

100TH CONGRESS  
1ST SESSION

S. \_\_\_\_\_

\_\_\_\_\_  
IN THE SENATE OF THE UNITED STATES

Mr. WEICKER introduced the following bill; which was read twice and referred  
to the Committee on \_\_\_\_\_

\_\_\_\_\_

## A BILL

To establish a clear and comprehensive prohibition of  
discrimination on the basis of handicap.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assem-*  
3 *bled,*

## 4 SECTION 1. SHORT TITLE.

5 This Act may be cited as the "Americans with Dis-  
6 abilities Act of 1987".

## 7 SEC. 2. FINDINGS AND PURPOSES.

8 (a) FINDINGS.—Congress finds that—

9 (1) some 36,000,000 Americans have one or  
10 more physical or mental disabilities, and this number

1 is increasing as the population as a whole is growing  
2 older;

3 (2) historically, society has tended to isolate and  
4 segregate persons with disabilities, and, despite some  
5 improvements, discrimination against persons with  
6 disabilities continues to be a serious and pervasive  
7 social problem;

8 (3) discrimination against persons with disabili-  
9 ties persists in such critical areas as employment,  
10 housing, public accommodations, education, trans-  
11 portation, recreation, institutionalization, health serv-  
12 ices, voting, and access to public services;

13 (4) every day, people with disabilities encounter  
14 various forms of discrimination, including outright,  
15 intentional exclusion, architectural, transportation,  
16 and communication barriers, overprotective rules and  
17 policies, refusal to make modifications to existing fa-  
18 cilities and practices, exclusionary qualification  
19 standards and criteria, segregation, and relegation to  
20 lesser services, programs, activities, benefits, jobs, or  
21 other opportunities;

22 (5) census data, national polls, and other studies  
23 have documented that people with disabilities, as a  
24 group, occupy an inferior status in our society, and

1 are severely disadvantaged socially, vocationally,  
2 economically, and educationally;

3 (6) persons with disabilities are a discrete and  
4 insular minority who have been saddled with restric-  
5 tions and limitations, subjected to a history of pur-  
6 poseful unequal treatment, and relegated to a posi-  
7 tion of political powerlessness in our society, based  
8 on characteristics that are beyond the control of such  
9 persons and resulting from stereotypic assumptions  
10 not truly indicative of the individual ability of such  
11 persons to participate in, and contribute to, society;

12 (7) the Nation's proper goals regarding persons  
13 with disabilities are to assure equality of opportunity,  
14 full participation, independent living, and, wherever  
15 possible, economic self-sufficiency for such citizens;  
16 and

17 (8) the continuing existence of unfair and un-  
18 necessary barriers, discrimination, and prejudice  
19 denies people with disabilities the opportunity to  
20 compete on an equal basis and to pursue those op-  
21 portunities for which our free society is justifiably  
22 famous, and costs the United State billions of dollars  
23 in unnecessary expenses resulting from dependency  
24 and nonproductivity.

25 (b) PURPOSE.—It is the purpose of this Act—

1 (1) to provide a clear and comprehensive Na-  
2 tional mandate for the elimination of discrimination  
3 against persons with disabilities;

4 \* (2) to provide a prohibition of discrimination  
5 against persons with disabilities parallel in scope of  
6 coverage with that afforded in statutes prohibiting  
7 discrimination on the basis of race, sex, national  
8 origin, and religion;

9 (3) to provide clear, strong, consistent, enforcea-  
10 ble standards addressing discrimination against per-  
11 sons with disabilities; and

12 (4) to invoke the sweep of congressional author-  
13 ity, including its power to enforce the fourteenth  
14 amendment, to regulate commerce, and to regulate  
15 interstate transportation, in order to address the  
16 major areas of discrimination faced day-to-day by  
17 people with disabilities.

18 SEC. 3. DEFINITIONS

19 For purposes of this Act:

20 (1) ON THE BASIS OF HANDICAP.—The term “on  
21 the basis of handicap” means because of a physical  
22 or mental impairment, perceived impairment, or  
23 record of impairment.

24 (2) PHYSICAL OR MENTAL IMPAIRMENT.—The  
25 term “physical or mental impairment” means—

*Housing?*

1 (A) any physiological disorder or condi-  
2 tion, cosmetic disfigurement, or anatomical loss  
3 affecting one or more of the following body  
4 systems:

- 5 (i) the neurological system;  
6 (ii) the musculoskeletal system;  
7 (iii) the special sense organs, and res-  
8 piratory organs, including speech organs;  
9 (iv) the cardiovascular system;  
10 (v) the reproductive system;  
11 (vi) the digestive and genitourinary  
12 systems;  
13 (vii) the hemic and lymphatic systems;  
14 (viii) the skin; and  
15 (ix) the endocrine system; or

16 (B) any mental or psychological disorder,  
17 such as mental retardation, organic brain syn-  
18 drome, emotional or mental illness, and specific  
19 learning disabilities.

20 (3) PERCEIVED IMPAIRMENT.—The term “per-  
21 ceived impairment” means not having a physical or  
22 mental impairment as defined in paragraph (2), but  
23 being regarded as having or treated as having a  
24 physical or mental impairment.

1 (4) RECORD OF IMPAIRMENT.—The term “record  
2 of impairment” means having a history of, or having  
3 been misclassified as having, a physical or mental  
4 impairment.

5 (5) REASONABLE ACCOMMODATION.—The term  
6 “reasonable accommodation” means providing or  
7 modifying devices, services, or facilities, or changing  
8 standards, criteria, practices, or procedures for the  
9 purpose of responding to the specific functional  
10 abilities of a particular person with a physical or  
11 mental impairment, perceived impairment, or record  
12 of impairment in order to provide an equal opportu-  
13 nity to participate effectively in a particular program,  
14 activity, job, or other opportunity.

15 SEC. 4. SCOPE OF DISCRIMINATION PROHIBITED.

16 (a) IN GENERAL.—No person shall be subjected to dis-  
17 crimination on the basis of handicap in regard to—

18 (1) employer practices, employment agency  
19 practices, labor organization practices, and training  
20 programs covered by title VII of the Civil Rights  
21 Act of 1964;

22 2. (2) the sale or rental of housing covered by title  
23 VIII of the Civil Rights Act of 1968;

24 (3) any public accommodation covered by title  
25 II of the Civil Rights Act of 1964;

*Who are covered  
by Civil Rights Act of 64  
+ 68.*

1 (4) transportation services rendered by a person,  
2 company, or agency engaged in the principal busi-  
3 ness of interstate transportation of persons, goods,  
4 documents, or data; and

5 (5) the actions, practices, and operations of a  
6 State, or agency or political subdivision of a State.

7 (b) CONSTRUCTION.—

8 (1) REHABILITATION ACT.—Nothing in this Act  
9 shall be construed to effect or change the nondis-  
10 crimination provisions contained in Title V of the  
11 Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.),  
12 or to effect or change regulations issued by Federal  
13 agencies pursuant to title V of such Act.

14 (2) OTHER LAWS.—Nothing in this Act shall be  
15 construed to invalidate or limit any other Federal law  
16 or any law of a State or political subdivision of a  
17 State, or jurisdiction that provides greater protection  
18 or rights for persons with physical or mental impair-  
19 ments, perceived impairments, or records of impair-  
20 ment than are afforded by this Act.

21 **SEC. 5. FORMS OF DISCRIMINATION PROHIBITED.**

22 (a) IN GENERAL.—Subject to the standards and proce-  
23 dures established in sections 6 through 9 of this Act, the  
24 actions or omissions described in this subsection constitute  
25 discrimination on the basis of handicap.

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS,  
JOBS, OR OTHER OPPORTUNITIES.—

(A) IN GENERAL.—It shall be discriminatory  
to subject a person, directly or through contrac-  
tual, licensing, or other arrangements, on the  
basis of handicap, to any of the following:

(i) Denial of the opportunity to par-  
ticipate in or benefit from a service, pro-  
gram, activity, benefit, job, or other oppor-  
tunity.

(ii) Affording a person an opportunity  
to participate in or benefit from a service,  
program, activity, benefit, job, or other op-  
portunity that is not equal to that afforded  
others.

(iii) Providing a person with a service,  
program, activity, benefit, job, or other op-  
portunity that is less effective than that  
provided to others.

(iv) Providing a person with a service,  
program, activity, benefit, job, or other op-  
portunity that is different or separate,  
unless such action is necessary to provide  
the person with a service, program, activi-

*Def. of  
service, program,  
activity, benefit,  
other opportunity.*

*insurance*

1 ty, benefit, job, or other opportunity that is  
2 as effective as that provided to others.

3 (v) Aiding or perpetuating discrimina-  
4 2. tion by providing significant assistance to  
5 an agency, organization, or person that dis-  
6 criminate.

7 (vi) Denying a person the opportunity  
8 to participate as a member of planning or  
9 advisory boards.

10 (vii) Otherwise limiting a person in  
11 2. the enjoyment of any right, privilege, ad-  
12 vantage, or opportunity enjoyed by others.

13 (B) LEVELS OF ACHIEVEMENT.—For pur-  
14 poses of this section, services, programs, activi-  
15 ties, benefits, jobs, or other opportunities to be  
16 equally effective, are not required to produce  
17 the identical result or level of achievement for  
18 persons with physical and mental impairments,  
19 perceived impairments, or records of impair-  
20 ment, and persons without such impairments,  
21 but such services, programs, activities, benefits,  
22 jobs, or other opportunities shall afford persons  
23 with such impairments an equal opportunity to  
24 obtain the same result, to gain the same bene-  
25 fits, or to reach the same level of achievement.

1 in the most integrated setting appropriate to the  
2 needs of the person.

3 (C) OPPORTUNITY TO PARTICIPATE.—Not-  
4 withstanding the existence of separate or differ-  
5 ent programs or activities provided in accord-  
6 ance with this section, a person with a physical  
7 or mental impairment, perceived impairment, or  
8 record of impairment shall not be denied the  
9 opportunity to participate in such programs or  
10 activities that are not separate or different.

11 (D) ADMINISTRATIVE METHODS.—A person,  
12 company, or agency may not, directly or  
13 through contractual or other arrangements, uti-  
14 lize criteria or methods of administration—

15 (i) that have the effect of discrimina-  
16 tion on the basis of handicap;

17 (ii) that have the purpose or effect of  
18 defeating or substantially impairing the ac-  
19 complishment of the objectives of the serv-  
20 ices, programs, activities, benefits, jobs, or  
21 other opportunities provided with respect to  
22 persons with physical or mental impair-  
23 ments, or records of impairments; or

24 (iii) that perpetuate the discrimination  
25 of others who are subject to common ad-

1                   ministrative control or are agencies of the  
2                   same State.

3                   (2) BARRIERS.—It shall be discriminatory—

4                   (A) to establish or impose; or

5                   (B) to fail or refuse to remove;

6                   any architectural, transportation, or communication  
7                   barriers that prevent or limit the access or participa-  
8                   tion of persons on the basis of handicap.

9                   (3) ACCOMMODATION.—It shall be discriminato-  
10                  ry to fail or refuse to make a reasonable accommo-  
11                  dation to permit an individual with a physical or  
12                  mental impairment, perceived impairment, or record  
13                  of impairment to apply, have access to, or participate  
14                  in a program, activity, job, or other opportunity.

15                  (4) STANDARDS AND CRITERIA.—It shall be dis-  
16                  criminatorily to impose or apply any qualification  
17                  standards, selection criteria, or eligibility criteria  
18                  that—

19                  (A) screen out or disadvantage an individ-  
20                  ual because of a physical or mental impairment,  
21                  perceived impairment, or record of impairment;  
22                  or

23                  (B) disproportionately screens out or disad-  
24                  vantages persons with particular types of physi-

*transportation  
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responsibility for  
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They are not under his  
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*Retrofitting?*

1 cal or mental impairments, perceived impair-  
2 ments, or record of impairments;

3 unless such criteria or standards can be shown to be  
4 necessary and substantially related to ability to per-  
5 form or participate in essential components of the  
6 particular service, program, activity, benefit, job, or  
7 other opportunity.

8 (5) RELATIONSHIPS OR ASSOCIATIONS.—It shall  
9 be discriminatory to exclude or otherwise deny equal  
10 services, programs, activities, benefits, jobs, or other  
11 opportunities to a person because of the relationship  
12 to, or association of, that person with another person  
13 that has a physical or mental impairment, perceived  
14 impairment, or record of impairment.

15 (b) ACTIONS NOT DISCRIMINATORY.—It shall not be  
16 considered to be discrimination on the basis of handicap to  
17 exclude or otherwise deny equal services, programs, activi-  
18 ties, benefits, jobs, or other opportunities to a person—

19 (1) for reasons wholly unrelated to the existence  
20 of or consequences of a physical or mental impair-  
21 ment, perceived impairment, or record of impair-  
22 ment;

23 (2) based on a legitimate application of qualifi-  
24 cation standards, selection criteria, performance  
25 standards, or eligibility criteria that are both neces-

1 sary and substantially related to the ability to per-  
2 form or participate in the essential components of  
3 the particular job, program, activity, or opportunity,  
4 and such performance or participation cannot be ac-  
5 complished by a reasonable accommodation; or

6 (3) by operating a program or activity that pro-  
7 vides services, programs, activities, benefits, jobs, or  
8 other opportunities designed for and rendered to per-  
9 sons with particular physical or mental impairments  
10 or types of impairments.

11 SEC. 6. DISCRIMINATION IN HOUSING.

12 (a) IN GENERAL.—Notwithstanding the requirements  
13 of section 5(a), it shall be an act of discrimination in  
14 regard to housing—

15 (1) to discriminate in the sale or rental, or to  
16 otherwise make unavailable or deny, a dwelling to  
17 any buyer or renter because of a physical or mental  
18 impairment, perceived impairment, or record of im-  
19 pairment of—

20 (A) such buyer or renter;

21 (B) a person residing in or intending to  
22 reside in such dwelling after it is sold, rented,  
23 or made available; or

24 (C) any person associated with such buyer  
25 or renter; and

1 (2) to discriminate against any person in the  
2 terms, conditions, or privileges of the sale or rental  
3 of a dwelling, or in the provision of services or fa-  
4 cilities in connection with such dwelling, because of  
5 a physical or mental impairment, perceived impair-  
6 ment, or record of impairment of—

7 (A) such person;

8 (B) a person residing in or intending to  
9 reside in such dwelling after it is so sold,  
10 rented, or made available; or

11 (C) any person associated with such  
12 person.

13 (b) REMOVAL OF BARRIERS IN HOUSING.—For pur-  
14 poses of subsection (a), discrimination includes—

15 (1) a refusal to permit, at the expense of a  
16 person with a physical or mental impairment, per-  
17 ceived impairment, or record of impairment, reasona-  
18 ble modifications of existing premises occupied, or  
19 to be occupied, by such person if such modifications  
20 may be necessary to afford such person full enjoy-  
21 ment of the premises;

22 (2) a refusal to make reasonable accommoda-  
23 tions in rules, policies, practices, or services, when  
24 such accommodations may be necessary to afford

*Common areas?*

1 such person equal opportunity to use and enjoy a  
2 dwelling; or

3 (3) a failure to design and construct qualified  
4 multifamily dwellings for first occupancy after the  
5 date that is 30 months after the date of enactment of  
6 this Act, in such a manner that—

7 (A) the public and common use portions of  
8 such dwelling are readily accessible to, and  
9 usable by, persons with physical and mental im-  
10 pairments;

11 (B) all the doors into and within all prem-  
12 ises within such dwellings are sufficiently wide  
13 to allow passage by persons in wheelchairs; and

14 (C) all premises within such dwellings con-  
15 tain basic universal features of adaptive design.

16 (c) DEFINITION.—As used in this section the term  
17 “qualified multifamily dwellings” means—

18 (1) buildings consisting of two or more units if  
19 such buildings have one or more elevators; and

20 (2) those units in other buildings consisting of  
21 two or more units that are on the ground floor.

22 SEC. 7. LIMITATIONS ON THE DUTIES OF ACCOMMODATION AND  
23 BARRIER REMOVAL.

24 (a) EXISTENCE THREATENING ALTERATIONS.—

1 (1) IN GENERAL.—The failure or refusal to  
2 remove architectural, transportation, and communica-  
3 tion barriers, and to make reasonable accommoda-  
4 tions, required under section 5(a) shall not constitute  
5 an unlawful act of discrimination on the basis of  
6 handicap if such barrier removal or accommodation  
7 would fundamentally alter the essential nature, or  
8 threaten the existence of the program, activity, busi-  
9 ness, or facility in question.

10 (2) OTHER ACTION.—In the event that barrier re-  
11 moval is not required because it would result in a  
12 fundamental alteration or threaten the existence of a  
13 program, activity, business, or facility, there shall  
14 continue to be a duty to conform to other require-  
15 ments of this Act and to take such other actions as  
16 are necessary to make a program, activity, or service,  
17 when viewed in its entirety, readily accessible to and  
18 usable by persons with physical and mental impair-  
19 ments, perceived impairments, or record of impair-  
20 ments.

21 (b) TIME FOR ALTERATIONS.—

22 (1) IN GENERAL.—If substantial modifications to  
23 existing buildings and facilities are necessary in  
24 order to remove architectural, transportation, and  
25 communication barriers, as required under section

*Rather high  
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1       5(a), such modifications shall, unless required earlier  
2       by other law or regulation, be made within a reason-  
3       able period of time, not to exceed 2 years from the  
4       date of enactment of this Act.

5               (2) EXCEPTION.—Regulations promulgated pur-  
6       suant to section 8 of this Act may allow up to 5  
7       years from the date of enactment of this Act where  
8       reasonably necessary for the completion of such  
9       modifications to particular classes of buildings and  
10      facilities.

11      (c) MASS TRANSPORTATION.—

12              (1) IN GENERAL.—If substantial modifications to  
13      existing platforms and stations of mass transportation  
14      systems are necessary in order to remove architectur-  
15      al, transportation, and communication barriers, as re-  
16      quired under section 5(a), regulations promulgated  
17      pursuant to section 8 of this Act may, unless re-  
18      quired earlier by other law or regulation, allow a rea-  
19      sonable period of time, in no event to exceed 10  
20      years from the date of enactment of this Act, for  
21      such modifications to be made.

22              (2) AFFECT.—Paragraph (1) shall not affect the  
23      duty of providers of transportation services to con-  
24      form to other requirements of this Act, including the  
25      requirement of removing other types of architectural,

1 transportation, and communication barriers, and the  
2 application of such requirements to vehicles and roll-  
3 ing stock.

4 **SEC. 8. REGULATIONS.**

5 (a) **ARCHITECTURAL AND TRANSPORTATION BARRIERS**  
6 **COMPLIANCE BOARD.**—Within 6 months of the date of en-  
7 actment of this Act, the Architectural and Transportation  
8 Barriers Compliance Board shall issue minimum guide-  
9 lines, to supplement the existing Minimum Guidelines and  
10 Requirements for Accessible Design, to establish standards  
11 for the architectural, transportation, and communication  
12 accessibility of buildings, facilities, vehicles, and rolling  
13 stock subject to the requirements of this Act.

14 (b) **ATTORNEY GENERAL.**—

15 (1) **IN GENERAL.**—Within 1 year of the date of  
16 enactment of this Act, the Attorney General shall  
17 promulgate regulations for the implementation and  
18 enforcement of the requirements of this Act as it ap-  
19 plies to States and agencies and political subdivi-  
20 sions of States.

21 (2) **MINIMUM GUIDELINES.**—The Attorney Gen-  
22 eral of the United States shall coordinate the timely  
23 development of regulations required under this sec-  
24 tion and shall issue, within six months of the effec-

1       tive date of this Act, minimum guidelines for the de-  
2       velopment of such regulations.

3       (c) EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.—

4           (1) EMPLOYER PRACTICES.—

5               (A) IN GENERAL.—Within 1 year of the  
6       date of enactment of this Act, the Equal Em-  
7       ployment Opportunity Commission shall pro-  
8       mulgate regulations for the implementation and  
9       enforcement of the requirements of this Act as  
10      it applies to employer practices.

11            (B) PROHIBITIONS.—The regulations pro-  
12      mulgated under subparagraph (A) shall prohibit  
13      discrimination in regard to job application pro-  
14      cedures, the hiring and discharge of employees,  
15      employee compensation, job training, and other  
16      terms, conditions, and privileges of employ-  
17      ment.

18            (2) REQUIREMENTS.—The regulations promulgat-  
19      ed under subparagraph (A) shall include, for all cov-  
20      ered employers having 15 or more employees, a re-  
21      quirement of outreach and recruitment efforts to in-  
22      crease the work force representation of individuals  
23      with physical or mental impairments, or records of  
24      impairments, and shall establish a process and time-  
25      liness for the development, implementation, and peri-

1       odic revision of such outreach and recruitment ef-  
2       forts.

3               (3) PREEMPLOYMENT INQUIRIES.—

4               (A) IN GENERAL.—The regulations promul-  
5       gated under paragraph (1)(A) shall include a re-  
6       quirement that employers may not conduct a  
7       preemployment medical examination and may  
8       not make a preemployment inquiry of an appli-  
9       cant as to whether such applicant has a physical  
10      or mental impairment, perceived impairment, or  
11      record of impairment, or as to the nature or se-  
12      verity of such impairment.

13              (B) PERMITTED INQUIRIES.—An employer—

14              (i) may make a preemployment in-  
15      quiry into the ability of an applicant to sat-  
16      isfy legitimate qualifications standards, se-  
17      lection criteria, performance standards, or  
18      eligibility criteria as permitted under sec-  
19      tion 5(b)(2);

20              (ii) may condition an offer of employ-  
21      ment on the results of a medical examina-  
22      tion conducted prior to the entrance to duty  
23      of the applicant, if—

24              (I) all entering applicants are sub-  
25      jected to such an examination regard-

1 less of physical or mental impairment,  
2 perceived impairment, or record of  
3 impairment; and

4 (II) the results of such an exami-  
5 nation are used only in accordance  
6 with the requirements of this section;

7 (iii) taking remedial action to correct  
8 the effects of past discrimination, or en-  
9 gaged in outreach and recruitment efforts  
10 to increase the participation of persons  
11 with physical or mental impairments, may  
12 invite employment applicants to indicate  
13 whether, and to what extent, such appli-  
14 cants have a physical or mental impair-  
15 ment, if—

16 (I) the employer states clearly on  
17 any written questionnaire used for em-  
18 ployment purposes, or makes clear  
19 orally if no written questionnaire is  
20 used, that the information requested is  
21 intended for use solely in connection  
22 with such remedial action or outreach  
23 and recruitment activities; and

24 (III) the employer states clearly  
25 that the information is being requested

1 on a voluntary basis, that such infor-  
2 mation will be kept confidential as  
3 provided in subparagraph (C), that re-  
4 fus<sup>2</sup>al to provide such information will  
5 not subject the applicant to any ad-  
6 verse treatment, and that such infor-  
7 mation will be used only in accord-  
8 ance with the requirements of this sec-  
9 tion.

10 (C) CONFIDENTIALITY.—Information, as to  
11 the medical condition or history of the appli-  
12 cant, obtained in accordance with this paragraph  
13 shall be collected and maintained on separate  
14 forms that shall be accorded the same confiden-  
15 tiality as are medical records, except that—

16 (i) supervisors and managers may be  
17 informed of restrictions on the work or  
18 duties of persons with physical or mental  
19 impairments and of necessary accommoda-  
20 tions for such persons;

21 (ii) first aid and safety personnel may  
22 be informed, where appropriate, if such a  
23 condition may require emergency treat-  
24 ment; and

1 (iii) government officials investigating  
2 compliance with this Act shall be provided  
3 with relevant information on request.

4 (d) SECRETARY OF HOUSING AND URBAN DEVELOP-  
5 MENT.—Within 1 year of the date of enactment of this Act,  
6 the Secretary of Housing and Urban Development shall  
7 promulgate regulations for the implementation and en-  
8 forcement of the requirements of this Act as it applies to  
9 sellers, landlords, and other providers of housing.

10 (e) SECRETARY OF TRANSPORTATION.—

11 (1) IN GENERAL.—Within 1 year of the date of  
12 enactment of this Act, the Secretary of Transporta-  
13 tion shall promulgate regulations for the implementa-  
14 tion and enforcement of the requirements of this Act  
15 as it applies to State and local transit systems and to  
16 those engaged in the business of interstate transpor-  
17 tation.

18 (2) STANDARDS.—The regulations promulgated  
19 under paragraph (1) shall include standards regarding  
20 the accessibility of vehicles and rolling stock that are  
21 consistent with the requirements of paragraph (3).

22 (3) REQUIREMENTS.—With respect to State and  
23 local transit systems, rail and light rail services, and  
24 bus companies, the standards issued under paragraph  
25 (2) shall—

1 (A) insure that all vehicles or rolling stock  
2 that are purchased, leased, renovated, or other-  
3 wise placed into service after the date of enact-  
4 ment of this Act shall be accessible to and  
5 usable by persons with physical or mental im-  
6 pairments, including wheelchair users;

7 (B) permit a reasonable period of time, not  
8 to exceed 7 years, for such transportation opera-  
9 tors to purchase, acquire, or modify sufficient  
10 vehicles and rolling stock so that the peak fleet  
11 of such operators has at least 50 percent of the  
12 vehicles and rolling stock that are accessible to  
13 and usable by persons with physical or mental  
14 impairments, including wheelchair users; and

15 (C) insure that the use of paratransit and  
16 other specialized transportation services for per-  
17 sons with physical or mental impairments shall  
18 be used as a supplement to other forms of trans-  
19 portation, but shall not affect the requirement  
20 that transportation systems and services avail-  
21 able to members of the public shall be accessi-  
22 ble to and usable by persons with physical or  
23 mental impairments, including wheelchair users.

24 (f) SECRETARY OF COMMERCE.—Within 1 year of the  
25 date of enactment of this Act, the Secretary of Commerce

50% in  
7 years.

1 shall promulgate regulations for the implementation and  
2 enforcement of the requirements of this Act as it applies to  
3 places of public accommodation.

4 SEC. 9. ENFORCEMENT.

5 (a) ADMINISTRATIVE ACTIONS.—

6 (1) IN GENERAL.—Any person who believes that  
7 he or she or any specific class of individuals is being  
8 or is about to be subjected to discrimination on the  
9 basis of handicap in violation of this Act, shall have  
10 a right, by himself or herself, or by a representative,  
11 to pursue such administrative enforcement proce-  
12 dures and remedies as are available in connection  
13 with the regulations issued pursuant to section 8 of  
14 this Act.

15 (2) REMEDY.—Agencies enforcing such regula-  
16 tions shall have the authority to order all appropriate  
17 remedial relief, including compliance orders, cutoff  
18 of Federal funds, rescission of Federal licenses, mon-  
19 etary damages, and back pay.

20 (b) CIVIL ACTIONS.—

21 (1) RIGHT TO FILE.—Any person who believes  
22 that he or she or any specific class of individuals is  
23 being or is about to be subjected to discrimination  
24 on the basis of handicap in violation of this Act,  
25 shall have a right, by himself or herself, or by a rep-

1       representative, to file a civil action for injunctive relief,  
2       monetary damages, or both in a district court of the  
3       United States.

4               (2) ADMINISTRATIVE ENFORCEMENT.—The ex-  
5       haustion of administrative enforcement procedures  
6       and remedies as contemplated in section 9(a) shall  
7       not be a prerequisite to the filing of a civil action  
8       under this subsection, except in regard to employer  
9       practices, employment agency practices, labor orga-  
10      nization practices, and training programs, covered by  
11      section 4(a)(1) of this Act, for which such exhaus-  
12      tion shall be required unless—

13               (A) administrative enforcement procedures  
14              and remedies as contemplated in section 9(a)  
15              are not available; or

16               (B) such enforcement procedures are not  
17              concluded within 180 days after the filing of a  
18              complaint of discrimination prohibited under  
19              this Act.

20               (c) ADDITIONAL EVIDENCE.—In any action brought  
21      under this section, the court shall receive the records of the  
22      administrative proceedings, shall hear additional evidence  
23      at the request of a party, and, basing its decision on the  
24      preponderance of the evidence, shall grant such relief as  
25      the court determines is appropriate.

1 (d) JURISDICTION.—The district courts of the United  
2 States shall have jurisdiction of actions brought under this  
3 Act without regard to the amount in controversy.

4 (e) IMMUNITY.—A State shall not be immune under  
5 the eleventh amendment to the Constitution of the United  
6 States from suit in Federal court for a violation of this Act.  
7 In a suit against a State for a violation of the requirements  
8 of this Act, remedies (including remedies both at law and  
9 in equity) are available for such a violation to the same  
10 extent as such remedies are available for such a violation  
11 in a suit against any public or private entity other than a  
12 State.

13 (f) ATTORNEY'S FEES.—In any action or administra-  
14 tive proceeding commenced pursuant to this section, the  
15 court, or agency, in its discretion, may allow the prevailing  
16 party, other than the United States, a reasonable attorney's  
17 fee in addition to costs, and the United States shall be  
18 liable for costs the same as a private person.

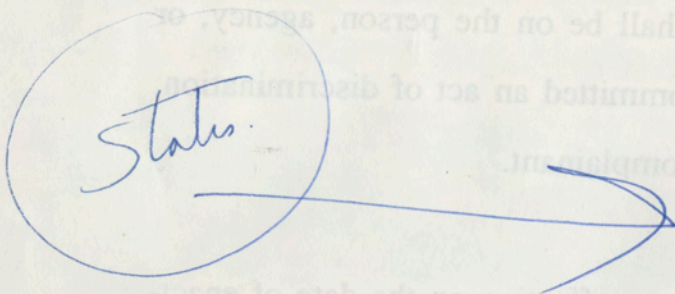
19 (g) BURDEN OF PROOF.—In any administrative pro-  
20 ceeding or civil action brought under this Act, the burden  
21 of proving the legitimacy of any qualifications standard,  
22 selection criteria, or eligibility criteria at issue in a case,  
23 and of proving the defense that a particular reasonable ac-  
24 commodation or removal of an architectural, transporta-  
25 tion, or communication barrier would fundamentally alter

1 or threaten the existence of the program, activity, business,  
2 or facility in question, shall be on the person, agency, or  
3 entity alleged to have committed an act of discrimination,  
4 and shall not be on the complainant.

5 **SEC. 10. EFFECTIVE DATE.**

6 This Act shall become effective on the date of enact-  
7 ment.

States.



Fed.