparison and Analysis of the Bill as Introduced and as Passed by the Senate

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**THE AMERICANS WITH DISABILITIES ACT (ADA):
A COMPARISON AND ANALYSIS OF THE BILL AS INTRODUCED
AND AS PASSED BY THE SENATE**

SUMMARY

The Americans with Disabilities Act (ADA), S. 933 and H.R. 2273, 101st Cong., 1st Sess., would provide broad based nondiscrimination protection for persons with disabilities in the private sector and would cover employment, public services, public accommodations, transportation, and telecommunications. Many of the concepts used in the ADA originated in the language and interpretation of §504, 29 U.S.C. §794. This report describes and comments on the ADA as introduced and as passed by the Senate.

Generally, the ADA as passed by the Senate contains some significant changes from the ADA as introduced which reflect the intense negotiations over the bill. The bill as passed by the Senate deleted title I which had provided general guidance on the forms of discrimination prohibited; clarified how the bill covered drug addicts and alcoholics; added definitions of undue hardship and readily achievable; limited the enforcement provisions; loosened some of the requirements for transportation; changed the scope of the public accommodations section; added a section allowing certain religious exceptions; and added a section providing for coverage of the Congress.

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**THE AMERICANS WITH DISABILITIES ACT (ADA):
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INTRODUCTION

The Americans with Disabilities Act, S. 933 and H.R. 2273, 101st Cong., 1st Sess., would provide broad based nondiscrimination protection for persons with disabilities in the private sector and would cover employment, public services, public accommodations, transportation, and telecommunications. The ADA originated with a proposal from the National Council on Disabilities¹ and similar legislation was introduced in the 100th Congress.² The House and Senate versions in the 101st Congress were identical as introduced but the Senate version has undergone significant changes as it was reported out of committee and as it passed the Senate.³ This report describes in chart form the provisions of the legislation as introduced and compares them to the legislation as it passed the Senate. It also analyzes the import of these changes.

The major existing federal statute prohibiting discrimination against individuals with disabilities is section 504 of the Rehabilitation Act of 1973, 29 U.S.C. sec. 794. Section 504 prohibits discrimination against an otherwise qualified individual with handicaps solely by reasons of handicap in any program or activity that receives federal financial assistance or in the executive agencies or the U.S. Postal Service. Many of the concepts used in the ADA originated in section 504 jurisprudence although section 504 and the ADA differ in several ways. The most significant difference is that section 504's prohibition of discrimination is generally tied to the receipt of federal financial assistance. The ADA would cover the private sector and contains a specific section stating that nothing in the act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under the nondiscrimination provisions of section 504.

Generally, the ADA as passed by the Senate has some significant changes from the ADA as introduced which reflect the intense negotiations over the bill. The chart attempts to examine these changes in detail but it may be helpful to briefly note some of the major differences. First, the ADA as passed by the Senate deleted the title I which was in the bill as introduced. This title had provided general guidance on the forms of discrimination prohibited and possible defenses to charges of discrimination. There was some concern that these general provisions could create new or different rights than were enumerated in the subsequent titles, thus possibly providing broader coverage than might be given by the more specific sections. Much of the language in title I is incorporated in the ADA as passed in various other parts of the legislation.

The definitions sections proved to be very controversial; perhaps most controversial was the extent to which drug addicts and alcoholics were covered by nondiscrimination provisions.⁴ As passed by the Senate, the bill clarified the coverage of active drug addicts and alcoholics and clearly stated that employers may prohibit the use of illegal drugs or alcohol at the workplace and require that employees be held to the requirements established in the Drug Free Workplace Act, 41 U.S.C. sec. 701 et seq. A similar amendment to the definitional section applicable to section 504 of the Rehabilitation Act, 29 U.S.C. sec. 794, was also made on the Senate floor. The bill as passed by the Senate also specifically added definitions of the terms "undue hardship" and "readily achievable" to alleviate concerns that these qualifications on non discrimination provisions were too nebulous and uncertain.

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The enforcement sections of the ADA as introduced were among the most controversial in the bill. Significant changes to the enforcement sections were made throughout the legislation as it passed the Senate. Generally, the version that passed would exclude awards of backpay and compensatory and punitive damages and would not allow relief for a person who "believes that he or she is...*about to be subjected to discrimination.*"⁶ For example, in the employment title, the enforcement section of the bill as introduced made the remedies and procedures available under 42 U.S.C. sec. 1981 applicable. This reference, which would have allowed a private right of action without the exhaustion of title VII administrative remedies and which would have expanded the possibility for backpay and compensatory and punitive damages, was deleted in the bill as passed by the Senate.

The transportation sections of the ADA raised considerable concern within segments of the transportation industry due to possible cost implications of potential requirements. The bill as passed by the Senate loosened some of the requirements originally contained within the ADA as introduced by, for example, increasing the time available for compliance. In addition the version as passed by the Senate contains a specific exception for the provision of paratransit where it would impose "an undue financial burden."

The scope of the public accommodations section of the ADA as introduced was the subject of disagreement among various groups. The bill as introduced had a broad general definition followed by some specific examples of types of public accommodations. It was argued that this provision was broad enough to reach even small businesses that were run from individual's homes and that a more appropriate approach would be to parallel title II of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000a, which simply listed covered entities. This second approach was taken in the bill as passed but the list of covered entities was expanded from that in title II of the Civil Rights Act to include such places as the professional offices of

health care providers. In addition to this change, certain other limitations were made in the requirements for public accommodations. For example, as passed by the Senate, the ADA contains a special section allowing for certain exceptions concerning the installation of elevators.

The ADA as passed by the Senate includes a new section in the employment title allowing a religious association to give preference in employment to individuals of a particular religion to perform work connected with the association's activities and require conformity with the religious tenets of the organization. In addition, the Senate passed version of the ADA contains a new provision regarding technical assistance and a provision applying the act to the Congress. This latter provision was described during debate on the Senate floor as possibly raising some constitutional separation of powers questions. Finally, the ADA as introduced would have been effective on the date of enactment while the ADA as passed by the Senate would be effective on various dates depending upon the particular title in question.

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1. The National Council on Disabilities is an independent federal agency. Its statutory functions include providing recommendations to the Congress regarding individuals with disabilities. 29 U.S.C. sec. 781.
2. S. 2345 and H.R. 4498, 100th Cong. For an analysis of these bills see "The Americans with Disabilities Act (ADA): Legal Analysis of Proposed Legislation Prohibiting Discrimination on the Basis of Handicap," CRS Rep. No. 88-621A (Sept. 19, 1988). For a comparison of the major differences between the legislation in the 100th Congress and the 101st Congress see "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues," CRS Rep. No. 89-433A (July 25, 1989).
3. S. 933 as amended was passed by the Senate on September 7, 1989 by a vote of 76 to 8. 135 Cong. Rec. S10803 (daily ed. Sept. 7, 1989).
4. Interestingly, although persons with AIDS and HIV infection are clearly covered by the legislation, this has not proved to be a major controversy so far.
5. For a more detailed discussion of the "about to be subjected to discrimination" language see "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues," CRS Rep. No. 89-433A (July 25, 1989).

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COMMENTS

Section 1 -- Short title; table of contents

The Act is cited as the Americans with Disabilities Act of 1989.

Section 2 -- Findings and Purposes

Individuals with disabilities have faced widespread discrimination and to remedy this the act provides a clear and comprehensive national mandate for the elimination of discrimination.

Section 3 -- Definitions

Auxiliary Aids and Services -- Such services shall include qualified interpreters for individuals with hearing impairment, qualified readers for individuals with visual impairments, and the acquisition or modification of equipment or devices.

Disability -- The term disability means (1) a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

Reasonable Accommodation -- The term reasonable accommodation shall include (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

State -- The term state means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Section 1 -- Short title; table of contents

The Act is cited as the Americans with Disabilities Act of 1989.

Section 2 -- Findings and Purposes

Identical to S. 933.

Section 3 -- Definitions

Auxiliary Aids and Services -- Identical to S. 933 as introduced.

Disability -- Identical to S. 933 as introduced.

Section 101(8) -- Reasonable Accommodation -- The term reasonable accommodation may include (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters and other similar accommodations.

State -- Identical to S. 933 as introduced.

Short title; table of contents -- The title is the same, the table of contents varies.

Findings and Purposes -- The provisions are identical.

Auxiliary Aids and Services -- The provisions are identical.

Disability -- This definition is identical in both versions of S. 933 and is drawn from the definitional section applicable to section 504 of the Rehabilitation Act.

Reasonable Accommodation -- The bill as passed by the Senate moved the definition from section 3 to title I (which concerns employment in the Senate passed version). In addition, the version passed by the Senate includes within the definition reassignment to a *vacant* position, appropriate adjustment or modifications of examinations, training materials or *policies* and excludes the adoption or modification of procedures or protocols. (Words in italics added).

State -- The provisions are identical.

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Title I -- General Prohibition Against Discrimination

Section 101 -- Forms of Discrimination Prohibited
(a) In General --

(1) Services, Programs, Activities, Benefits, Jobs or Other Opportunities. Subject to titles II-V, it shall be discriminatory to subject an individual on the basis of disability to the denial of an opportunity to participate in or benefit from a service, program, activity, benefit, job or other opportunity; to an unequal opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity; to the provision of an opportunity that is less effective than that provided to others; to the provision of an opportunity that is different or separate unless such action is necessary to provide the individual with an opportunity that is as effective as that provided to others; to aid or perpetuate discrimination by providing significant assistance to an organization that discriminates; to deny the opportunity to participate as a member of boards or commissions or to otherwise limit the enjoyment of any right enjoyed by others.

(2) Equal Opportunity -- Aids, benefits and services to be equally effective must afford an individual an equal opportunity to obtain the same result, benefit or level of achievement in the most integrated setting appropriate.

(3) Opportunity to Participate -- Even if there are separate programs, an individual with a disability shall not be denied the opportunity to participate in programs that are not separate or different.

(4) Administrative Methods --An individual may not utilize standards or criteria or methods of administration that have the effect of discriminating, have the purpose or effect of substantially impairing the accomplishment of the objectives of the services or opportunities provided to an individual with disabilities or that perpetuates the discrimination of others who are subject to common administrative control or are agencies of the same state.

General Prohibition Against Discrimination

Title I of the ADA as introduced as deleted from the version of the bill passed by the Senate but many of its provisions were added to other titles. For example, a provision similar to the one on relationships and associations was added in the title referring to employment.

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(5) Relationships or associations -- It shall be discriminatory to exclude or otherwise deny equal services or other opportunities to an individual because of the relationship to or association of that individual with another individual with a disability.

(b) Defenses --

(1) In general -- It shall be a defense to a charge of discrimination that an alleged application of qualification standards or other eligibility criteria that excludes or denies services or opportunities to an individual with a disability has been demonstrated to be both necessary and substantially related to the ability of an individual to perform or participate in the essential components of the program and such performance or participation cannot be accomplished by applicable reasonable accommodations.

(2) Qualification Standards -- The term qualification standards may include (a) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and (b) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

Section 103(a) -- Defenses

It may be a defense to a charge of discrimination that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

Section 103(b) Qualification Standards --

The term qualification standards may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

Defenses

The provisions are very similar but the version as passed by the Senate is contained only in the title referring to employment and therefore would appear to be relevant only to that title.

Qualification Standards; Drug Addicts and

Alcoholics -- The original S. 933 language regarding drug addicts, alcoholics and persons with contagious diseases closely paralleled the requirements of the definitional section applicable to section 504. This proved to be very controversial and it was argued that the language might protect drug addicts and alcoholics from discrimination in certain circumstances. The changes in S. 933 as passed by the Senate attempt to clarify that the legislation would not conflict with the Drug-Free Workplace Act. The amendments still maintain the emphasis of the original legislation that discrimination can occur due to behavior but not due to simple status. The issue of the extent to which the use of drugs in a nonwork place environment can be used to justify a discriminatory act is not directly addressed by the new language although the provision requiring that transportation employees meet requirements established by the Department of Transportation could arguably disallow some usage out of the work place.

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Section 103(c) Drug Addicts and Alcoholics --

A covered entity may prohibit the use of alcohol or illegal drugs at the workplace, may require that employees not be under the influence of alcohol or illegal drugs at the workplace, may require that employees conform their behavior to the requirements of the Drug-Free Workplace Act, 41 U.S.C. sec. 701 et seq., and that transportation employees meet requirements established by the Department of Transportation (DOT), may hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals.

Section 103(d) Religious Entities --

The title on employment shall not prohibit a religious association from giving preference in employment to individuals of a particular religion to perform work connected with such association's activities and a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of the organization.

Religious Entities -- The provision relating to religious entities is new and is modeled after the provision in title IX of the Education Amendments of 1972. See S. Rep. No. 116, 101st Cong., 1st Sess. (1989). It addresses the controversy concerning whether the ADA could impose substantial economic costs on religious schools and churches and whether its application would pose any violations of the free exercise and establishment of religion clauses of the First Amendment. [For a discussion of this issue see "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues." CRS Report 89-433A (July 25, 1989).

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Title II -- Employment

Section 201 -- Definitions

Commission -- The term refers to the Equal Employment Opportunity Commission.

Employee -- In general employee means an individual employed by an employer. This term does not include any individual elected to public office in any state or political subdivision of a state or a person on such officer's personal staff or an appointee on the policy making level or an immediate adviser. This exception does not include employees subject to civil service laws of a state.

Employer -- In general the term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The term does not include the United States, a corporation wholly owned by the U.S. Government or an Indian tribe or a bona fide private membership club, other than a labor organization that is exempt from taxation under section 501(c) of the IRS Code of 1986.

Person -- The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", have the same meanings as given in section 701 of the Civil Rights Act of 1964.

Qualified Individual with a Disability -- This term means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

Title I -- Employment

Section 101 -- Definitions

Commission -- The term is identical to S. 933 as introduced.

Employee -- The term employee means an individual employed by an employer.

Employer -- The definition is identical to that of S. 933 as introduced except that for two years following the effective date of the title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.

Person -- The term is identical to S. 933 as introduced.

Qualified Individual with a Disability -- The term is identical to S. 933 as introduced.

Illegal drug -- The term means a controlled substance, as defined in schedules I and II of section 202 of the Controlled Substances Act (21 U.S.C. sec. 812) the possession or distribution of which is unlawful under the act.

Employment

Commission -- The provisions are identical.

Employee -- S. 933 as introduced contained an exception for certain state and local officials and certain of their employees. The exception is not contained in the version passed by the Senate.

Employer -- One of the basic concerns raised about the ADA has been its possible negative effect on small businesses. The bill as passed by Senate contains a phase in for coverage so there will be more time for the smallest businesses to become educated concerning the requirements of the legislation.

Person -- S. 933 as introduced and as passed by the Senate have the identical definitions.

Qualified Individual with a Disability -- S. 933 as introduced and as passed by the Senate have the identical definitions. These are comparable to the definition used in regulations implementing section 504.

Illegal Drug -- This term is not defined in the ADA as introduced.

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Section 202 -- Discrimination

(a) General Rule

No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of the individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) Construction

The term discrimination as used in the general rule includes

- (1) the failure by an employer to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;
- (2) the denial of employment opportunities by a covered employer, employment agency, labor organization or joint labor-management committee to an applicant or employee who is a qualified individual with a disability is the basis for such denial is because of the need of the individual for reasonable accommodation;

Undue Hardship -- The term means an action requiring significant difficulty or expense. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include the overall size of the business, the type of operation maintained and the nature and cost of the accommodation.

Covered Entity -- The term means an employer, employment agency, labor organization or joint labor-management committee.

Section 102 -- Discrimination

(a) General Rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) Construction

The term discrimination as used in the general rules includes

- (1)(E) Not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;
- (1)(F) denying employment opportunities to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

Undue Hardship -- The ADA as introduced did not contain this definition and was criticized for lack of specificity. This definition is essentially drawn from existing section 504 regulations. See 45 C.F.R. sec. 84.

Covered Entity -- This term was not used in the ADA as introduced so it was not defined there.

Discrimination

(a) General Rule

The bill as passed by the Senate does not list the various types of organizations covered but refers more generally to "covered entities."

Construction

The ADA as passed by the Senate is more detailed and incorporates many sec. 504 regulatory concepts. See 45 C.R.F. Part 84.

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(3) the imposition or application by a covered employer, employment agency, labor organization or joint labor-management committee of qualification standards, tests, selection criteria or eligibility criteria that identify or limit a qualified individual with a disability unless such standards, tests or criteria can be shown to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

(1)(C) utilizing standards, criteria or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control;

(1)(G) using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of such individuals unless the test is shown to be job related for the position in question and is consistent with business necessity;

(1)(H) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant except where such skills are the factors that the test purports to measure;

(1)(A) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(1)(B) participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title;

(1)(D) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 104 -- Illegal Drugs and Alcohol

(a) Qualified individual with a disability

For the purposes of this title, the term shall not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protection of this act if such individual also uses or is also addicted to drugs.

(b) Authority of covered entity

A covered entity may prohibit the use of alcohol or illegal drugs at the workplace by all employees; may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace; may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act, 41 U.S.C. sec. 701 et seq., and that transportation employees meet the requirements established by the Secretary of Transportation; and may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees.

(c) Drug testing

For the purposes of this title a test to determine the use of illegal drugs shall not be considered a medical examination. Nothing in the title shall be construed to encourage, prohibit, or authorize the conducting drug testing of job applicants or employees or making employment decisions based on such test results.

Illegal Drugs and Alcohol

One of the major areas of controversy in the ADA has been the extent to which it covers drug addicts or alcoholics and whether this would conflict with the national policy on drug abuse, particularly as recently expressed in the Drug-Free Workplace Act. The ADA language was added on the Senate floor by Senator Harkin after lengthy negotiations with other Senators, the White House and representatives of various business and civil rights organizations. Senator Harkin stated that this amendment would be consistent with the national drug strategy, meet legitimate business needs and promote the national effort for a drug free workplace. For a more extensive discussion of the provision see 135 Cong. Rec. S10776 (daily ed. Sept. 7, 1989). Apparently some confusion has surfaced regarding this amendment and in a floor statement after Senate passage, Senator Harkin indicated that he will request the insertion of "when the covered entity acts on the basis of such use" at the end of subsection (a). 135 Cong. Rec. S11224 (daily ed. Sept. 15, 1989).

Section 203 -- Posting Notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the act's applicable provisions.

Section 105 -- Posting Notices

The provision is the same as in the bill as introduced.

Posting Notices

The provisions are identical.

Section 204 -- Regulations

Not later than 180 days after the date of enactment, the Commission shall issue regulations in an accessible format.

Section 106 -- Regulations

Not later than one year after the date of enactment, the Commission shall issue regulations in an accessible format.

Regulations

The bill as passed by the Senate lengthened the time for the issuance of regulations from 180 days after enactment to one year.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 205 -- Enforcement

The remedies and procedures set forth in sections 706, 709 and 710 of the Civil Rights Act of 1964 and the remedies and procedures available under section 1981 shall be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of the act or its regulations concerning employment.

Section 107 -- Enforcement

The remedies and procedures set forth in section 706, 707, 709 and 710 of the Civil Rights Act of 1964 shall be available with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provision of this act or regulations concerning employment.

Enforcement

The enforcement sections of the ADA as introduced were among the most controversial in the bill. Significant changes were made in the bill as passed by the Senate. First, the bill as introduced would have incorporated the remedies of section 1981, 42 U.S.C. sec. 1981, which would have allowed a private right of action without the exhaustion of title VII administrative remedies and which would have expanded the possible use of the award of backpay and compensatory and punitive damages. The version passed by the Senate does **not** include section 1981 remedies. Similarly, the ADA as introduced would have allowed suit if an individual "believes that he or she is being or **about to be** subjected to discrimination..." The "about to be subjected to discrimination" language, which was modeled on the Fair Housing Act amendments of 1988, P.L. 100-430, was very controversial and it was alleged that it could give rise to frivolous suits. This language was deleted from the bill as passed by the Senate. Finally, the version of the ADA passed by the Senate added the coverage of section 707 of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e-6, which concerns administrative enforcement by the Commission. For a more detailed discussion of the issues relating to remedies under the ADA see "Remedies and Standing to Sue Under S. 933, the 'Americans with Disabilities Act of 1989'," CRS Rep. No. 89-336 (May 26, 1989) and "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues," CRS Rep. No. 89-433 (July 25, 1989).

Section 606 -- Effective Date

The entire Act would become effective on the date of enactment.

Section 108 -- Effective Date

The effective date of the employment title is 24 months after the date of enactment.

Effective Date

The effective date for the entire ADA as introduced is on the date of enactment. The provisions in the bill as passed by the Senate vary, with the effective date for the employment provisions 24 months after enactment.

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S. 933 AS PASSED BY THE SENATE

COMMENTS

Title III -- Public Services

Section 301 -- Definition of Qualified Individual with a Disability

For the purposes of this title the term means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, commission or other instrumentality of a State and political subdivision.

Title II -- Public Services

Section 201 -- Definition

Qualified individual with a disability means an individual who, with or without reasonable modifications to rules, policies, and practices, the removal of barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or local government.

Section 102(c) -- Medical Examinations and Inquiries

The general prohibition against discrimination shall include medical examinations and inquiries. Generally, a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability. However, a covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions and may require a medical examination after an offer of employment has been made and may condition the job on the results if all entering employees are subjected to the examination, information is treated confidentially (except where necessary for accommodations, for the information of first aid workers where the person may require emergency treatment and for government officials investigating compliance with this act) and the results of the physical exam are used only in accordance with this title. A covered entity shall not conduct an examination or make inquiries unless it is shown to be job related and consistent with business necessity.

Medical Examinations and Inquiries

The version of the ADA passed by the Senate, but not the bill as introduced, contains provisions directly relating to medical examinations and inquiries. These provisions are modeled after regulations promulgated pursuant to section 504. See 28 C.F.R. sec. 41.55, 42.513.

Public Services

Definition -- Qualified Individual with a Disability

The ADA as introduced and as passed by the Senate are essentially the same although the descriptions of State and local agencies vary.

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S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 302 -- Discrimination

No qualified individual with a disability shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a State, or agency or political subdivision of a State or board, commission or other instrumentality of a State and political subdivision.

Section 303 -- Actions Applicable to Public Transportation Considered Discriminatory

(a) Definition

The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) Vehicles

(1) New Buses, Rail Vehicles, and other Fixed Route Vehicles It shall be discrimination for the purposes of the act and section 504 for an individual or entity to purchase or lease a new fixed route bus, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this act, if such vehicle is not readily accessible to and useable by individuals with disabilities.

(2) Used Vehicles If an individual or entity purchases or leases a used vehicle after the date of enactment, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and useable by individuals with disabilities.

Section 202 -- Discrimination

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

Section 203 -- Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

(a) Definition

The term "public transportation" is defined in the same way as in the ADA as introduced.

(b) Vehicles

(1) New Buses, Rail Vehicles, and other Fixed Route Vehicles This requirement is the same as in the ADA as introduced except that the reference to individuals purchasing or leasing such vehicles is deleted and reference is made to public entities, not just "entities."

(2) Used Vehicles If a public entity purchases or leases a used vehicle to be used for public transportation after the date of enactment, such individual or entity shall make demonstrated good faith efforts to purchase or lease such a used vehicle that is readily accessible to and useable by individuals with disabilities.

Discrimination

The two versions provide similar coverage and would extend the nondiscrimination policy of section 504 to cover all state and local governmental entities.

Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

(a) Definition The term "public transportation" is defined identically in the two versions.

Vehicles

(1) New Buses, Rail Vehicles, and other Fixed Route Vehicles The requirements are the same except that the version passed by the Senate does not consider individuals who purchase such vehicles to fall within the scope of the prohibition. It could be argued that this would eliminate the possibility of individual liability for such actions.

(2) Used Vehicles The requirements are similar but the version passed by the Senate deletes the first reference to individuals purchasing vehicles and adds the modifier "public" to the term entity. There is some ambiguity since there is a reference to an individual making demonstrated good faith efforts in the version passed by the Senate even though this version does not refer to an individual purchasing or leasing a vehicle. It is possible that this language might give rise to potential liability on the part of an individual.

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COMMENTS

(3) Remanufactured Vehicles If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

(c) Paratransit as a Supplement to Fixed Route Public Transportation System If an individual or entity operates a fixed route public transportation system, it shall be considered discrimination for the purposes of this act and section 504 for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(3) Remanufactured Vehicles If a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle to be used for public transportation, so as to extend its life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

(c) Paratransit as a Supplement to Fixed Route Public Transportation System In general if a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination for the purposes of the act and section 504 for a public transit entity that is responsible for providing public transportation to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity. If the provision of such services would cause an undue financial burden, such entity must provide paratransit and other special transportation services to the extent that they would not impose an undue burden. The regulations may include a flexible numerical formula that incorporates appropriate local characteristics such as population but the Secretary may require a public transit authority to provide paratransit services beyond the amount determined by such formula.

Remanufactured Vehicles Instead of referring to an individual or entity purchasing or remanufacturing a vehicle, the version passed by the Senate refers to "public entity." This would appear to limit liability.

Paratransit as a Supplement to Fixed Route Public Transportation System Both versions require the provision of paratransit in certain circumstances but there are some significant distinctions. The ADA as introduced refers to individuals and entities who operate a fixed route public transportation system while the version passed by the Senate refers solely to public entities. Both versions also require regulations to be promulgated by the Secretary of Transportation but the version passed by the Senate contains more detailed requirements for these regulations. The version passed by the Senate also contains a specific exception for the provision of paratransit where it would impose "an undue financial burden." This term is not defined although the Senate Report indicates that the committee's intent was that any criteria developed by the Secretary with regard to this proviso be consistent with the portion of *ADAPT v. Skinner*, No. 88-1139, 88-1177, 88-1178 (3d Cir. 1989), regarding the 3% "safe harbor" provision. S. Rept. No. 116, 101st Cong., 1st Sess. 50 (1989).

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COMMENTS

(d) Community Operating Demand Responsive Systems for the General Public If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for the purposes of the Act and section 504 for such individual or entity to purchase or lease a new vehicle that is not readily accessible to and usable by individuals with disabilities unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(d) Community Operating Demand Responsive Systems for the General Public This provision is the same as that in the ADA as introduced except that it refers to public entities instead of individuals and entities.

Community Operating Demand Responsive Systems for the General Public The provisions are the same except that the ADA as introduced refers to individuals and entities while the ADA as passed by the Senate refers to public entities. As noted previously, this change may limit liability for individuals.

(e) Temporary Relief Where Lifts are Unavailable With respect to the purchase of new buses, a public entity may be granted a temporary relief by the Secretary of Transportation from the obligation to purchase new buses that are readily accessible if the entity can demonstrate certain difficulties in obtaining such vehicles.

Temporary Relief Where Lifts are Unavailable Accessibility requirements in the ADA have been controversial and questions were raised concerning the possibility of compliance. These provisions regarding temporary relief were added to the ADA as passed by the Senate apparently in an attempt to limit the requirements where they could not possibly be met.

(f) Construction Any relief from the requirements of accessible shall be limited in duration and the appropriate committee of Congress shall be notified and such relief shall be cancelled if fraudulently applied for.

(e) New Facilities For the purposes of the Act and section 504, it shall be considered to be discrimination for an individual or entity to build a new facility that will be used to provide public transportation services that is not readily accessible to and usable by individuals with disabilities.

(g) New Facilities This provision is the same as that in the ADA as introduced except that it refers to public entities rather than individuals and entities.

New Facilities The provisions are the same in the two versions except that the ADA as introduced refers to individuals and entities and the ADA as passed by the Senate refers to public entities and therefore would limits the possible scope of liability.

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COMMENTS

(f) Alterations of Existing Facilities With respect to a facility that is used for public transportation and that is altered later than one year after enactment in a manner that affects or could affect the usability of the facility, it shall be considered discrimination for the purposes of this act and section 504 for such individual or entity to fail to make the alterations in such a manner that to the maximum extent feasible the altered portion of the facility and certain related areas are readily accessible to and usable by individuals with disabilities.

(g) Existing Facilities, Intercity Rail, Rapid Rail, Light Rail, and Commuter Rail Systems, and Key Stations It shall be considered discrimination for the purposes of the act and section 504 for an individual or entity to fail to operate such public transportation program so that when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities. With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for the purposes of the act and section 504 it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities as soon as practicable but no less than 5 years. For the purposes of the act and section 504 it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible as soon as practicable but in no event later than 3 years after the date of enactment except that the Secretary of Transportation may extend the time up to 20 years for extraordinarily expensive structural changes.

(h) Alterations of Existing Facilities With respect to a facility that is used for public transportation and is altered by a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination for the purposes of the act and section 504 for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities. If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation), such public entity shall also make the alterations in such a manner "that to the maximum extent feasible, make the path of travel to the altered area, and the bathrooms, telephones,..." readily accessible to and usable by individuals with disabilities.

(i) Existing Facilities, Intercity Rail, Rapid Rail, Light Rail and Commuter Rail Systems, and Key Stations The provisions relating to existing facilities, and intercity, rapid, light, and commuter rail systems are the same as in the ADA as introduced except that the bill as passed by the Senate references public entities, not individuals and entities. With regard to key stations, it shall be considered to be discrimination for the purposes of the act and section 504 for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities. Key stations in rapid rail, commuter rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities as soon as practicable but in no event later than 3 years after the date of enactment except that the Secretary of Transportation may extend the time up to 20 years. All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities as soon as practicable but in no event later than 20 years

Alterations of Existing Facilities The two versions contain similar requirements that alterations be accessible to the maximum extent feasible but vary in several respects. First, as occurs throughout the title on transportation, the ADA as introduced refers to individuals or entities while the ADA as passed by the Senate refers to public entities. However, in this section, the second reference in the ADA as passed by the Senate continues to be to "such individual or entity" thus creating some confusion about the possible scope of liability. The ADA as passed by the Senate also limits alterations relating to the path of travel and the bathrooms serving the area to public entities undertaking "major structural alterations" and provides for the Secretary of Transportation to establish criteria relating to the usability of the facility.

Existing Facilities, Intercity Rail, Rapid Rail, Light Rail and Commuter Rail Systems, and Key Stations The requirements relating to existing facilities and intercity, rapid and light and commuter rail systems are essentially the same except for referencing public entities in the ADA as passed by the Senate while the language in the bill as introduced referred to individuals or entities. Significant differences occur in the subsections relating to key stations. Both versions provide that it shall be considered to be discrimination to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible as soon as practicable but in no event later than 3 years after enactment although waivers may be granted for up to 20 years. However, the ADA as passed by the Senate contains a new subsection concerning intercity rail systems which requires all stations in intercity rail systems to be made accessible as soon as practicable but in no event later than 20 years after enactment. Thus in the version passed by the Senate, unlike the ADA as introduced,

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after enactment. The Secretary of Transportation shall require the appropriate public entity to develop a plan for compliance.

Section 204 -- Regulations

(a) Attorney General Not later than 1 year after enactment, the Attorney General shall promulgate regulations in an accessible format consistent with the section 504 regulations at 28 C.F.R. Part 41 except that with regard to "program accessibility, existing facilities," and "communications" such regulations shall be consistent with such part as is applicable to federally conducted activities under section 504.

(b) Secretary of Transportation Not later than one year after enactment, the Secretary shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203 and such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

intercity rail system stations can take up to 20 years to be made accessible without a special extension by the Secretary. The version passed by the Senate also contains a requirement not contained in the bill as introduced that the Secretary require the appropriate public entity to develop a compliance plan.

Regulations

(a) Attorney General The bill as passed by the Senate allows 1 year for the promulgation of regulations while the bill as introduced provided for 180 days. Also, the bill as introduced references only the section 504 regulations at 28 C.F.R. Part 41 while the version passed by the Senate also references the federally conducted activities regulations for the interpretation of "program accessibility, existing facilities, and communications." 28 C.F.R. Part 39. The regulations referenced by the ADA as passed by the Senate are more detailed and contain specific limitations regarding undue financial and administrative burdens.

(b) Secretary of Transportation Both versions of the ADA require the Secretary to promulgate regulations; the version passed by the Senate requires promulgation within one year while the ADA as introduced requires promulgation not later than 240 days. The standards applicable to facilities and vehicles are to be consistent with standards which were to be promulgated by the ATBCB under the ADA in the version as introduced while such standards are to be consistent with the ATBCB's section 504 regulations in the version passed by the Senate.

Section 304 -- Regulations

(a) Attorney General Not later than 180 days after enactment the Attorney General shall promulgate regulations in an accessible format consistent with this title and with the section 504 regulations at 41 C.F.R. Part 41.

(b) Secretary of Transportation Not later than 240 days after the date of enactment, the Secretary of Transportation shall promulgate regulations in an accessible format including standards applicable to facilities and vehicles and such standards shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b) of the ADA.

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COMMENTS

Section 305 -- Enforcement The remedies, procedures and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. sec. 794a) shall be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of the act or regulations.

Section 205 -- Enforcement The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of the act or its regulations.

Enforcement As noted previously, the enforcement sections of the ADA as introduced were among the most controversial in the bill. One of the controversies centered around language in the ADA as introduced which would have allowed suit if an individual "believes that he or she is being or **about to be** subjected to discrimination." The "about to be subjected to discrimination" language was deleted from the ADA as passed by the Senate throughout its enforcement provisions, including the title relating to public services. For a more detailed discussion of this issue see "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues," CRS Rep. No. 89-433 (July 25, 1989).

Section 206 -- Effective Date The title shall become effective regarding new fixed route vehicles on the date of enactment but for all other purposes the title shall become effective 18 months after the date of enactment.

Effective Date The effective date for the entire ADA as introduced is on the date of enactment. The provisions in the bill as passed by the Senate vary, with the effective date for new fixed route vehicles the date of enactment but for other parts of title II of the ADA as passed by the Senate the effective date is 18 months after enactment.

Title IV -- Public Accommodations and Services Operated by Private Entities

Section 401 -- Definitions

Commerce The term commerce means travel, trade, traffic, commerce, transportation, or communication among the several States or between D.C. and any State or between any foreign country or any territory or possession and any State or D.C. or between points in the same State but through another State or the District of Columbia or foreign country.

Title III -- Public Accommodations and Services Operated by Private Entities

Section 301 -- Definitions

Commerce -- The definition is substantively identical to that of the ADA as introduced.

Public Accommodations and Services Operated by Private Entities

Definitions

Commerce -- The definitions in the two versions are identical except that the ADA as passed by the Senate divides the component parts of the definition in a format that is easier to read.

Potential Places of Employment The term means facilities that are intended for nonresidential use and whose operations will affect commerce. The term does not include facilities covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S. C. sec. 3601 et seq.).

Potential Places of Employment There was concern expressed about the scope of coverage of the public accommodations section of the ADA as introduced since it covered all "potential places of employment" and the question arose concerning whether it would cover businesses run from an individual's home. The addition of the definition of "potential places of employment" to the ADA as passed by the Senate attempts to limit the reach of this section by excluding residential facilities.

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Public Accommodation The term means privately operated establishments that are used by the general public as customers, clients or visitors or that are potential places of employment and whose operations affect commerce. This includes auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels and motels, terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

Public Transportation The term means transportation by bus or rail, or by an other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

Section 402 -- Prohibition of Discrimination by Public Accommodations

(a) General Rule No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

Public Accommodations The following privately operated entities are considered public accommodations for the purposes of the title if the operations of the entities affect commerce: an inn, hotel, motel or other similar place of lodging, a restaurant, bar or other establishment serving food and drink, a motion picture house, theater, concert hall, stadium or other place of exhibition or entertainment, an auditorium, convention center or lecture hall, a bakery, grocery store, clothing store, hardware store, shopping center, a laundromat, dry-cleaners, bank, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacist, insurance office, professional office of a health care provider, hospital, terminal used for public transportation, a museum, library, gallery, park, zoo, a nursery, elementary secondary, undergraduate or postgraduate private school, a day care center, senior citizen center, homeless shelter, food bank, adoption program, a gymnasium, health spa, bowling alley, golf course, or other similar establishment.

Public Transportation The definition is identical to that of the ADA as introduced.

Readily Achievable The term means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include the overall size of the covered entity, the type of operation of the covered entity, and the nature and cost of the action needed.

Section 302 -- Prohibitions of Discrimination by Public Accommodations

(a) General Rule The substantive requirements are identical.

Public Accommodation There was considerable controversy about the scope of the public accommodations provision in the ADA as introduced and it was argued that its general provisions were very broad and would cover even small businesses run from individual's homes. This approach is different from that of title II of the Civil Rights Act of 1964, 42 U.S.C. 2000a, since that act simply listed covered entities. The ADA as passed by the Senate took an approach similar to that of title II and listed covered entities although the list is more exhaustive than that of title II. One issue raised by the bill as passed by the Senate is whether nursing homes would be covered by the legislation. Such facilities are not specifically mentioned although they would probably be covered under the category of "hospital, or other similar service establishment." The Senate Report would support this argument since it indicates that the "or other similar" language is to be interpreted liberally. S. Rep. No. 116, 101st Cong., 1st Sess. at 59 (1989).

Public Transportation The two versions have identical definitions.

Readily Achievable The ADA as introduced used the term "readily achievable" but did not define it and was criticized for a lack of clarity. The ADA as passed by the Senate includes a definition of the term which draws from the "undue hardship" criteria used in section 504 regulations. See e.g., 45 C.F.R. sec. 84.12.

Prohibition of Discrimination by Public Accommodations

(a) General Rule The two versions are substantively identical although the phrasing is slightly different.

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(b) Construction

(b) Construction It shall be discriminatory to subject an individual on the basis of a disability to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity; to afford such an individual an opportunity that is not equal to that afforded to other individuals; or to provide such individual with a good, service, privilege, advantage or accommodation that is different or separate from that provided to other individuals unless such action is necessary to provide a good that is as effective as that provided to others. These goods shall be afforded to an individual with a disability in the most integrated setting as appropriate to the needs of the individual. Notwithstanding the existence of separate or different programs or activities an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different. An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination against others who are subject to common administrative control. It shall be discriminatory to exclude or otherwise deny equal goods, services, privileges, advantages, and accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

General Prohibition The ADA as passed by the Senate contains several prohibitions against discrimination that have no direct parallel in title IV of the ADA as introduced. However, these sections are similar to the more general prohibitions against discrimination that were found in title I of the ADA as introduced.

The term discriminated against as used in the general rule includes: (1) the imposition or application of eligibility criteria that identify or limit an individual with a disability from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations;

The term discrimination shall include (1) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, or accommodations being offered.

The term discrimination is defined in similar ways in both the ADA as introduced and as passed by the Senate except that the version passed by the Senate contains an exception where criteria can be shown to be necessary for the provision of the goods, services, facilities, or accommodations being offered.

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(2) a failure to make reasonable modifications in the rules, policies, practices, etc. when such modifications may be necessary to afford such privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages and accommodations;

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in an undue burden;

(4) (a) a failure to remove architectural and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles, not including barriers that can be removed only through the retrofitting of vehicles, where such removal is readily achievable;

(4) (b) where an entity can demonstrate that removal of a barrier under subparagraph A is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(2) the failure to make reasonable modifications requirement is the same as that in the ADA as introduced.

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, or accommodation being offered or would result in an undue burden.

(4) Identical to S. 933 as introduced.

(5) Identical to S. 933 as introduced except that the provision was renumbered to subsection (v).

The provisions relating to reasonable modifications in policies are the same in the two versions of the ADA.

(3) The provisions relating to auxiliary aids are the same except that the version passed by the Senate provides an exception where an entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, or accommodation being offered.

This part of the discrimination prohibition is the same in both versions of the ADA.

This part of the discrimination prohibition is the same in both versions of the ADA.

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(5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of the act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered areas, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;

(6) With respect to a facility of part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, and where the covered entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Attorney General). The entity shall also make alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains are readily accessible, except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installations of elevators based on the usage of such facilities.

The ADA as introduced makes the requirements concerning alteration applicable one year after the date of enactment while the ADA as passed by the Senate contains no time delay for the requirements. The ADA as passed by the Senate makes certain of the requirements concerning paths of travel and bathrooms, telephones and drinking fountains applicable only where the covered entity is undertaking *major structural alterations* while the ADA as introduced has no such limitation. The ADA as passed by the Senate also requires the Attorney General to establish criteria concerning major structural alterations, and limits its requirements concerning the installation of elevators for certain facilities.

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(6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title;

Section 303. New Construction in Public Accommodations and Potential Places of Employment. As applied to a public accommodation and a potential place of employment, the term discrimination as used in section 302(a) shall mean a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title. However, this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category or such facilities requires the installation of elevators.

New Construction The ADA as introduced refers to a "failure to make facilities constructed for first occupancy...readily accessible." The ADA as passed by the Senate defines the term discrimination as applied to public accommodations and potential places of employment. The ADA as passed by the Senate also contains a special section allowing for exceptions concerning the installation of elevators in certain cases.

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403, a failure to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and purchasing or leasing a new bus or vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of the Act, that is not readily accessible to and usable by individuals with disabilities.

Entities not covered under sections 203 or 304
(B) Fixed Route Systems

It shall be considered discrimination for a covered entity that uses a vehicle for a fixed route system to transport individuals not covered under section 203 or 304 to purchase or lease a bus or vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of the act, that is not readily accessible. If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of the title that is not readily accessible, it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service equivalent to the level of service provided to the general public.

Certain entities uncovered under previous sections
Both versions of the ADA contain provisions relating to vehicles not covered under certain other sections. The ADA as introduced has a more general statement and covers vehicles carrying in excess of 12 passengers while the ADA as passed by the Senate contains more detailed standards and covers vehicles that carry in excess of 16 passengers. The ADA as passed by the Senate would provide less stringent requirements.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(C) **Demand Responsive System** As used in subsection a, the term discrimination shall include in the case of a covered entity that used vehicles in a demand responsive system to transport individuals no covered under section 203 or 304 an incident in which such entity purchase or leases a vehicle carrying 16 or less passengers after the effective date of this title, a failure to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities equivalent to the level of service provided to the general public and such entity purchases or leases a bus or vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of the act that is not readily accessible unless such entity can demonstrate that such system when viewed in its entirety already provides a level of service to individuals equivalent to that provided to the general public except that over the road buses shall be subject to section 304(b)(4) and section 305.

Section 403 Prohibition of Discrimination in Public Transportation Services Provided by Private Entities

(a) **General Rule** No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

Section 304 Prohibition of Discrimination in Public Transportation Services Provided by Private Entities

(a) **General Rule** The general rule is identical to S. 933 as introduced.

Prohibition of Discrimination in Public Transportation Services Provided by Private Entities

(a) **General Rule** The general rule prohibiting discrimination is the same in both versions.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(b) Construction -- As used in subsection (a), the term discrimination against includes

- (1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;
- (2) the failure of an entity to
 - (A) make reasonable modifications consistent with those required under section 402(b)(2);
 - (B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and
 - (C) remove barriers consistent with the requirements of section 402(b)(4); and
- (3) the purchase or lease of a new vehicle, other than an automobile, that is to be used to provide public transportation services and for which a solicitation is made later than 30 days after the date of enactment of the act, that is not readily accessible to and usable by individuals with disabilities.

(b) Construction As used in subsection (a), the term discrimination against includes

- (1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;
- (2) the failure of an entity to
 - (A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);
 - (B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and
 - (C) remove barriers consistent with the requirements of section 302(b)(2)(A)(iv)(v) and (vi); and
- (3) the purchase or lease of a new vehicle other than a automobile or an over-the-road bus that is to be used to provide public transportation services and for which a solicitation is made later than 30 days after the date of enactment of this act, that is not readily accessible to and usable by individuals with disabilities. Vehicles used in a demand response system need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.
- (4) the purchase or lease of a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment of the act for small providers and 6 years for other providers, that is not readily accessible to and usable by individuals with disabilities.

Section 305 -- Study The Office of Technology Assessment is to undertake a study to determine the access needs of individuals with disabilities to over-the-road buses and the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities. The Architectural and Transportation Barriers Compliance Board shall have an opportunity to comment on the draft study.

(b) Construction The subsections describing the construction of the phrase "discrimination against" are similar but the Senate version is more limited in scope. It refers not to the imposition of criteria that identify or limit an individual with disabilities but rather to criteria that **screen out or tend to screen out** individuals with disabilities. The ADA as introduced exempted only automobiles in subsection (3), while the Senate version exempts both automobiles and over-the-road buses and does not require vehicles used in a demand responsive system to be readily accessible if the entity can demonstrate that such system when viewed in its entirety provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public. The Senate passed version also contains a new subsection (4) which provides that discrimination includes the purchase or lease of a new inaccessible over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment for small providers and 6 years for other providers. An amendment was made by Senator Hollings on the Senate floor which changed these year figures from 6 and 5 to 7 and 6 years respectively. See 135 Cong. Rec. S10756 (daily ed. Sept. 7, 1989).

Study The ADA as passed by the Senate contains a section mandating a study of various issues relating to the accessibility of over-the-road buses. The ADA as introduced had no such provision. An amendment was made on the Senate floor by Senator Hollings which changed the authorship of the study from the ATBCB to OTA. The ATBCB is to have an opportunity to review and comment on the OTA draft. See 135 Cong. Rec. S10756 (daily ed. Sept. 7, 1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 404 -- Regulations

(a) Not later than 240 days after the date of enactment, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 403.

(b) Not later than 240 days after the date of enactment, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title.

(c) Standards included in these regulations shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

Section 306 -- Regulations

(a) Not later than 1 year after the date of enactment, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2)(B) and (C) and section 304.

(b) Not later than one year after the date of enactment, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a).

(c) Standards included in the regulations shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

Section 307 -- Exemptions for Private Clubs and Religious Organizations

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000-a(e), or to entities controlled by religious organizations, including places of worship.

Regulations The ADA as introduced required that the regulations be promulgated within 240 days, while the ADA as it passed the Senate required regulations within one year.

Exemptions for Private Clubs and Religious Organizations The ADA as introduced had no such exemption. This addition in conference was part of a compromise concerning the coverage of religious organizations.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 405 -- Enforcement

The enforcement provisions of the Fair Housing Act, 42 U.S.C. secs. 3602(i), 3613, and 3614(a) and (d), shall be available with respect to any aggrieved individual except that any reference to a discriminatory housing practice or reach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity and subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of 42 U.S.C. sec. 3613 shall not apply.

Section 606 -- Effective Date

The entire Act would become effective on the date of enactment.

Section 308 -- Enforcement

(a) **General** -- The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000a-3(a), shall be available to any individual who is being or is about to be discriminated against on the basis of disability. For certain violations, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title and may include the provisions of auxiliary aids, modification of a policy or the provision of alternative methods.

(b) **Enforcement by the Attorney General** -- The Attorney General shall investigate alleged violations and may commence a civil action where the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title. In such a civil action, the court may grant any appropriate equitable relief and may award such other appropriate relief such as monetary damages, and may assess a civil penalty in an amount not exceeding \$50,000 for a first violation and not exceeding \$100,000 for any subsequent violation.

(c) In a civil action under paragraph 1, the court, when considering the amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this act by the entity.

Section 309 -- Effective Date

The effective date of this title is 18 months after the date of enactment.

Enforcement

There are significant distinctions between the enforcement mechanisms in the ADA as introduced and as passed the Senate. The remedies under the Fair Housing Act which were referenced in the ADA as introduced are among the most stringent in civil rights law and allow for an individual to receive actual and punitive damages, a temporary or permanent injunction and such affirmative action as may be appropriate. The ADA as it passed the Senate limited the remedies available to an individual since title II of the Civil Rights Act of 1964 has not been interpreted to allow for damages. The requirements for suit by the Attorney General would be similar under the two versions of the ADA. Subsection (c) was added by an amendment from Senator Boschwitz on the Senate floor and would allow a court to take good faith attempts at compliance into consideration. See 135 Cong. Rec. S10751 (daily ed. Sept. 7, 1989).

Effective Date

The effective date for the entire ADA as introduced is on the date of enactment. The provisions in the bill it passed the Senate vary, with the effective date for the public accommodations and services operated by private entities 18 months after enactment.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

**Title V -- Telecommunications Relay Services
Section 501 -- Definitions**

Commission -- Commission means the Federal Communications Commission.

Telecommunications Relay Services

The term means services that enable simultaneous communication to take place between individuals who use TDD's or other nonvoice terminal devices and individuals who do not use such devices.

TDD

The term means a telecommunication device for the deaf, a machine that employs graphic communications in the transmission of coded signals through the nationwide telecommunications system.

**Title IV -- Telecommunications Relay Services
Section 401 -- Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals**

Title II of the Communications Act of 1934, 47 U.S.C. sec. 201 et seq., is amended by adding at the end thereof the following new section.

Telecommunications Relay Services

The term means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

TDD

The definition is identical to that in the ADA as introduced.

Common Carrier or Carrier

The term includes any common carrier engaged in interstate communication by wire or radio, any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication.

**Telecommunications Relay Services
Telecommunications Services**

The ADA as introduced had these provisions within the ADA while the ADA as it passed the Senate would amend title II of the Communications Act of 1934. As a result the ADA as introduced contains a definition of commission while the passed version does not.

Telecommunications Relay Services

The definition in the bill as passed by the Senate appears to be broader than that in the ADA as introduced.

TDD

The definitions are identical in the two versions of the ADA.

Common Carrier or Carrier

The ADA as introduced does not define the term.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 502 -- Telecommunications Relay Services

(a) General Rule -- It shall be considered to be discrimination for any common carrier that offers telephone service to the general public to fail to provide, not later than 1 year after the date of enactment, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities that are equal to those provided to their customers who are able to use voice telephone services.

(b) State Discrimination -- It shall be considered to be discrimination by a state that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations, to fail to provide not later than one year after the date of enactment of this act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) Construction -- Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

Section 401 -- Availability of Telecommunications Relay Services

(1) In General -- The Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals.

(2) Remedies -- The same remedies, procedures, rights, and obligations that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and to common carriers engaged in both interstate and intrastate communications by wire or radio.

(3) Provision of Services -- Each common carrier shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment.

Telecommunications Relay Services

The ADA as introduced and as passed the Senate contain different approaches to the requirements relating to telecommunications relay services. As introduced, the ADA defined certain discriminatory practices while as passed by the Senate, the ADA adopts a more regulatory approach by incorporating certain specific requirements within the framework of the Communications Act of 1934. In the Senate debate, Senator Harkin added an amendment which changed the provision of services section from allowing 2 years for the full implementation of services by the carriers to 3 years. 135 Cong. Rec. S10736 (daily ed. Sept. 7, 1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 504 -- Regulations

Not later than 180 days after the date of enactment, the Commission shall issue regulations to carry out this title and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

Section 504 -- Enforcement

(a) *Civil Actions* The enforcement provisions of the Fair Housing Act, 42 U.S.C. sec. 3602(i), 3613, and 3614 (a) and (d), shall be available with respect to any aggrieved individual except that any reference to a discriminatory housing practice shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service and certain subparagraphs shall not apply.

Regulations

The Commission shall, not later than 1 year after the date of enactment, prescribe regulations to implement this section including regulations that establish functional requirements, establish minimum standards, require that telecommunications services operated every day for 24 hours, require that users pay rates no greater than the rates paid for functionally equivalent voice communication services, prohibit relay operators from refusing calls or limiting their length, or from disclosing the content of the calls or keeping records or intentionally altering a relayed conversation. The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

The Commission shall prescribe regulations governing the jurisdictional separation of costs. If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

Enforcement

In general, the Commission shall enforce the section and the Commission shall resolve a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

Regulations

The ADA as introduced required the promulgation of regulations within 180 days after enactment while the ADA as passed by the Senate allows a year for the promulgation of regulations. The ADA version passed by the Senate is also much more detailed in its description of the requirements of the regulations. The regulations section of the ADA as it passed the Senate contains a requirement concerning technology that is similar to a requirement contained in the statutory language of the ADA as introduced. The version passed by the Senate also contains a specific undue burden exception which allows for the extension of the date for full compliance.

Enforcement

The enforcement provisions in the ADA as introduced are much more stringent than those in the ADA as passed by the Senate. The Fair Housing Act enforcement provisions are among the most strict in civil rights law and provide for private rights of action, actual and punitive damages and injunctive relief and attorneys' fees. The ADA as passed by the Senate simply provides for administrative enforcement.

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COMMENTS

(b) Administrative Enforcement The Commission shall enforce the provisions of the title; certain provisions of the Communications Act of 1934 shall apply; the Commission shall have the authority for cease and desist orders; and certain penalties are available. These penalties provide that any carrier or State to which the requirements apply that knowingly fails or neglects to comply with this title or of any regulations or order made by the Commission in carrying out this title shall forfeit to the United States \$10,000 for each such offense.

Title VI -- Miscellaneous Provisions

Section 601 -- Construction

(a) Rehabilitation Act of 1973

Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973, 29 U.S.C. sec. 790 et seq., or the regulations issued by Federal agencies pursuant to such title.

Certification

Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services. This documentation shall be reviewed and certified by the Commission if it meets certain requirements and such certification may be revoked in certain circumstances.

Complaint

Complaints to the Commission concerning intrastate telecommunications relay services shall be referred to the State but in certain circumstances the Commission may exercise jurisdiction,

Title V -- Miscellaneous Provisions

Section 501 -- Construction

(a) Rehabilitation Act of 1973

This provision is identical to the ADA as introduced.

Certification

This provision is only in the ADA as passed by the Senate.

Complaint

This provision is only in the ADA as passed by the Senate.

Miscellaneous Provisions

Construction

(a) Rehabilitation Act of 1973

The provisions in the two versions are identical and both provide that nothing in the ADA shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or standards applied under title V of the Rehabilitation Act of 1973.

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COMMENTS

(b) Other Laws

Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities than are afforded by this Act.

(c) Relationship among Titles

The requirements contained in titles I through V shall be construed in a manner than is consistent with the other provisions of this Act and any apparent conflict between provisions of this Act shall be resolved by reference to the title that specifically covers the type of action in question.

(b) Other Laws

This provision is identical to the ADA as introduced.

Relationship among Titles

This is no comparable section in the ADA as passed by the Senate.

(c) Insurance

Titles I - IV of this Act shall not be construed to prohibit or restrict -- an insurer, hospital, medical service company, health maintenance organization, agent or entity that administers benefit plans, or similar organization from underwriting, classifying, or administering insurance risks that are based on or not inconsistent with State law; or a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting, classifying, or administering insurance risks that are based on or not inconsistent with state law; or a person or organization covered by this act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to state law that regulate insurance. These provisions shall not be used as a subterfuge to evade the purposes of titles I and III.

(b) Other Laws

The provisions in the two versions are identical and both provided that nothing in the ADA shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this act. Thus, the ADA would not preempt state or local laws that are more expansive in terms of coverage but acts as a floor or baseline for the law in this area.

Relationship among Titles

The ADA as introduced contained a section describing the relationship among the titles to clarify that title I which contained the general provisions would not be interpreted to be in conflict with the more specific titles. Since title I was dropped in the ADA as passed by the Senate and some of its provisions were incorporated within the other titles, this provision was also dropped in the ADA as passed by the Senate.

Insurance

The ADA as introduced had no provision relating to insurance and there were questions raised concerning whether insurance would be covered by the legislation. The provision in the ADA as passed by the Senate indicates that generally insurance is not to be covered but that insurance questions shall not be used as a subterfuge for evading the purposes of the titles on employment and public accommodations and services operated by private entities. An amendment by Senator Harkin during Senate debate added a new subsection to indicate that this section was not to be read to affect the preemption doctrine of the Employee Retirement Income Security Act of 1974. See 135 Cong. Rec. S10776 (daily ed. Sept. 6, 1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 602 -- Prohibition Against Retaliation

No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

Section 603 -- State Immunity

A state shall not be immune under the eleventh amendment from an action in Federal court for a violation of this act. In any action against a state for a violation of the requirements of this act, remedies are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

Section 502 -- Prohibition Against Retaliation and Coercion.

(a) **Retaliation** No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

(b) **Interference, Coercion, or Intimidation** -- It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercises or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

(c) **Remedies and Procedures** The remedies and procedures available under section 106, 205, and 308 shall be available to aggrieved persons for violations of subsections (a) and (b).

Section 503 -- State Immunity

This section of the ADA as it passed the Senate is identical to the ADA as introduced.

Prohibitions Against Retaliation and Coercion

The two versions of the ADA contain identical sections on retaliation but the ADA as passed by the Senate contains additional subsections relating to interference, coercion, or intimidation and remedies which have no parallel in the ADA as introduced.

State Immunity

The Supreme Court, in *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985), indicated that the Court will require very specific statements in congressional legislation prior to determining that Congress intends to abrogate the eleventh amendment thus allowing individuals to bring suit against a state. Both versions of the ADA would include a section specifically allowing for such abrogation. See also, *Dellmuth v. Muth*, ___ S.Ct. ___ (1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 604 -- Regulations by the Architectural and Transportation Barriers Compliance Board (ATBCB)

(a) Issuance of Guidelines Not later than 6 months after the date of enactment, the ATBCB shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for the purposes of section 304 and 404.

(b) Contents of the Guidelines The guidelines issued under subsection (a) shall establish additional requirements, consistent with this act, to ensure that buildings, facilities, and vehicle are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

Section 605 -- Attorney's Fees

In any action or administrative proceeding commenced pursuant to this act, the court or agency in its discretion may allow the prevailing party, other than the U.S., a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Section 606 -- Effective Date

The act shall become effective on the date of enactment.

Section 504 -- Regulations by the Architectural and Transportation Barriers Compliance Board

(a) Issuance of Guidelines Not later than 6 months after the date of enactment, the ATBCB shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) Contents of Guidelines This subsection is identical to the subsection in the ADA as introduced.

Section 505 -- Attorney's Fees

This section is identical to the ADA as introduced.

Effective Date

The ADA as passed by the Senate contains different effective dates for the different titles.

Section 506 -- Technical Assistance

The Attorney General is to develop and implement within 180 days of enactment a plan to assist entities in understanding the act. This plan shall be developed in consultation with several executive agencies and commissions, shall be published for public comment, provide for the implementation of the various titles, and for the making of grants and contracts.

Regulations by the Architectural and Transportation Barriers Compliance Board

This section is the same in both versions except that the version as passed by the Senate would supplement the regulations for all of the titles concerning accessibility rather than just certain sections.

Attorney's Fees

Both versions of the ADA contain provisions allowing for attorney's fees.

Effective Date

The ADA as introduced would make the entire act effective on the date of enactment while the ADA as passed by the Senate would make the act effective at various times depending on the title.

Technical Assistance

The ADA as passed by the Senate contains a section requiring the Attorney General to develop and implement a plan for technical assistance and providing for grant assistance. There is no similar provision in the ADA as introduced. This section was substantially amended and expanded upon in the Senate debate. See 135 Cong. Rec. S10778 (daily ed. Sept. 7, 1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 507 -- Federal Wilderness Area

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System, 16 U.S.C. secs. 1131.

Section 508 -- Transvestites

An amendment by Senator Helms was passed by the Senate during its debate which provided that for the purposes of the act, the term disabled or disability shall not apply to an individual solely because that individual is a transvestite.

Section 509 -- Coverage of Congress

Notwithstanding any other provision of this act or law, the provisions of this act shall apply in their entirety to the Senate, House, and all the instrumentalities of Congress, or either House thereof.

Section 510 -- Disability and Illegal Drugs

For the purposes of this act, an individual with a disability shall not include any individual who uses illegal drugs but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs. However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

Federal Wilderness Area

This section was added by Senator Hatch as an amendment on the Senate floor and was to address the issue of whether the prohibitions on the use of forms of mechanical transport in wilderness areas discriminate against persons with disabilities. See 135 Cong. Rec. 10735 (daily ed. Sept. 7, 1989).

Transvestites

As amended on the Senate floor, the act includes an exception for transvestites. See 135 Cong. Rec. S10776 (daily ed. Sept. 7, 1989).

Coverage of Congress

This provision was offered on the floor of the Senate by Senator Grassley who described it as "very straightforward. It says that, starting today, and at long last, Congress will begin to live by the same laws it passes for others." This amendment was strenuously objected to by Senator Ford who expressed approval for the substance of the amendment but indicated that it may create constitutional separation of powers questions since the enforcement authority for the act rests with either the executive or judicial branches. See 135 Cong. Rec. S10780 (daily ed. September 7, 1989).

Disability and Illegal Drugs

This provision was added by an amendment from Senator Humphrey on the Senate floor. In a colloquy between Senator Harkin and Senator Humphrey, Senator Harkin indicated that he felt that the language in this amendment "did what we did in the beginning...we will accept this language to allay any fears, apprehensions, or misgivings ..." See 135 Cong. Rec. S10785 (daily ed. Sept. 7, 1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 511 -- Disability, Sexual Preferences, and Sexual and other Disorders

The term disability does not include homosexuality, bisexuality, transvestism, pedophilia, transsexualism, exhibitionism, voyeurism, compulsive gambling, kleptomania, pyromania, gender identity disorders, current psychoactive substance use disorders, current psychoactive substance-induced organic mental disorders as defined by DSM III-R which are not the result of medical treatment or other sexual behavior disorders.

Section 512 -- Amendment to the Definition of Handicapped Individual in the Rehabilitation Act, 29 U.S.C. sec. 706(8)(B)

The term individual with a handicap does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services. For the purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. For purposes of sections 503 and 504 of this act as such sections relate to employment, the term individual with handicaps does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse would constitute a direct threat to property or the safety of others. A new term is also added to the definitions in the Rehabilitation Act. The term illegal drugs means controlled substances as defined in schedules I - V, 21 U.S. C. sec. 812 and does not mean the use of a controlled substance pursuant to a valid prescription or other uses.

Disability, Sexual Preferences, and Sexual and other Disorders

This provision was added by an amendment from Senator Armstrong on the Senate floor. During a colloquy between Senator Harkin and Senator Armstrong, Senator Harkin indicated that he did not feel that this amendment was necessary. See 135 Cong. Rec. S10785 (daily ed. Sept. 7, 1989).

Amendment to the Definition of Handicapped Individual under the Rehabilitation Act of 1973, 29 U.S.C. sec. 706(8)(B)

This provision would amend the definitional section of the Rehabilitation Act to make it similar in coverage regarding illegal drugs to the ADA. It was added on the Senate floor by Senator Helms and there was no comparable provision in the ADA as introduced. See 135 Cong. Rec. S10780 (daily ed. Sept. 7, 1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

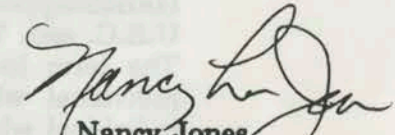
COMMENTS

Section 513 -- Severability Clause

Should any provision of this act be found to be unconstitutional, such provision shall be severed from the remainder of the act, and any such action shall not affect the enforceability of the remaining provisions of the act.

Severability Clause

This provision was added by an amendment from Senator Harkin on the Senate floor. There is no comparable provision in the ADA as introduced. See 135 Cong. Rec. S10788 (daily ed. Sept. 7, 1989).


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CRS Report for Congress

The Americans with Disabilities Act (ADA): A Comparison and Analysis of the Bill as Introduced and as Passed by the Senate

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September 27, 1989



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**THE AMERICANS WITH DISABILITIES ACT (ADA):
A COMPARISON AND ANALYSIS OF THE BILL AS INTRODUCED
AND AS PASSED BY THE SENATE**

SUMMARY

The Americans with Disabilities Act (ADA), S. 933 and H.R. 2273, 101st Cong., 1st Sess., would provide broad based nondiscrimination protection for persons with disabilities in the private sector and would cover employment, public services, public accommodations, transportation, and telecommunications. Many of the concepts used in the ADA originated in the language and interpretation of §504, 29 U.S.C. §794. This report describes and comments on the ADA as introduced and as passed by the Senate.

Generally, the ADA as passed by the Senate contains some significant changes from the ADA as introduced which reflect the intense negotiations over the bill. The bill as passed by the Senate deleted title I which had provided general guidance on the forms of discrimination prohibited; clarified how the bill covered drug addicts and alcoholics; added definitions of undue hardship and readily achievable; limited the enforcement provisions; loosened some of the requirements for transportation; changed the scope of the public accommodations section; added a section allowing certain religious exceptions; and added a section providing for coverage of the Congress.

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1. The National Council on Disabilities is an independent federal agency. Its statutory functions include providing recommendations to the Congress regarding individuals with disabilities. 29 U.S.C. sec. 781.
2. S. 2345 and H.R. 4498, 100th Cong. For an analysis of these bills see "The Americans with Disabilities Act (ADA): Legal Analysis of Proposed Legislation Prohibiting Discrimination on the Basis of Handicap," CRS Rep. No. 88-621A (Sept. 19, 1988). For a comparison of the major differences between the legislation in the 100th Congress and the 101st Congress see "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues," CRS Rep. No. 89-433A (July 25, 1989).
3. S. 933 as amended was passed by the Senate on September 7, 1989 by a vote of 76 to 8. 135 Cong. Rec. S10803 (daily ed. Sept. 7, 1989).
4. Interestingly, although persons with AIDS and HIV infection are clearly covered by the legislation, this has not proved to be a major controversy so far.
5. For a more detailed discussion of the "about to be subjected to discrimination" language see "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues," CRS Rep. No. 89-433A (July 25, 1989).

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S. 933 AS INTRODUCED	S. 933 AS PASSED BY THE SENATE	COMMENTS
<p>Section 1 -- Short title; table of contents The Act is cited as the Americans with Disabilities Act of 1989.</p>	<p>Section 1 -- Short title; table of contents The Act is cited as the Americans with Disabilities Act of 1989.</p>	<p><i>Short title; table of contents</i> -- The title is the same, the table of contents varies.</p>
<p>Section 2 -- Findings and Purposes Individuals with disabilities have faced widespread discrimination and to remedy this the act provides a clear and comprehensive national mandate for the elimination of discrimination.</p>	<p>Section 2 -- Findings and Purposes Identical to S. 933.</p>	<p><i>Findings and Purposes</i> -- The provisions are identical.</p>
<p>Section 3 -- Definitions <i>Auxiliary Aids and Services</i> -- Such services shall include qualified interpreters for individuals with hearing impairment, qualified readers for individuals with visual impairments, and the acquisition or modification of equipment or devices.</p>	<p>Section 3 -- Definitions <i>Auxiliary Aids and Services</i> -- Identical to S. 933 as introduced.</p>	<p><i>Auxiliary Aids and Services</i> -- The provisions are identical.</p>
<p><i>Disability</i> -- The term disability means (1) a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.</p>	<p><i>Disability</i> -- Identical to S. 933 as introduced.</p>	<p><i>Disability</i> -- This definition is identical in both versions of S. 933 and is drawn from the definitional section applicable to section 504 of the Rehabilitation Act.</p>
<p><i>Reasonable Accommodation</i> -- The term reasonable accommodation shall include (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.</p>	<p>Section 101(8) -- <i>Reasonable Accommodation</i> -- The term reasonable accommodation may include (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters and other similar accommodations.</p>	<p><i>Reasonable Accommodation</i> -- The bill as passed by the Senate moved the definition from section 3 to title I (which concerns employment in the Senate passed version). In addition, the version passed by the Senate includes within the definition reassignment to a <i>vacant</i> position, appropriate adjustment or modifications of examinations, training materials or <i>policies</i> and excludes the adoption or modification of procedures or protocols. (Words in italics added).</p>
<p><i>State</i> -- The term state means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.</p>	<p><i>State</i> -- Identical to S. 933 as introduced.</p>	<p><i>State</i> -- The provisions are identical.</p>

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Title I -- General Prohibition Against Discrimination

Section 101 -- Forms of Discrimination Prohibited

(a) In General --

(1) Services, Programs, Activities, Benefits, Jobs or Other Opportunities. Subject to titles II-V, it shall be discriminatory to subject an individual on the basis of disability to the denial of an opportunity to participate in or benefit from a service, program, activity, benefit, job or other opportunity; to an unequal opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity; to the provision of an opportunity that is less effective than that provided to others; to the provision of an opportunity that is different or separate unless such action is necessary to provide the individual with an opportunity that is as effective as that provided to others; to aid or perpetuate discrimination by providing significant assistance to an organization that discriminates; to deny the opportunity to participate as a member of boards or commissions or to otherwise limit the enjoyment of any right enjoyed by others.

(2) Equal Opportunity -- Aids, benefits and services to be equally effective must afford an individual an equal opportunity to obtain the same result, benefit or level of achievement in the most integrated setting appropriate.

(3) Opportunity to Participate -- Even if there are separate programs, an individual with a disability shall not be denied the opportunity to participate in programs that are not separate or different.

(4) Administrative Methods --An individual may not utilize standards or criteria or methods of administration that have the effect of discriminating, have the purpose or effect of substantially impairing the accomplishment of the objectives of the services or opportunities provided to an individual with disabilities or that perpetuates the discrimination of others who are subject to common administrative control or are agencies of the same state.

General Prohibition Against Discrimination

Title I of the ADA as introduced is deleted from the version of the bill passed by the Senate but many of its provisions were added to other titles. For example, a provision similar to the one on relationships and associations was added in the title referring to employment.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(5) **Relationships or associations** -- It shall be discriminatory to exclude or otherwise deny equal services or other opportunities to an individual because of the relationship to or association of that individual with another individual with a disability.

(b) **Defenses** --

(1) **In general** -- It shall be a defense to a charge of discrimination that an alleged application of qualification standards or other eligibility criteria that excludes or denies services or opportunities to an individual with a disability has been demonstrated to be both necessary and substantially related to the ability of an individual to perform or participate in the essential components of the program and such performance or participation cannot be accomplished by applicable reasonable accommodations.

(2) **Qualification Standards** -- The term qualification standards may include (a) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and (b) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

Section 103(a) -- Defenses

It may be a defense to a charge of discrimination that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

Section 103(b) Qualification Standards --

The term qualification standards may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

Defenses

The provisions are very similar but the version as passed by the Senate is contained only in the title referring to employment and therefore would appear to be relevant only to that title.

Qualification Standards; Drug Addicts and Alcoholics -- The original S. 933 language regarding drug addicts, alcoholics and persons with contagious diseases closely paralleled the requirements of the definitional section applicable to section 504. This proved to be very controversial and it was argued that the language might protect drug addicts and alcoholics from discrimination in certain circumstances. The changes in S. 933 as passed by the Senate attempt to clarify that the legislation would not conflict with the Drug-Free Workplace Act. The amendments still maintain the emphasis of the original legislation that discrimination can occur due to behavior but not due to simple status. The issue of the extent to which the use of drugs in a nonwork place environment can be used to justify a discriminatory act is not directly addressed by the new language although the provision requiring that transportation employees meet requirements established by the Department of Transportation could arguably disallow some usage out of the work place.

Section 103(c) Drug Addicts and Alcoholics --

A covered entity may prohibit the use of alcohol or illegal drugs at the workplace, may require that employees not be under the influence of alcohol or illegal drugs at the workplace, may require that employees conform their behavior to the requirements of the Drug-Free Workplace Act, 41 U.S.C. sec. 701 et seq., and that transportation employees meet requirements established by the Department of Transportation (DOT), may hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals.

Section 103(d) Religious Entities --

The title on employment shall not prohibit a religious association from giving preference in employment to individuals of a particular religion to perform work connected with such association's activities and a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of the organization.

Religious Entities -- The provision relating to religious entities is new and is modeled after the provision in title IX of the Education Amendments of 1972. See S. Rep. No. 116, 101st Cong., 1st Sess. (1989). It addresses the controversy concerning whether the ADA could impose substantial economic costs on religious schools and churches and whether its application would pose any violations of the free exercise and establishment of religion clauses of the First Amendment. [For a discussion of this issue see "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues." CRS Report 89-433A (July 25, 1989).

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S. 933 AS INTRODUCED	S. 933 AS PASSED BY THE SENATE	COMMENTS
<p>Title II -- Employment Section 201 -- Definitions Commission -- The term refers to the Equal Employment Opportunity Commission.</p> <p>Employee -- In general employee means an individual employed by an employer. This term does not include any individual elected to public office in any state or political subdivision of a state or a person on such officer's personal staff or an appointee on the policy making level or an immediate adviser. This exception does not include employees subject to civil service laws of a state.</p> <p>Employer -- In general the term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The term does not include the United States, a corporation wholly owned by the U.S. Government or an Indian tribe or a bona fide private membership club, other than a labor organization that is exempt from taxation under section 501(c) of the IRS Code of 1986.</p> <p>Person -- The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", have the same meanings as given in section 701 of the Civil Rights Act of 1964.</p> <p>Qualified Individual with a Disability -- This term means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.</p>	<p>Title I -- Employment Section 101 -- Definitions Commission -- The term is identical to S. 933 as introduced.</p> <p>Employee -- The term employee means an individual employed by an employer.</p> <p>Employer -- The definition is identical to that of S. 933 as introduced except that for two years following the effective date of the title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.</p> <p>Person -- The term is identical to S. 933 as introduced.</p> <p>Qualified Individual with a Disability -- The term is identical to S. 933 as introduced.</p> <p>Illegal drug -- The term means a controlled substance, as defined in schedules I and II of section 202 of the Controlled Substances Act (21 U.S.C. sec. 812) the possession or distribution of which is unlawful under the act.</p>	<p>Employment</p> <p>Commission -- The provisions are identical.</p> <p>Employee -- S. 933 as introduced contained an exception for certain state and local officials and certain of their employees. The exception is not contained in the version passed by the Senate.</p> <p>Employer -- One of the basic concerns raised about the ADA has been its possible negative effect on small businesses. The bill as passed by Senate contains a phase in for coverage so there will be more time for the smallest businesses to become educated concerning the requirements of the legislation.</p> <p>Person -- S. 933 as introduced and as passed by the Senate have the identical definitions.</p> <p>Qualified Individual with a Disability -- S. 933 as introduced and as passed by the Senate have the identical definitions. These are comparable to the definition used in regulations implementing section 504.</p> <p>Illegal Drug -- This term is not defined in the ADA as introduced.</p>

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 202 -- Discrimination

(a) General Rule

No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of the individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) Construction

The term discrimination as used in the general rule includes

- (1) the failure by an employer to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;
- (2) the denial of employment opportunities by a covered employer, employment agency, labor organization or joint labor-management committee to an applicant or employee who is a qualified individual with a disability is the basis for such denial is because of the need of the individual for reasonable accommodation;

Undue Hardship -- The term means an action requiring significant difficulty or expense. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include the overall size of the business, the type of operation maintained and the nature and cost of the accommodation.

Covered Entity -- The term means an employer, employment agency, labor organization or joint labor-management committee.

Section 102 -- Discrimination

(a) General Rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) Construction

The term discrimination as used in the general rules includes

- (1)(E) Not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;
- (1)(F) denying employment opportunities to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

Undue Hardship -- The ADA as introduced did not contain this definition and was criticized for lack of specificity. This definition is essentially drawn from existing section 504 regulations. See 45 C.F.R. sec. 84.

Covered Entity -- This term was not used in the ADA as introduced so it was not defined there.

Discrimination

(a) General Rule

The bill as passed by the Senate does not list the various types of organizations covered but refers more generally to "covered entities."

Construction

The ADA as passed by the Senate is more detailed and incorporates many sec. 504 regulatory concepts. See 45 C.R.F. Part 84.

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S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 104 -- Illegal Drugs and Alcohol

(a) Qualified individual with a disability

For the purposes of this title, the term shall not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protection of this act if such individual also uses or is also addicted to drugs.

(b) Authority of covered entity

A covered entity may prohibit the use of alcohol or illegal drugs at the workplace by all employees; may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace; may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act, 41 U.S.C. sec. 701 et seq., and that transportation employees meet the requirements established by the Secretary of Transportation; and may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees.

(c) Drug testing

For the purposes of this title a test to determine the use of illegal drugs shall not be considered a medical examination. Nothing in the title shall be construed to encourage, prohibit, or authorize the conducting drug testing of job applicants or employees or making employment decisions based on such test results.

Illegal Drugs and Alcohol

One of the major areas of controversy in the ADA has been the extent to which it covers drug addicts or alcoholics and whether this would conflict with the national policy on drug abuse, particularly as recently expressed in the Drug-Free Workplace Act. The ADA language was added on the Senate floor by Senator Harkin after lengthy negotiations with other Senators, the White House and representatives of various business and civil rights organizations. Senator Harkin stated that this amendment would be consistent with the national drug strategy, meet legitimate business needs and promote the national effort for a drug free workplace. For a more extensive discussion of the provision see 135 Cong. Rec. S10776 (daily ed. Sept. 7, 1989). Apparently some confusion has surfaced regarding this amendment and in a floor statement after Senate passage, Senator Harkin indicated that he will request the insertion of "when the covered entity acts on the basis of such use" at the end of subsection (a). 135 Cong. Rec. S11224 (daily ed. Sept. 15, 1989).

Section 203 -- Posting Notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the act's applicable provisions.

Section 105 -- Posting Notices

The provision is the same as in the bill as introduced.

Posting Notices

The provisions are identical.

Section 204 -- Regulations

Not later than 180 days after the date of enactment, the Commission shall issue regulations in an accessible format.

Section 106 -- Regulations

Not later than one year after the date of enactment, the Commission shall issue regulations in an accessible format.

Regulations

The bill as passed by the Senate lengthened the time for the issuance of regulations from 180 days after enactment to one year.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Title III -- Public Services

Section 301 -- Definition of Qualified Individual with a Disability

For the purposes of this title the term means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, commission or other instrumentality of a State and political subdivision.

Section 102(c) -- Medical Examinations and Inquiries

The general prohibition against discrimination shall include medical examinations and inquiries. Generally, a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability. However, a covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions and may require a medical examination after an offer of employment has been made and may condition the job on the results if all entering employees are subjected to the examination, information is treated confidentially (except where necessary for accommodations, for the information of first aid workers where the person may require emergency treatment and for government officials investigating compliance with this act) and the results of the physical exam are used only in accordance with this title. A covered entity shall not conduct an examination or make inquiries unless it is shown to be job related and consistent with business necessity.

Title II -- Public Services

Section 201 -- Definition

Qualified individual with a disability means an individual who, with or without reasonable modifications to rules, policies, and practices, the removal of barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or local government.

Medical Examinations and Inquiries

The version of the ADA passed by the Senate, but not the bill as introduced, contains provisions directly relating to medical examinations and inquiries. These provisions are modeled after regulations promulgated pursuant to section 504. See 28 C.F.R. sec. 41.55, 42.513.

Public Services

Definition -- Qualified Individual with a Disability

The ADA as introduced and as passed by the Senate are essentially the same although the descriptions of State and local agencies vary.

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COMMENTS

Section 302 -- Discrimination

No qualified individual with a disability shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a State, or agency or political subdivision of a State or board, commission or other instrumentality of a State and political subdivision.

Section 303 -- Actions Applicable to Public Transportation Considered Discriminatory

(a) Definition

The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) Vehicles

(1) New Buses, Rail Vehicles, and other Fixed Route Vehicles It shall be discrimination for the purposes of the act and section 504 for an individual or entity to purchase or lease a new fixed route bus, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this act, if such vehicle is not readily accessible to and useable by individuals with disabilities.

(2) Used Vehicles If an individual or entity purchases or leases a used vehicle after the date of enactment, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and useable by individuals with disabilities.

Section 202 -- Discrimination

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

Section 203 -- Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

(a) Definition

The term "public transportation" is defined in the same way as in the ADA as introduced.

(b) Vehicles

(1) New Buses, Rail Vehicles, and other Fixed Route Vehicles This requirement is the same as in the ADA as introduced except that the reference to individuals purchasing or leasing such vehicles is deleted and reference is made to public entities, not just "entities."

(2) Used Vehicles If a public entity purchases or leases a used vehicle to be used for public transportation after the date of enactment, such individual or entity shall make demonstrated good faith efforts to purchase or lease such a used vehicle that is readily accessible to and useable by individuals with disabilities.

Discrimination

The two versions provide similar coverage and would extend the nondiscrimination policy of section 504 to cover all state and local governmental entities.

Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

(a) Definition The term "public transportation" is defined identically in the two versions.

Vehicles

(1) New Buses, Rail Vehicles, and other Fixed Route Vehicles The requirements are the same except that the version passed by the Senate does not consider individuals who purchase such vehicles to fall within the scope of the prohibition. It could be argued that this would eliminate the possibility of individual liability for such actions.

(2) Used Vehicles The requirements are similar but the version passed by the Senate deletes the first reference to individuals purchasing vehicles and adds the modifier "public" to the term entity. There is some ambiguity since there is a reference to an individual making demonstrated good faith efforts in the version passed by the Senate even though this version does not refer to an individual purchasing or leasing a vehicle. It is possible that this language might give rise to potential liability on the part of an individual.

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(3) Remanufactured Vehicles If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

(c) Paratransit as a Supplement to Fixed Route Public Transportation System If an individual or entity operates a fixed route public transportation system, it shall be considered discrimination for the purposes of this act and section 504 for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(3) Remanufactured Vehicles If a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle to be used for public transportation, so as to extend its life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

(c) Paratransit as a Supplement to Fixed Route Public Transportation System In general if a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination for the purposes of the act and section 504 for a public transit entity that is responsible for providing public transportation to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity. If the provision of such services would cause an undue financial burden, such entity must provide paratransit and other special transportation services to the extent that they would not impose an undue burden. The regulations may include a flexible numerical formula that incorporates appropriate local characteristics such as population but the Secretary may require a public transit authority to provide paratransit services beyond the amount determined by such formula.

Remanufactured Vehicles Instead of referring to an individual or entity purchasing or remanufacturing a vehicle, the version passed by the Senate refers to "public entity." This would appear to limit liability.

Paratransit as a Supplement to Fixed Route Public Transportation System Both versions require the provision of paratransit in certain circumstances but there are some significant distinctions. The ADA as introduced refers to individuals and entities who operate a fixed route public transportation system while the version passed by the Senate refers solely to public entities. Both versions also require regulations to be promulgated by the Secretary of Transportation but the version passed by the Senate contains more detailed requirements for these regulations. The version passed by the Senate also contains a specific exception for the provision of paratransit where it would impose "an undue financial burden." This term is not defined although the Senate Report indicates that the committee's intent was that any criteria developed by the Secretary with regard to this proviso be consistent with the portion of *ADAPT v. Skinner*, No. 88-1139, 88-1177, 88-1178 (3d Cir. 1989), regarding the 3% "safe harbor" provision. S. Rept. No. 116, 101st Cong., 1st Sess. 50 (1989).

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(d) Community Operating Demand Responsive Systems for the General Public If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for the purposes of the Act and section 504 for such individual or entity to purchase or lease a new vehicle that is not readily accessible to and usable by individuals with disabilities unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) New Facilities For the purposes of the Act and section 504, it shall be considered to be discrimination for an individual or entity to build a new facility that will be used to provide public transportation services that is not readily accessible to and usable by individuals with disabilities.

(d) Community Operating Demand Responsive Systems for the General Public This provision is the same as that in the ADA as introduced except that it refers to public entities instead of individuals and entities.

(e) Temporary Relief Where Lifts are Unavailable With respect to the purchase of new buses, a public entity may be granted a temporary relief by the Secretary of Transportation from the obligation to purchase new buses that are readily accessible if the entity can demonstrate certain difficulties in obtaining such vehicles.

(f) Construction Any relief from the requirements of accessible shall be limited in duration and the appropriate committee of Congress shall be notified and such relief shall be cancelled if fraudulently applied for.

(g) New Facilities This provision is the same as that in the ADA as introduced except that it refers to public entities rather than individuals and entities.

Community Operating Demand Responsive Systems for the General Public The provisions are the same except that the ADA as introduced refers to individuals and entities while the ADA as passed by the Senate refers to public entities. As noted previously, this change may limit liability for individuals.

Temporary Relief Where Lifts are Unavailable Accessibility requirements in the ADA have been controversial and questions were raised concerning the possibility of compliance. These provisions regarding temporary relief were added to the ADA as passed by the Senate apparently in an attempt to limit the requirements where they could not possibly be met.

New Facilities The provisions are the same in the two versions except that the ADA as introduced refers to individuals and entities and the ADA as passed by the Senate refers to public entities and therefore would limit the possible scope of liability.

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(f) Alterations of Existing Facilities With respect to a facility that is used for public transportation and that is altered later than one year after enactment in a manner that affects or could affect the usability of the facility, it shall be considered discrimination for the purposes of this act and section 504 for such individual or entity to fail to make the alterations in such a manner that to the maximum extent feasible the altered portion of the facility and certain related areas are readily accessible to and usable by individuals with disabilities.

(g) Existing Facilities, Intercity Rail, Rapid Rail, Light Rail, and Commuter Rail Systems, and Key Stations It shall be considered discrimination for the purposes of the act and section 504 for an individual or entity to fail to operate such public transportation program so that when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities. With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for the purposes of the act and section 504 it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities as soon as practicable but no less than 5 years. For the purposes of the act and section 504 it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible as soon as practicable but in no event later than 3 years after the date of enactment except that the Secretary of Transportation may extend the time up to 20 years for extraordinarily expensive structural changes.

(h) Alterations of Existing Facilities With respect to a facility that is used for public transportation and is altered by a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination for the purposes of the act and section 504 for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities. If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation), such public entity shall also make the alterations in such a manner "that to the maximum extent feasible, make the path of travel to the altered area, and the bathrooms, telephones,..." readily accessible to and usable by individuals with disabilities.

(i) Existing Facilities, Intercity Rail, Rapid Rail, Light Rail and Commuter Rail Systems, and Key Stations The provisions relating to existing facilities, and intercity, rapid, light, and commuter rail systems are the same as in the ADA as introduced except that the bill as passed by the Senate references public entities, not individuals and entities. With regard to key stations, it shall be considered to be discrimination for the purposes of the act and section 504 for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities. Key stations in rapid rail, commuter rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities as soon as practicable but in no event later than 3 years after the date of enactment except that the Secretary of Transportation may extend the time up to 20 years. All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities as soon as practicable but in no event later than 20 years.

Alterations of Existing Facilities The two versions contain similar requirements that alterations be accessible to the maximum extent feasible but vary in several respects. First, as occurs throughout the title on transportation, the ADA as introduced refers to individuals or entities while the ADA as passed by the Senate refers to public entities. However, in this section, the second reference in the ADA as passed by the Senate continues to be to "such individual or entity" thus creating some confusion about the possible scope of liability. The ADA as passed by the Senate also limits alterations relating to the path of travel and the bathrooms serving the area to public entities undertaking "major structural alterations" and provides for the Secretary of Transportation to establish criteria relating to the usability of the facility.

Existing Facilities, Intercity Rail, Rapid Rail, Light Rail and Commuter Rail Systems, and Key Stations The requirements relating to existing facilities and intercity, rapid and light and commuter rail systems are essentially the same except for referencing public entities in the ADA as passed by the Senate while the language in the bill as introduced referred to individuals or entities. Significant differences occur in the subsections relating to key stations. Both versions provide that it shall be considered to be discrimination to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible as soon as practicable but in no event later than 3 years after enactment although waivers may be granted for up to 20 years. However, the ADA as passed by the Senate contains a new subsection concerning intercity rail systems which requires all stations in intercity rail systems to be made accessible as soon as practicable but in no event later than 20 years after enactment. Thus in the version passed by the Senate, unlike the ADA as introduced,

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after enactment. The Secretary of Transportation shall require the appropriate public entity to develop a plan for compliance.

intercity rail system stations can take up to 20 years to be made accessible without a special extension by the Secretary. The version passed by the Senate also contains a requirement not contained in the bill as introduced that the Secretary require the appropriate public entity to develop a compliance plan.

Section 304 -- Regulations

(a) Attorney General Not later than 180 days after enactment the Attorney General shall promulgate regulations in an accessible format consistent with this title and with the section 504 regulations at 41 C.F.R. Part 41.

Section 204 -- Regulations

(a) Attorney General Not later than 1 year after enactment, the Attorney General shall promulgate regulations in an accessible format consistent with the section 504 regulations at 28 C.F.R. Part 41 except that with regard to "program accessibility, existing facilities," and "communications" such regulations shall be consistent with such part as is applicable to federally conducted activities under section 504.

Regulations

(a) Attorney General The bill as passed by the Senate allows 1 year for the promulgation of regulations while the bill as introduced provided for 180 days. Also, the bill as introduced references only the section 504 regulations at 28 C.F.R. Part 41 while the version passed by the Senate also references the federally conducted activities regulations for the interpretation of "program accessibility, existing facilities, and communications." 28 C.F.R. Part 39. The regulations referenced by the ADA as passed by the Senate are more detailed and contain specific limitations regarding undue financial and administrative burdens.

(b) Secretary of Transportation Not later than 240 days after the date of enactment, the Secretary of Transportation shall promulgate regulations in an accessible format including standards applicable to facilities and vehicles and such standards shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b) of the ADA.

(b) Secretary of Transportation Not later than one year after enactment, the Secretary shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203 and such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

(b) Secretary of Transportation Both versions of the ADA require the Secretary to promulgate regulations; the version passed by the Senate requires promulgation within one year while the ADA as introduced requires promulgation not later than 240 days. The standards applicable to facilities and vehicles are to be consistent with standards which were to be promulgated by the ATBCB under the ADA in the version as introduced while such standards are to be consistent with the ATBCB's section 504 regulations in the version passed by the Senate.

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Section 305 -- Enforcement The remedies, procedures and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. sec. 794a) shall be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of the act or regulations.

Section 205 -- Enforcement The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of the act or its regulations.

Enforcement As noted previously, the enforcement sections of the ADA as introduced were among the most controversial in the bill. One of the controversies centered around language in the ADA as introduced which would have allowed suit if an individual "believes that he or she is being or **about to be** subjected to discrimination." The "about to be subjected to discrimination" language was deleted from the ADA as passed by the Senate throughout its enforcement provisions, including the title relating to public services. For a more detailed discussion of this issue see "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues," CRS Rep. No. 89-433 (July 25, 1989).

Section 206 -- Effective Date The title shall become effective regarding new fixed route vehicles on the date of enactment but for all other purposes the title shall become effective 18 months after the date of enactment.

Effective Date The effective date for the entire ADA as introduced is on the date of enactment. The provisions in the bill as passed by the Senate vary, with the effective date for new fixed route vehicles the date of enactment but for other parts of title II of the ADA as passed by the Senate the effective date is 18 months after enactment.

Title IV -- Public Accommodations and Services Operated by Private Entities
Section 401 -- Definitions

Commerce The term commerce means travel, trade, traffic, commerce, transportation, or communication among the several States or between D.C. and any State or between any foreign country or any territory or possession and any State or D.C. or between points in the same State but through another State or the District of Columbia or foreign country.

Title III -- Public Accommodations and Services Operated by Private Entities
Section 301 -- Definitions

Commerce -- The definition is substantively identical to that of the ADA as introduced.

Public Accommodations and Services Operated by Private Entities
Definitions

Commerce -- The definitions in the two versions are identical except that the ADA as passed by the Senate divides the component parts of the definition in a format that is easier to read.

Potential Places of Employment The term means facilities that are intended for nonresidential use and whose operations will affect commerce. The term does not include facilities covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S. C. sec. 3601 et seq.).

Potential Places of Employment There was concern expressed about the scope of coverage of the public accommodations section of the ADA as introduced since it covered all "potential places of employment" and the question arose concerning whether it would cover businesses run from an individual's home. The addition of the definition of "potential places of employment" to the ADA as passed by the Senate attempts to limit the reach of this section by excluding residential facilities.

**THE AMERICANS WITH DISABILITIES ACT (ADA):
A COMPARISON AND ANALYSIS OF THE BILL AS INTRODUCED
AND AS PASSED BY THE SENATE**

INTRODUCTION

The Americans with Disabilities Act, S. 933 and H.R. 2273, 101st Cong., 1st Sess., would provide broad based nondiscrimination protection for persons with disabilities in the private sector and would cover employment, public services, public accommodations, transportation, and telecommunications. The ADA originated with a proposal from the National Council on Disabilities¹ and similar legislation was introduced in the 100th Congress.² The House and Senate versions in the 101st Congress were identical as introduced but the Senate version has undergone significant changes as it was reported out of committee and as it passed the Senate.³ This report describes in chart form the provisions of the legislation as introduced and compares them to the legislation as it passed the Senate. It also analyzes the import of these changes.

The major existing federal statute prohibiting discrimination against individuals with disabilities is section 504 of the Rehabilitation Act of 1973, 29 U.S.C. sec. 794. Section 504 prohibits discrimination against an otherwise qualified individual with handicaps solely by reasons of handicap in any program or activity that receives federal financial assistance or in the executive agencies or the U.S. Postal Service. Many of the concepts used in the ADA originated in section 504 jurisprudence although section 504 and the ADA differ in several ways. The most significant difference is that section 504's prohibition of discrimination is generally tied to the receipt of federal financial assistance. The ADA would cover the private sector and contains a specific section stating that nothing in the act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under the nondiscrimination provisions of section 504.

Generally, the ADA as passed by the Senate has some significant changes from the ADA as introduced which reflect the intense negotiations over the bill. The chart attempts to examine these changes in detail but it may be helpful to briefly note some of the major differences. First, the ADA as passed by the Senate deleted the title I which was in the bill as introduced. This title had provided general guidance on the forms of discrimination prohibited and possible defenses to charges of discrimination. There was some concern that these general provisions could create new or different rights than were enumerated in the subsequent titles, thus possibly providing broader coverage than might be given by the more specific sections. Much of the language in title I is incorporated in the ADA as passed in various other parts of the legislation.

The definitions sections proved to be very controversial; perhaps most controversial was the extent to which drug addicts and alcoholics were covered by nondiscrimination provisions.⁴ As passed by the Senate, the bill clarified the coverage of active drug addicts and alcoholics and clearly stated that employers may prohibit the use of illegal drugs or alcohol at the workplace and require that employees be held to the requirements established in the Drug Free Workplace Act, 41 U.S.C. sec. 701 et seq. A similar amendment to the definitional section applicable to section 504 of the Rehabilitation Act, 29 U.S.C. sec. 794, was also made on the Senate floor. The bill as passed by the Senate also specifically added definitions of the terms "undue hardship" and "readily achievable" to alleviate concerns that these qualifications on non discrimination provisions were too nebulous and uncertain.

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The enforcement sections of the ADA as introduced were among the most controversial in the bill. Significant changes to the enforcement sections were made throughout the legislation as it passed the Senate. Generally, the version that passed would exclude awards of backpay and compensatory and punitive damages and would not allow relief for a person who "believes that he or she is...*about to be subjected to discrimination.*"⁶ For example, in the employment title, the enforcement section of the bill as introduced made the remedies and procedures available under 42 U.S.C. sec. 1981 applicable. This reference, which would have allowed a private right of action without the exhaustion of title VII administrative remedies and which would have expanded the possibility for backpay and compensatory and punitive damages, was deleted in the bill as passed by the Senate.

The transportation sections of the ADA raised considerable concern within segments of the transportation industry due to possible cost implications of potential requirements. The bill as passed by the Senate loosened some of the requirements originally contained within the ADA as introduced by, for example, increasing the time available for compliance. In addition the version as passed by the Senate contains a specific exception for the provision of paratransit where it would impose "an undue financial burden."

The scope of the public accommodations section of the ADA as introduced was the subject of disagreement among various groups. The bill as introduced had a broad general definition followed by some specific examples of types of public accommodations. It was argued that this provision was broad enough to reach even small businesses that were run from individual's homes and that a more appropriate approach would be to parallel title II of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000a, which simply listed covered entities. This second approach was taken in the bill as passed but the list of covered entities was expanded from that in title II of the Civil Rights Act to include such places as the professional offices of

health care providers. In addition to this change, certain other limitations were made in the requirements for public accommodations. For example, as passed by the Senate, the ADA contains a special section allowing for certain exceptions concerning the installation of elevators.

The ADA as passed by the Senate includes a new section in the employment title allowing a religious association to give preference in employment to individuals of a particular religion to perform work connected with the association's activities and require conformity with the religious tenets of the organization. In addition, the Senate passed version of the ADA contains a new provision regarding technical assistance and a provision applying the act to the Congress. This latter provision was described during debate on the Senate floor as possibly raising some constitutional separation of powers questions. Finally, the ADA as introduced would have been effective on the date of enactment while the ADA as passed by the Senate would be effective on various dates depending upon the particular title in question.

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(3) the imposition or application by a covered employer, employment agency, labor organization or joint labor-management committee of qualification standards, tests, selection criteria or eligibility criteria that identify or limit a qualified individual with a disability unless such standards, tests or criteria can be shown to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

(1)(C) utilizing standards, criteria or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control;

(1)(G) using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of such individuals unless the test is shown to be job related for the position in question and is consistent with business necessity;

(1)(H) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant except where such skills are the factors that the test purports to measure;

(1)(A) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(1)(B) participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title;

(1)(D) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

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Section 205 -- Enforcement

The remedies and procedures set forth in sections 706, 709 and 710 of the Civil Rights Act of 1964 and the remedies and procedures available under section 1981 shall be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of the act or its regulations concerning employment.

Section 107 -- Enforcement

The remedies and procedures set forth in section 706, 707, 709 and 710 of the Civil Rights Act of 1964 shall be available with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provision of this act or regulations concerning employment.

Enforcement

The enforcement sections of the ADA as introduced were among the most controversial in the bill. Significant changes were made in the bill as passed by the Senate. First, the bill as introduced would have incorporated the remedies of section 1981, 42 U.S.C. sec. 1981, which would have allowed a private right of action without the exhaustion of title VII administrative remedies and which would have expanded the possible use of the award of backpay and compensatory and punitive damages. The version passed by the Senate does **not** include section 1981 remedies. Similarly, the ADA as introduced would have allowed suit if an individual "believes that he or she is being or **about to be** subjected to discrimination..." The "about to be subjected to discrimination" language, which was modeled on the Fair Housing Act amendments of 1988, P.L. 100-430, was very controversial and it was alleged that it could give rise to frivolous suits. This language was deleted from the bill as passed by the Senate. Finally, the version of the ADA passed by the Senate added the coverage of section 707 of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e-6, which concerns administrative enforcement by the Commission. For a more detailed discussion of the issues relating to remedies under the ADA see "Remedies and Standing to Sue Under S. 933, the 'Americans with Disabilities Act of 1989'," CRS Rep. No. 89-336 (May 26, 1989) and "The Americans with Disabilities Act (ADA): An Overview of Selected Major Legal Issues," CRS Rep. No. 89-433 (July 25, 1989).

Section 606 -- Effective Date

The entire Act would become effective on the date of enactment.

Section 108 -- Effective Date

The effective date of the employment title is 24 months after the date of enactment.

Effective Date

The effective date for the entire ADA as introduced is on the date of enactment. The provisions in the bill as passed by the Senate vary, with the effective date for the employment provisions 24 months after enactment.

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S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Public Accommodation The term means privately operated establishments that are used by the general public as customers, clients or visitors or that are potential places of employment and whose operations affect commerce. This includes auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels and motels, terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

Public Transportation The term means transportation by bus or rail, or by an other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

Section 402 -- Prohibition of Discrimination by Public Accommodations

(a) General Rule No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

Public Accommodations The following privately operated entities are considered public accommodations for the purposes of the title if the operations of the entities affect commerce: an inn, hotel, motel or other similar place of lodging, a restaurant, bar or other establishment serving food and drink, a motion picture house, theater, concert hall, stadium or other place of exhibition or entertainment, an auditorium, convention center or lecture hall, a bakery, grocery store, clothing store, hardware store, shopping center, a laundromat, dry-cleaners, bank, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacist, insurance office, professional office of a health care provider, hospital, terminal used for public transportation, a museum, library, gallery, park, zoo, a nursery, elementary secondary, undergraduate or postgraduate private school, a day care center, senior citizen center, homeless shelter, food bank, adoption program, a gymnasium, health spa, bowling alley, golf course, or other similar establishment.

Public Transportation The definition is identical to that of the ADA as introduced.

Readily Achievable The term means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include the overall size of the covered entity, the type of operation of the covered entity, and the nature and cost of the action needed.

Section 302 -- Prohibitions of Discrimination by Public Accommodations

(a) General Rule The substantive requirements are identical.

Public Accommodation There was considerable controversy about the scope of the public accommodations provision in the ADA as introduced and it was argued that its general provisions were very broad and would cover even small businesses run from individual's homes. This approach is different from that of title II of the Civil Rights Act of 1964, 42 U.S.C. 2000a, since that act simply listed covered entities. The ADA as passed by the Senate took an approach similar to that of title II and listed covered entities although the list is more exhaustive than that of title II. One issue raised by the bill as passed by the Senate is whether nursing homes would be covered by the legislation. Such facilities are not specifically mentioned although they would probably be covered under the category of "hospital, or other similar service establishment." The Senate Report would support this argument since it indicates that the "or other similar" language is to be interpreted liberally. S. Rep. No. 116, 101st Cong., 1st Sess. at 59 (1989).

Public Transportation The two versions have identical definitions.

Readily Achievable The ADA as introduced used the term "readily achievable" but did not define it and was criticized for a lack of clarity. The ADA as passed by the Senate includes a definition of the term which draws from the "undue hardship" criteria used in section 504 regulations. See e.g., 45 C.F.R. sec. 84.12.

Prohibition of Discrimination by Public Accommodations

(a) General Rule The two versions are substantively identical although the phrasing is slightly different.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(b) Construction

(b) Construction It shall be discriminatory to subject an individual on the basis of a disability to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity; to afford such an individual an opportunity that is not equal to that afforded to other individuals; or to provide such individual with a good, service, privilege, advantage or accommodation that is different or separate from that provided to other individuals unless such action is necessary to provide a good that is as effective as that provided to others. These goods shall be afforded to an individual with a disability in the most integrated setting as appropriate to the needs of the individual. Notwithstanding the existence of separate or different programs or activities an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different. An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination against others who are subject to common administrative control. It shall be discriminatory to exclude or otherwise deny equal goods, services, privileges, advantages, and accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

General Prohibition The ADA as passed by the Senate contains several prohibitions against discrimination that have no direct parallel in title IV of the ADA as introduced. However, these sections are similar to the more general prohibitions against discrimination that were found in title I of the ADA as introduced.

The term discriminated against as used in the general rule includes: (1) the imposition or application of eligibility criteria that identify or limit an individual with a disability from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations;

The term discrimination shall include (1) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, or accommodations being offered.

The term discrimination is defined in similar ways in both the ADA as introduced and as passed by the Senate except that the version passed by the Senate contains an exception where criteria can be shown to be necessary for the provision of the goods, services, facilities, or accommodations being offered.

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S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(2) a failure to make reasonable modifications in the rules, policies, practices, etc. when such modifications may be necessary to afford such privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages and accommodations;

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in an undue burden;

(4) (a) a failure to remove architectural and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles, not including barriers that can be removed only through the retrofitting of vehicles, where such removal is readily achievable;

(4) (b) where an entity can demonstrate that removal of a barrier under subparagraph A is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(2) the failure to make reasonable modifications requirement is the same as that in the ADA as introduced.

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, or accommodation being offered or would result in an undue burden.

(4) Identical to S. 933 as introduced.

(5) Identical to S. 933 as introduced except that the provision was renumbered to subsection (v).

The provisions relating to reasonable modifications in policies are the same in the two versions of the ADA.

(3) The provisions relating to auxiliary aids are the same except that the version passed by the Senate provides an exception where an entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, or accommodation being offered.

This part of the discrimination prohibition is the same in both versions of the ADA.

This part of the discrimination prohibition is the same in both versions of the ADA.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of the act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered areas, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;

(6) With respect to a facility of part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, and where the covered entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Attorney General). The entity shall also make alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains are readily accessible, except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installations of elevators based on the usage of such facilities.

The ADA as introduced makes the requirements concerning alteration applicable one year after the date of enactment while the ADA as passed by the Senate contains no time delay for the requirements. The ADA as passed by the Senate makes certain of the requirements concerning paths of travel and bathrooms, telephones and drinking fountains applicable only where the covered entity is undertaking *major structural alterations* while the ADA as introduced has no such limitation. The ADA as passed by the Senate also requires the Attorney General to establish criteria concerning major structural alterations, and limits its requirements concerning the installation of elevators for certain facilities.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title;

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403, a failure to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and purchasing or leasing a new bus of vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of the Act, that is not readily accessible to and usable by individuals with disabilities.

Section 303. New Construction in Public Accommodations and Potential Places of Employment. As applied to a public accommodation and a potential place of employment, the term discrimination as used in section 302(a) shall mean a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title. However, this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category or such facilities requires the installation of elevators.

Entities not covered under sections 203 or 304

(B) Fixed Route Systems

It shall be considered discrimination for a covered entity that uses a vehicle for a fixed route system to transport individuals not covered under section 203 or 304 to purchase or lease a bus or vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of the act, that is not readily accessible. If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of the title that is not readily accessible, it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service equivalent to the level of service provided to the general public.

New Construction The ADA as introduced refers to a "failure to make facilities constructed for first occupancy...readily accessible." The ADA as passed by the Senate defines the term discrimination as applied to public accommodations and potential places of employment. The ADA as passed by the Senate also contains a special section allowing for exceptions concerning the installation of elevators in certain cases.

Certain entities uncovered under previous sections

Both versions of the ADA contain provisions relating to vehicles not covered under certain other sections. The ADA as introduced has a more general statement and covers vehicles carrying in excess of 12 passengers while the ADA as passed by the Senate contains more detailed standards and covers vehicles that carry in excess of 16 passengers. The ADA as passed by the Senate would provide less stringent requirements.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(C) *Demand Responsive System* As used in subsection a, the term discrimination shall include in the case of a covered entity that used vehicles in a demand responsive system to transport individuals no covered under section 203 or 304 an incident in which such entity purchase or leases a vehicle carrying 16 or less passengers after the effective date of this title, a failure to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities equivalent to the level of service provided to the general public and such entity purchases or leases a bus or vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of the act that is not readily accessible unless such entity can demonstrate that such system when viewed in its entirety already provides a level of service to individuals equivalent to that provided to the general public except that over the road buses shall be subject to section 304(b)(4) and section 305.

Section 403 Prohibition of Discrimination in Public Transportation Services Provided by Private Entities

(a) *General Rule* No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

Section 304 Prohibition of Discrimination in Public Transportation Services Provided by Private Entities

(a) *General Rule* The general rule is identical to S. 933 as introduced.

Prohibition of Discrimination in Public Transportation Services Provided by Private Entities

(a) *General Rule* The general rule prohibiting discrimination is the same in both versions.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(b) Construction -- As used in subsection (a), the term discrimination against includes

- (1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;
- (2) the failure of an entity to
 - (A) make reasonable modifications consistent with those required under section 402(b)(2);
 - (B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and
 - (C) remove barriers consistent with the requirements of section 402(b)(4); and
- (3) the purchase or lease of a new vehicle, other than an automobile, that is to be used to provide public transportation services and for which a solicitation is made later than 30 days after the date of enactment of the act, that is not readily accessible to and usable by individuals with disabilities.

(b) Construction As used in subsection (a), the term discrimination against includes

- (1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;
- (2) the failure of an entity to
 - (A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);
 - (B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and
 - (C) remove barriers consistent with the requirements of section 302(b)(2)(A)(iv)(v) and (vi); and
- (3) the purchase or lease of a new vehicle other than a automobile or an over-the-road bus that is to be used to provide public transportation services and for which a solicitation is made later than 30 days after the date of enactment of this act, that is not readily accessible to and usable by individuals with disabilities. Vehicles used in a demand response system need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.
- (4) the purchase or lease of a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment of the act for small providers and 6 years for other providers, that is not readily accessible to and usable by individuals with disabilities.

Section 305 -- Study The Office of Technology Assessment is to undertake a study to determine the access needs of individuals with disabilities to over-the-road buses and the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities. The Architectural and Transportation Barriers Compliance Board shall have an opportunity to comment on the draft study.

(b) Construction The subsections describing the construction of the phrase "discrimination against" are similar but the Senate version is more limited in scope. It refers not to the imposition of criteria that identify or limit an individual with disabilities but rather to criteria that **screen out or tend to screen out** individuals with disabilities. The ADA as introduced exempted only automobiles in subsection (3), while the Senate version exempts both automobiles and over-the-road buses and does not require vehicles used in a demand responsive system to be readily accessible if the entity can demonstrate that such system when viewed in its entirety provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public. The Senate passed version also contains a new subsection (4) which provides that discrimination includes the purchase or lease of a new inaccessible over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment for small providers and 6 years for other providers. An amendment was made by Senator Hollings on the Senate floor which changed these year figures from 6 and 5 to 7 and 6 years respectively. See 135 Cong. Rec. S10756 (daily ed. Sept. 7, 1989).

Study The ADA as passed by the Senate contains a section mandating a study of various issues relating to the accessibility of over-the-road buses. The ADA as introduced had no such provision. An amendment was made on the Senate floor by Senator Hollings which changed the authorship of the study from the ATBCB to OTA. The ATBCB is to have an opportunity to review and comment on the OTA draft. See 135 Cong. Rec. S10756 (daily ed. Sept. 7, 1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 404 -- Regulations

(a) Not later than 240 days after the date of enactment, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 403.

(b) Not later than 240 days after the date of enactment, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title.

(c) Standards included in these regulations shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

Section 306 -- Regulations

(a) Not later than 1 year after the date of enactment, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2)(B) and (C) and section 304.

(b) Not later than one year after the date of enactment, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a).

(c) Standards included in the regulations shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

Section 307 -- Exemptions for Private Clubs and Religious Organizations

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000-a(e), or to entities controlled by religious organizations, including places of worship.

Regulations The ADA as introduced required that the regulations be promulgated within 240 days, while the ADA as it passed the Senate required regulations within one year.

Exemptions for Private Clubs and Religious Organizations The ADA as introduced had no such exemption. This addition in conference was part of a compromise concerning the coverage of religious organizations.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 405 -- Enforcement

The enforcement provisions of the Fair Housing Act, 42 U.S.C. secs. 3602(i), 3613, and 3614(a) and (d), shall be available with respect to any aggrieved individual except that any reference to a discriminatory housing practice or reach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity and subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of 42 U.S.C. sec. 3613 shall not apply.

Section 606 -- Effective Date

The entire Act would become effective on the date of enactment.

Section 308 -- Enforcement

(a) General -- The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000a-3(a), shall be available to any individual who is being or is about to be discriminated against on the basis of disability. For certain violations, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title and may include the provisions of auxiliary aids, modification of a policy or the provision of alternative methods.

(b) Enforcement by the Attorney General -- The Attorney General shall investigate alleged violations and may commence a civil action where the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title. In such a civil action, the court may grant any appropriate equitable relief and may award such other appropriate relief such as monetary damages, and may assess a civil penalty in an amount not exceeding \$50,000 for a first violation and not exceeding \$100,000 for any subsequent violation.

(c) In a civil action under paragraph 1, the court, when considering the amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this act by the entity.

Section 309 -- Effective Date

The effective date of this title is 18 months after the date of enactment.

Enforcement

There are significant distinctions between the enforcement mechanisms in the ADA as introduced and as passed the Senate. The remedies under the Fair Housing Act which were referenced in the ADA as introduced are among the most stringent in civil rights law and allow for an individual to receive actual and punitive damages, a temporary or permanent injunction and such affirmative action as may be appropriate. The ADA as it passed the Senate limited the remedies available to an individual since title II of the Civil Rights Act of 1964 has not been interpreted to allow for damages. The requirements for suit by the Attorney General would be similar under the two versions of the ADA. Subsection (c) was added by an amendment from Senator Boschwitz on the Senate floor and would allow a court to take good faith attempts at compliance into consideration. See 135 Cong. Rec. S10751 (daily ed. Sept. 7, 1989).

Effective Date

The effective date for the entire ADA as introduced is on the date of enactment. The provisions in the bill it passed the Senate vary, with the effective date for the public accommodations and services operated by private entities 18 months after enactment.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

**Title V -- Telecommunications Relay Services
Section 501 -- Definitions**

Commission -- Commission means the Federal Communications Commission.

Telecommunications Relay Services

The term means services that enable simultaneous communication to take place between individuals who use TDD's or other nonvoice terminal devices and individuals who do not use such devices.

TDD

The term means a telecommunication device for the deaf, a machine that employs graphic communications in the transmission of coded signals through the nationwide telecommunications system.

**Title IV -- Telecommunications Relay Services
Section 401 -- Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals**
Title II of the Communications Act of 1934, 47 U.S.C. sec. 201 et seq., is amended by adding at the end thereof the following new section.

Telecommunications Relay Services

The term means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

TDD

The definition is identical to that in the ADA as introduced.

Common Carrier or Carrier

The term includes any common carrier engaged in interstate communication by wire or radio, any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication.

**Telecommunications Relay Services
*Telecommunications Services***

The ADA as introduced had these provisions within the ADA while the ADA as it passed the Senate would amend title II of the Communications Act of 1934. As a result the ADA as introduced contains a definition of commission while the passed version does not.

Telecommunications Relay Services

The definition in the bill as passed by the Senate appears to be broader than that in the ADA as introduced.

TDD

The definitions are identical in the two versions of the ADA.

Common Carrier or Carrier

The ADA as introduced does not define the term.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 502 -- Telecommunications Relay Services

(a) General Rule -- It shall be considered to be discrimination for any common carrier that offers telephone service to the general public to fail to provide, not later than 1 year after the date of enactment, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities that are equal to those provided to their customers who are able to use voice telephone services.

(b) State Discrimination -- It shall be considered to be discrimination by a state that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations, to fail to provide not later than one year after the date of enactment of this act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) Construction -- Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

Section 401 -- Availability of Telecommunications Relay Services

(1) In General -- The Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals.

(2) Remedies -- The same remedies, procedures, rights, and obligations that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and to common carriers engaged in both interstate and intrastate communications by wire or radio.

(3) Provision of Services -- Each common carrier shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment.

Telecommunications Relay Services

The ADA as introduced and as passed the Senate contain different approaches to the requirements relating to telecommunications relay services. As introduced, the ADA defined certain discriminatory practices while as passed by the Senate, the ADA adopts a more regulatory approach by incorporating certain specific requirements within the framework of the Communications Act of 1934. In the Senate debate, Senator Harkin added an amendment which changed the provision of services section from allowing 2 years for the full implementation of services by the carriers to 3 years. 135 Cong. Rec. S10736 (daily ed. Sept. 7, 1989).

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

Section 504 -- Regulations

Not later than 180 days after the date of enactment, the Commission shall issue regulations to carry out this title and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

Section 504 -- Enforcement

(a) Civil Actions The enforcement provisions of the Fair Housing Act, 42 U.S.C. sec. 3602(i), 3613, and 3614 (a) and (d), shall be available with respect to any aggrieved individual except that any reference to a discriminatory housing practice shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service and certain subparagraphs shall not apply.

Regulations

The Commission shall, not later than 1 year after the date of enactment, prescribe regulations to implement this section including regulations that establish functional requirements, establish minimum standards, require that telecommunications services operated every day for 24 hours, require that users pay rates no greater than the rates paid for functionally equivalent voice communication services, prohibit relay operators from refusing calls or limiting their length, or from disclosing the content of the calls or keeping records or intentionally altering a relayed conversation. The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

The Commission shall prescribe regulations governing the jurisdictional separation of costs.
If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

Enforcement

In general, the Commission shall enforce the section and the Commission shall resolve a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

Regulations

The ADA as introduced required the promulgation of regulations within 180 days after enactment while the ADA as passed by the Senate allows a year for the promulgation of regulations. The ADA version passed by the Senate is also much more detailed in its description of the requirements of the regulations. The regulations section of the ADA as it passed the Senate contains a requirement concerning technology that is similar to a requirement contained in the statutory language of the ADA as introduced. The version passed by the Senate also contains a specific undue burden exception which allows for the extension of the date for full compliance.

Enforcement

The enforcement provisions in the ADA as introduced are much more stringent than those in the ADA as passed by the Senate. The Fair Housing Act enforcement provisions are among the most strict in civil rights law and provide for private rights of action, actual and punitive damages and injunctive relief and attorneys' fees. The ADA as passed by the Senate simply provides for administrative enforcement.

S. 933 AS INTRODUCED

S. 933 AS PASSED BY THE SENATE

COMMENTS

(b) Administrative Enforcement The Commission shall enforce the provisions of the title; certain provisions of the Communications Act of 1934 shall apply; the Commission shall have the authority for cease and desist orders; and certain penalties are available. These penalties provide that any carrier or State to which the requirements apply that knowingly fails or neglects to comply with this title or of any regulations or order made by the Commission in carrying out this title shall forfeit to the United States \$10,000 for each such offense.

Certification

Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services. This documentation shall be reviewed and certified by the Commission if it meets certain requirements and such certification may be revoked in certain circumstances.

Complaint

Complaints to the Commission concerning intrastate telecommunications relay services shall be referred to the State but in certain circumstances the Commission may exercise jurisdiction,

Certification

This provision is only in the ADA as passed by the Senate.

Complaint

This provision is only in the ADA as passed by the Senate.

Title VI -- Miscellaneous Provisions

Section 601 -- Construction

(a) Rehabilitation Act of 1973

Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973, 29 U.S.C. sec. 790 et seq., or the regulations issued by Federal agencies pursuant to such title.

Title V -- Miscellaneous Provisions

Section 501 -- Construction

(a) Rehabilitation Act of 1973

This provision is identical to the ADA as introduced.

Miscellaneous Provisions

Construction

(a) Rehabilitation Act of 1973

The provisions in the two versions are identical and both provide that nothing in the ADA shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or standards applied under title V of the Rehabilitation Act of 1973.

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(b) Other Laws

Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities than are afforded by this Act.

(c) Relationship among Titles

The requirements contained in titles I through V shall be construed in a manner than is consistent with the other provisions of this Act and any apparent conflict between provisions of this Act shall be resolved by reference to the title that specifically covers the type of action in question.

(b) Other Laws

This provision is identical to the ADA as introduced.

Relationship among Titles

This is no comparable section in the ADA as passed by the Senate.

(c) Insurance

Titles I - IV of this Act shall not be construed to prohibit or restrict -- an insurer, hospital, medical service company, health maintenance organization, agent or entity that administers benefit plans, or similar organization from underwriting, classifying, or administering insurance risks that are based on or not inconsistent with State law; or a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting, classifying, or administering insurance risks that are based on or not inconsistent with state law; or a person or organization covered by this act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to state law that regulate insurance. These provisions shall not be used as a subterfuge to evade the purposes of titles I and III.

(b) Other Laws

The provisions in the two versions are identical and both provided that nothing in the ADA shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this act. Thus, the ADA would not preempt state or local laws that are more expansive in terms of coverage but acts as a floor or baseline for the law in this area.

Relationship among Titles

The ADA as introduced contained a section describing the relationship among the titles to clarify that title I which contained the general provisions would not be interpreted to be in conflict with the more specific titles. Since title I was dropped in the ADA as passed by the Senate and some of its provisions were incorporated within the other titles, this provision was also dropped in the ADA as passed by the Senate.

Insurance

The ADA as introduced had no provision relating to insurance and there were questions raised concerning whether insurance would be covered by the legislation. The provision in the ADA as passed by the Senate indicates that generally insurance is not to be covered but that insurance questions shall not be used as a subterfuge for evading the purposes of the titles on employment and public accommodations and services operated by private entities. An amendment by Senator Harkin during Senate debate added a new subsection to indicate that this section was not to be read to affect the preemption doctrine of the Employee Retirement Income Security Act of 1974. See 135 Cong. Rec. S10776 (daily ed. Sept. 6, 1989).

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Section 602 -- Prohibition Against Retaliation

No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

Section 603 -- State Immunity

A state shall not be immune under the eleventh amendment from an action in Federal court for a violation of this act. In any action against a state for a violation of the requirements of this act, remedies are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

Section 502 -- Prohibition Against Retaliation and Coercion.

(a) **Retaliation** No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

(b) **Interference, Coercion, or Intimidation** -- It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercises or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

(c) **Remedies and Procedures** The remedies and procedures available under section 106, 205, and 308 shall be available to aggrieved persons for violations of subsections (a) and (b).

Section 503 -- State Immunity

This section of the ADA as it passed the Senate is identical to the ADA as introduced.

Prohibitions Against Retaliation and Coercion

The two versions of the ADA contain identical sections on retaliation but the ADA as passed by the Senate contains additional subsections relating to interference, coercion, or intimidation and remedies which have no parallel in the ADA as introduced.

State Immunity

The Supreme Court, in *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985), indicated that the Court will require very specific statements in congressional legislation prior to determining that Congress intends to abrogate the eleventh amendment thus allowing individuals to bring suit against a state. Both versions of the ADA would include a section specifically allowing for such abrogation. See also, *Dellmuth v. Muth*, ___ S.Ct. ___ (1989).

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Section 604 -- Regulations by the Architectural and Transportation Barriers Compliance Board (ATBCB)

(a) Issuance of Guidelines Not later than 6 months after the date of enactment, the ATBCB shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for the purposes of section 304 and 404.

(b) Contents of the Guidelines The guidelines issued under subsection (a) shall establish additional requirements, consistent with this act, to ensure that buildings, facilities, and vehicle are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

Section 605 -- Attorney's Fees

In any action or administrative proceeding commenced pursuant to this act, the court or agency in its discretion may allow the prevailing party, other than the U.S., a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Section 606 -- Effective Date

The act shall become effective on the date of enactment.

Section 504 -- Regulations by the Architectural and Transportation Barriers Compliance Board

(a) Issuance of Guidelines Not later than 6 months after the date of enactment, the ATBCB shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) Contents of Guidelines This subsection is identical to the subsection in the ADA as introduced.

Section 505 -- Attorney's Fees

This section is identical to the ADA as introduced.

Effective Date

The ADA as passed by the Senate contains different effective dates for the different titles.

Section 506 -- Technical Assistance

The Attorney General is to develop and implement within 180 days of enactment a plan to assist entities in understanding the act. This plan shall be developed in consultation with several executive agencies and commissions, shall be published for public comment, provide for the implementation of the various titles, and for the making of grants and contracts.

Regulations by the Architectural and Transportation Barriers Compliance Board

This section is the same in both versions except that the version as passed by the Senate would supplement the regulations for all of the titles concerning accessibility rather than just certain sections.

Attorney's Fees

Both versions of the ADA contain provisions allowing for attorney's fees.

Effective Date

The ADA as introduced would make the entire act effective on the date of enactment while the ADA as passed by the Senate would make the act effective at various times depending on the title.

Technical Assistance

The ADA as passed by the Senate contains a section requiring the Attorney General to develop and implement a plan for technical assistance and providing for grant assistance. There is no similar provision in the ADA as introduced. This section was substantially amended and expanded upon in the Senate debate. See 135 Cong. Rec. S10778 (daily ed. Sept. 7, 1989).

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Section 507 -- Federal Wilderness Area

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System, 16 U.S.C. secs. 1131.

Section 508 -- Transvestites

An amendment by Senator Helms was passed by the Senate during its debate which provided that for the purposes of the act, the term disabled or disability shall not apply to an individual solely because that individual is a transvestite.

Section 509 -- Coverage of Congress

Notwithstanding any other provision of this act or law, the provisions of this act shall apply in their entirety to the Senate, House, and all the instrumentalities of Congress, or either House thereof.

Section 510 -- Disability and Illegal Drugs

For the purposes of this act, an individual with a disability shall not include any individual who uses illegal drugs but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs. However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

Federal Wilderness Area

This section was added by Senator Hatch as an amendment on the Senate floor and was to address the issue of whether the prohibitions on the use of forms of mechanical transport in wilderness areas discriminate against persons with disabilities. See 135 Cong. Rec. 10735 (daily ed. Sept. 7, 1989).

Transvestites

As amended on the Senate floor, the act includes an exception for transvestites. See 135 Cong. Rec. S10776 (daily ed. Sept. 7, 1989).

Coverage of Congress

This provision was offered on the floor of the Senate by Senator Grassley who described it as "very straightforward. It says that, starting today, and at long last, Congress will begin to live by the same laws it passes for others." This amendment was strenuously objected to by Senator Ford who expressed approval for the substance of the amendment but indicated that it may create constitutional separation of powers questions since the enforcement authority for the act rests with either the executive or judicial branches. See 135 Cong. Rec. S10780 (daily ed. September 7, 1989).

Disability and Illegal Drugs

This provision was added by an amendment from Senator Humphrey on the Senate floor. In a colloquy between Senator Harkin and Senator Humphrey, Senator Harkin indicated that he felt that the language in this amendment "did what we did in the beginning...we will accept this language to allay any fears, apprehensions, or misgivings ..." See 135 Cong. Rec. S10785 (daily ed. Sept. 7, 1989).

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Section 511 -- Disability, Sexual Preferences, and Sexual and other Disorders

The term disability does not include homosexuality, bisexuality, transvestism, pedophilia, transsexualism, exhibitionism, voyeurism, compulsive gambling, kleptomania, pyromania, gender identity disorders, current psychoactive substance use disorders, current psychoactive substance-induced organic mental disorders as defined by DSM III-R which are not the result of medical treatment or other sexual behavior disorders.

Section 512 -- Amendment to the Definition of Handicapped Individual in the Rehabilitation Act, 29 U.S.C. sec. 706(8)(B)

The term individual with a handicap does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services. For the purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. For purposes of sections 503 and 504 of this act as such sections relate to employment, the term individual with handicaps does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse would constitute a direct threat to property or the safety of others. A new term is also added to the definitions in the Rehabilitation Act. The term illegal drugs means controlled substances as defined in schedules I - V, 21 U.S. C. sec. 812 and does not mean the use of a controlled substance pursuant to a valid prescription or other uses.

Disability, Sexual Preferences, and Sexual and other Disorders

This provision was added by an amendment from Senator Armstrong on the Senate floor. During a colloquy between Senator Harkin and Senator Armstrong, Senator Harkin indicated that he did not feel that this amendment was necessary. See 135 Cong. Rec. S10785 (daily ed. Sept. 7, 1989).

Amendment to the Definition of Handicapped Individual under the Rehabilitation Act of 1973, 29 U.S.C. sec. 706(8)(B)

This provision would amend the definitional section of the Rehabilitation Act to make it similar in coverage regarding illegal drugs to the ADA. It was added on the Senate floor by Senator Helms and there was no comparable provision in the ADA as introduced. See 135 Cong. Rec. S10780 (daily ed. Sept. 7, 1989).

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COMMENTS

Section 513 -- Severability Clause

Should any provision of this act be found to be unconstitutional, such provision shall be severed from the remainder of the act, and any such action shall not affect the enforceability of the remaining provisions of the act.

Severability Clause

This provision was added by an amendment from Senator Harkin on the Senate floor. There is no comparable provision in the ADA as introduced. See 135 Cong. Rec. S10788 (daily ed. Sept. 7, 1989).


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