

QUESTIONS & ANSWERS ABOUT THE CHAPMAN AMENDMENT

What is the Chapman amendment?

The Chapman amendment to the Americans with Disabilities Act (ADA) would allow persons with "infectious diseases of public health significance" to be excluded from food-handling jobs.

What is the significance of this amendment?

The National Restaurant Association and the National Federation of Independent Businesses are pushing this amendment to license discrimination against people with AIDS based only on fears -- when the whole purpose of the ADA is to end this kind of irrational discrimination. The ADA prohibits discrimination against disabled people (including those with AIDS) in employment, public accommodations, and public services.

Is the Chapman amendment needed for medical reasons?

No. The ADA already protects the public from real health risks, by providing that disabled persons -- including those with an infectious disease -- can be excluded from situations where they would "pose a direct threat" to the health and safety of others. For instance, under the ADA, someone with an infectious disease that can be spread through food -- like infectious hepatitis or typhoid -- could be removed from a food-handling position.

The Chapman amendment, however, allows employers to target food workers with infectious diseases that cannot be transmitted through food -- such as Lyme disease, toxic shock or AIDS. Every medical authority in the country has concluded that AIDS cannot be spread through food, water or daily contact. Food-handling workers with these diseases do not pose a health risk to the public.

What would be the results of the Chapman amendment?

The amendment is drafted so broadly it would encourage arbitrary dismissals of food-handlers in many industries. The amendment does not establish any medical standards -- leaving employers and workers to litigate the meaning of terms like "public health significance."

The amendment resurrects groundless fears that AIDS can be spread through food, undermining years of public education efforts meant to calm people's fears about the disease.

Why then is the NRA supporting this amendment?

The National Restaurant Association admits that the Chapman amendment is discriminatory. They know that AIDS cannot be spread through food. But they contend that the amendment is needed for business reasons. Some restaurants have closed, they say, because customers fear AIDS.

This is a specious argument. There is no evidence that any restaurant has ever closed because of the fear of AIDS. The debates in Congress have cited only one case where that is alleged to have happened -- to a nameless restaurant in Milwaukee.

It is interesting to note that the National Restaurant Association took a similar stand in 1963 in opposition to the Civil Rights Act. Then, they asserted that extending civil rights to minorities would "only result in the elimination of free enterprise and of the rights and freedom of all citizens."

Doesn't the amendment protect employees from being fired?

No. This is an illusory claim by the amendment's proponents. Although the amendment states that employers will make a "reasonable accommodation" to "transfer" employees to other positions, what does this really mean? Where would a restaurant transfer a chef? To a dishwasher position for the same pay? If no position exists, would a restaurant invent a new one?

The Restaurant Association admits that this so-called transfer protection is limited by the "undue hardship" section of the bill. Since most employers in the food service industry are small businesses that have few jobs that do not involve food-handling, it is likely that any such transfer could be classified an "undue hardship" and the employer would be free to dismiss the employee.

Where does the Administration stand on the Chapman amendment?

The Administration opposes this amendment. HHS Secretary Sullivan wrote to Congress that the amendment "is not needed or justified. . . . We need to defeat discrimination rather than submit to it."

President Bush has spoken out strongly against discrimination against people with HIV infection: "There is only one way to deal with an individual who is sick. With dignity, compassion, and without discrimination."

THE CHAPMAN AMMENDMENT IS OPPOSED BY MEDICAL EXPERTS DR. LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES AND FORMER SURGEON GENERAL DR. C. EVERETT KOOP, AS WELL AS OVER 300 ORGANIZATIONS AND CORPORATIONS, INCLUDING:

AFL-CIO
AFSCME
AMERICAN ACADEMY OF PEDIATRICS
AMERICAN FOUNDATION FOR THE BLIND
AMERICAN JEWISH COMMITTEE
AMERICAN MEDICAL ASSOCIATION
AMERICAN NURSES ASSOCIATION
AMERICAN PSYCHOLOGICAL ASSOCIATION
AMERICAN PUBLIC HEALTH ASSOCIATION
ASSOCIATION OF FLIGHT ATTENDENTS
ASSOCIATION STATE AND TERRITORIAL HEALTH OFFICIALS
ASSOCIATION FOR RETARDED CITIZENS OF THE UNITED STATES
CATHOLIC CHARITIES
CHILD WELFARE LEAGUE OF AMERICA
CONSORTIUM OF CITIZENS WITH DISABILITIES
DIGITAL EQUIPMENT CORPORATION
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND
EPILEPSY FOUNDATION
THE EPISCOPAL CHURCH
HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES UNION
NATIONAL COUNCIL OF CHURCHES
NATIONAL COUNCIL FOR INDEPENDENT LIVING
NATIONAL COUNCIL ON LA RAZA
NATIONAL COUNCIL OF SENIOR CITIZENS
NATIONAL EASTER SEAL SOCIETY
NATIONAL EDUCATION ASSOCIATION
NATIONAL HEMOPHILIA FOUNDATION
NATIONAL MENTAL HEALTH ASSOCIATION
NATIONAL MULTIPLE SCLEROSIS ASSOCIATION
NATIONAL ORGANIZATIONS RESPONDING TO AIDS
PARALYZED VETERANS OF AMERICA
POLAROID CORPORATION
PRESBYTERIAN CHURCH, U.S.A.
SERVICE EMPLOYEES INTERNATIONAL UNION
TEXTRON
THE U.S. CATHOLIC CONFERENCE
UNION OF AMERICAN HEBREW CONGREGATIONS
UNITED CEREBRAL PALSY ASSOCIATION
UNITED FOOD AND COMMERCIAL WORKERS
THE UNITED METHODIST CHURCH

Description of Amendments Submitted to the Rules Committee on H.R. 2273
May 14, 1990
Total Amendments - 45

yes ✓
passed
by
voice vote

1) McCollum -

1) specifies that those individuals related to a disabled individual would also be protected by bill.

2) if an employer has a written job description of a given position, then the criteria set forth in that description will be considered the essential function of the job.

2) Lancaster -

An individual with a disability must inform the owners or place of public accommodation of his disability and suggest what accommodations he requires. Failure of the public accommodation to investigate and make the necessary accommodations would give the disabled individual grounds for pursuing litigation.

3) Olin -

TD
213-189

If an employer is required to spend over 10% of the annual salary or annualized hourly wage of a disabled employee, in order to facilitate the employment of that disabled employee, such expenditure will be presumed an undue hardship for the purpose of this bill.

4) Campbell -

Included in the factors for determining "undue hardship" would be changes on a temporary project worksite.

✓ 5) LaFalce/Campbell

yes 480-0
481-0

a) In title III the effective date is 18 months after final regulations are issued but no later than 24 months after date of enactment of the bill.

b) During the first 6 months after the effective date, businesses with 25 or fewer employees and gross receipts of \$1 million or less are exempt, for those businesses with 10 or fewer people and gross receipts of \$500,000 or less, the period is one year after the effective date.

6) Sensenbrenner -

The only remedies that apply under this act are those set forth in the Civil Rights Act of 1964.

7) Lipinski -

Requires that one car per train be accessible to disabled persons (within five years) and that demand for additional capacity for the disabled be met with additional cars as necessary (rather than the requirement that all new cars be accessible).

8) Douglas -

1) Allows police or sheriff departments to pre-screen, with such questions and examinations as they deem necessary, applicants who will be carrying deadly weapons.

2) Gives churches the same exemptions from the employment provision of the bill as is given to private membership clubs.

Poland - ceiling on cost of a job

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May 14, 1990
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An individual with a disability must inform the owner or place of public accommodation of his disability and suggest what accommodations he requires. Failure of the public accommodation to investigate and make the necessary accommodations would give the disabled individual grounds for pursuing litigation.

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2) Gives churches the same exemption from the employment provision of the bill as is given to private membership clubs.

1) McCollum -
The above amendments are to be added to the bill.

2) Lancaster -

3) Olin -
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4) Campbell -

5) LaFollet-Campbell -
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6) Gensmer-Renner -

7) Lightaki -

8) Douglas -

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*yes
unanimous*

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401-0*

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*192-
227*

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7) Lipinski -

*290-110
no*

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9) Chapman -

Employers may refuse to assign an individual with an infectious or communicable disease of public health significance, to a food handling job. The individual must then be reassigned to another position, if he or she is qualified for such position.

10) Hansen -

Individuals who are disabled may not be denied access to a wilderness area, including the use of a wheelchair in such area.

11) Henry -

1) Amends Title I to require that any Federal, state, or local ordinance must be followed if job related and consistent with business necessity.

2) Nothing shall preclude Federal, State or local compliance requirements regarding health or safety.

12) Shuster -

Provides for annual waivers from lift purchase requirements for new vehicles for transit authorities operating fixed route systems in urbanized areas with a population of 200,000 or less.

13) Chandler -

An employer may take into account an individual's history of drug addiction or alcoholism, the period of time the individual has been free of drugs or alcohol, and whether the individual has successfully completed treatment for such condition when deciding to assign or continuing to assign such individual to a safety sensitive position.

14) Dannemeyer -

1) Gives Congressional employees who believe they have been discriminated against access to Federal court.

2) Excludes from coverage under this bill an individual with a currently contagious or sexually transmissible disease or infection.

15) Hoyer -

1) Perfecting to Henry Amendment #1 - any Federal, state, or local ordinance shall be considered as relevant evidence in determining that a qualification is job-related and consistent with business necessity.

2) Perfecting to Henry Amendment #2 - any Federal, state or local requirements intended to protect the health and safety of individuals shall be considered a relevant evidence in determining whether a covered entity or commercial facility has complied with its requirements under this Act.

3) Perfecting to Chapman food handling by requiring guidelines issued by the Director of the Centers for Disease Control in determining which life-threatening, communicable diseases are applicable. Submitted jointly with Waxman.

4) Perfecting amendment to LaFalce/Campbell providing that Title III shall become effective 18 months after date of enactment of bill. The rest the same as LaFalce/Campbell except that actions may be brought

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*yes -18
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for violations of Section 303 (regarding new construction and alterations in public accommodations and commercial facilities).

- 5) Same language as #4 if offered alone (not as perfecting amendment).
- 6) Substitute language for Section 509 - Congressional inclusion.
- 7) Perfecting amendment to Douglas 1 - adds "including a psychological examination.

16) Burton -

- 1) An amendment to exempt churches and religious organizations from coverage under the employment title of the bill.
- 2) An amendment to allow an adoption agency to refuse the placement of any child to a person who is disabled on the basis of present or past alcoholism, drug abuse, sexual practices of the individual, mental, emotional, or behavioral disorder.
- 3) An amendment to clarify that coverage under the bill, other than for those disabled, will apply only to those who have a relationship by blood, marriage, adoption, legal guardianship, or a relationship that is based upon the provision social service assistance or health care services.
- 4) An amendment to assure that an employer is not required to hire, as a law enforcement officer, any person that is disabled by virtue of mental, emotional, or behavioral disorder.
- 5) To clarify that coverage of the bill shall not apply to homosexuals because of the possible application of the bill to persons who are disabled because they are regarded as carrying the HIV.
- 6) To assure that an employer is not required to place an employee with a contagious or communicable disease in a job or position involving food handling or the delivery of health care services.
- 7) To clarify that nothing in the bill creates, either directly or indirectly, any right for any person on the basis of the sexual preference of such person.

17) Delay -

- 1) To specify (in Title I) that the ability of an owner or manager of a facility to maintain or create jobs shall be a factor that is taken into consideration when determining whether an accommodation would pose an undue hardship or if it is readily achievable.
- 2) The same as #1 only to Title III.
- 3) To assure than any employer is not required to hire, as a law

enforcement officer, any person who is disabled by virtue of a mental, emotional, or behavioral disorder.

4) To clarify that nothing in the bill creates, either directly or indirectly, any right for any person on the basis of the sexual preference of such person.

5) To clarify that coverage of the bill shall not apply to homosexuals because of the possible application of the bill to persons that are disabled because they are regarded as carrying the HIV.

6) To allow individuals who acquire a communicable disease or infection due to an employer's compliance with the bill, the right to pursue civil action against the U.S. government to obtain damages resulting from the disease or infection.

7) To allow an adoption agency to refuse the placement of any child to a person who is disabled on the basis of present or past alcoholism, drug abuse, sexual practices of the individual, mental, emotional, or behavioral disorder.

8) To exempt churches and religious organizations from coverage under the employment title of the bill.

9) To clarify that coverage under the bill, other than for those disabled, will apply only to those who have a relationship by blood, marriage, adoption, legal guardianship, or a relationship that is based upon the provision social service assistance or health care services.

10) To provide an employer a rebuttable presumption that those functions that have been demonstrated by current employees as essential, shall be deemed essential.

11) To define the essential functions of a job as those functions that have been demonstrated by current employees as essential.

18) Dornan - To give amusement park operators the right to refuse to accommodate on unmodified rides disabled persons who operators believe in good faith would be exposed to unknown or unusual risks because of their particular disability.

19) Upton - Sense of Congress that legislation should be enacted to provide small businesses a tax credit for the costs of providing access.



48952

COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

2151 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515

202-225-4527

FAX-202-225-9070

FAX COVER SHEET

DATE: May 16, '90

TO: Mo

FROM: Alan

NUMBER OF PAGES IN THIS TRANSMISSION: Cover + 5

COMMENTS: per Reggie

PLEASE CALL IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION.

Notice of Action 5/16/90

-2-

H.R. 2273 Education & Labor
Energy & Commerce
Public Works & Transp.
Judiciary

Americans with Disabilities
Act of 1989

Granted a modified open rule providing two hours of general debate, with one-half hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor; one-half hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; one-half hour to be equally divided and controlled by the ranking minority member of the Committee on Public Works and Transportation; and one-half hour to be equally divided and controlled by the ranking minority member of the Committee on the Judiciary. All points of order against the consideration of the bill are waived. The rule makes in order the amendment in the nature of a substitute now printed in part one of the Committee on Rules accompanying this resolution as original text for the purpose of amendment, to be considered as read. All points of order against the substitute are waived. No amendment to the bill is in order except the amendments printed in part two of the report accompanying this resolution. The amendments are to be considered in the order and manner specified in the report, debatable for the period specified to be equally divided and controlled by the proponent of the amendment and a member opposed thereto and are not subject to amendment except as specified in the report. All points of order against the amendments in the report are waived. The amendments made in order are: (1) Representative Campbell of California or LaFalce for 20 minutes; (2) Representative McCollum of Florida for 20 minutes; (3) Representative Olin of Virginia; (4) Representative Hansen of Utah for 20 minutes; (5) Representative Chapman of Texas for 30 minutes; (6) Representative Lipinski of Illinois for 40 minutes; (7) Representative Shuster of Pennsylvania for 40 minutes; and (8) Representative Sensenbrenner of Wisconsin for one hour. The rule provides one motion to recommit with instructions, if offered by Representative Michel of Illinois, or his designee, or without instructions after passage of H.R. 2273, the rule makes in order to take S. 933 from the speaker's table and to consider the bill in the House. The rule then makes in order a motion to strike out all after the enacting clause of S. 933, and insert the text of H.R. 2273, as passed by the House. All points of order against the motion are waived.

From the floor

*10% limit
with bill*

one can per 77%

4/13

*limited
Civil
rights*

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 2 G ng commenced
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7 the same as a private individual.

8 SEC. 506. TECHNICAL ASSISTANCE.

9 (a) PLAN FOR ASSISTANCE.—

10 (1) IN GENERAL.—Not later than 180 days after
 11 the date of enactment of this Act, the Attorney Gener-
 12 al, in consultation with the Chair of the Equal Em-
 13 ployment Opportunity Commission, the Secretary of
 14 Transportation, the Chair of the Architectural and
 15 Transportation Barriers Compliance Board, and the
 16 Chairman of the Federal Communications Commission,
 17 shall develop a plan to assist entities covered under
 18 this Act, and other Federal agencies, in understanding
 19 the responsibility of such entities and agencies under
 20 this Act.

21 (2) PUBLICATION OF PLAN.—The Attorney Gen-
 22 eral shall publish the plan referred to in paragraph (1)
 23 for public comment in accordance with subchapter II of
 24 chapter 5 of title 5, United States Code (commonly
 25 known as the Administrative Procedure Act).

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1 (b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney
2 General may obtain the assistance of other Federal agencies
3 in carrying out subsection (a), including the National Council
4 on Disability, the President's Committee on Employment of
5 People with Disabilities, the Small Business Administration,
6 and the Department of Commerce.

7 (c) IMPLEMENTATION.—

8 (1) RENDERING ASSISTANCE.—Each Federal
9 agency that has responsibility under paragraph (2) for
10 implementing this Act may render technical assistance
11 to individuals and institutions that have rights or duties
12 under the respective title or titles for which such
13 agency has responsibility.

14 (2) IMPLEMENTATION OF TITLES.—

15 (A) TITLE I.—The Equal Employment Op-
16 portunity Commission and the Attorney General
17 shall implement the plan for assistance developed
18 under subsection (a), for title I.

19 (B) TITLE II.—

20 (i) SUBTITLE A.—The Attorney Gener-
21 al shall implement such plan for assistance
22 for subtitle A of title II.

23 (ii) SUBTITLE B.—The Secretary of
24 Transportation shall implement such plan for
25 assistance for subtitle B of title II.

DISABILITY

Issues Needing Answers

1. Costs and Benefits

What are the costs and benefits associated with the Americans with Disabilities Act (ADA)? Many provisions have costs. There does not now exist an analytic base for understanding the size of those costs and how the costs could be most efficiently allocated.

AT&T has estimated that its costs for complying with the telecommunications provisions of ADA would be \$200 million per year. Operating both lift-equipped buses and paratransit could cost public transit authorities \$270 million per year. How could these costs be mitigated consistent with ADA's goals? Who will ultimately pay these costs? Also, what are the gains to society that offset these costs? Where do these gains occur in relationship to the costs? What can be done to mitigate the most extreme costs?

2. Scope of Provisions

How widely should ADA's net be thrown? The public accommodations section seems to suggest that every office building in America would have to be accessible. Another reading suggests every doctor's and dentist's office would have to be accessible.

What provision should be made for small entities? Large employers and large firms can spread costs over a large base. Small firms and small organizations would find themselves with costs that threaten viability or ability to fulfill a principal mission. What provision should be made for these entities? Total exemption? Case by case good faith effort? What size entities should be exempted? ADA does not allow cost as a defense, and so an organization would have to comply no matter what the cost.

Remember the example that bedeviled Joe Califano when implementing Section 504 of the Rehabilitation Act. A library in a farming town in Iowa, population under a thousand, thought the federal government (actually it was the State librarian) was requiring it to install a ramp allowing for wheelchair access of the library. The ramp would have cost about \$7,000, close to the library's operating budget. And the town had no residents who used a wheelchair, making the proposed ramp a monument to useless regulation.

3. Implementation and the Courts

ADA contains many ambiguities that should be resolved in the statutory language. Because ADA is silent on many points, definitive elaboration would be left to the courts. For example, are transvestites protected? In effect, the real meaning of ADA would not be known for years until a number of cases move through the courts applying "undue hardship" and other vague concepts to specific fact patterns.

How can implementation be handled most smoothly? A law that took effect on enactment or shortly thereafter would expose many entities to litigation risks of which they are not aware.

Also, the uniform requirement for promulgating regulations in 180 days does not consider the comparative difficulty of regulating new areas as compared to altering existing regulatory schemes. For example, the Department of Transportation is asked to undertake a new area in the regulation of private transit.

What flexibility can offered to encourage non-confrontational dispute resolution and prevention as opposed to litigation and administrative processes?

4. Persons Covered and Implications

What is to be done where ADA overlaps the current structure of civil rights law? The Rehabilitation Act of 1973 and the Fair Housing Act of 1988 cover some of the same populations as ADA, have different compliance standards and different remedies. Absent specific instruction from the statute, resolution will be turned over to the courts and will entail significant litigation costs.

The potential for covering drug and alcohol abusers within the protection offered those with disabilities deserves long and hard consideration. On its face, such a move would appear to end the "drug free workplace" concept.

With respect to accessibility, does an emphasis on removing barriers exclude assistance to those for whom affirmative action is required, e.g., the sight and hearing impaired?

2d Degree

021012.570

S.L.C.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To apply the rights and remedies of the Civil Rights Act of 1990, the Americans With Disabilities Act, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1976, and the Rehabilitation Act of 1973 to the Senate.

IN THE SENATE

1 Sess.

AMENDMENT NO. 2112

By FORD - others

To amend the (civil rights la

Bill/Res. No. to Amnt # 2111

strengthen
, and for

3 pages

Referred to _____

and

Ordered to lie on the table and to be printed

Amendment intended to be proposed by Mr. FORD

For himself, Sen. Stevens, Sen. Harkin, & Sen. Pelt

In lieu of the Matter Proposed to be inserted, insert the following:
Viz: ~~Strike the pending first degree amendment and insert in lieu thereof the following:~~

1 ~~At the appropriate place, insert the following:~~

2 SEC. ____ RIGHTS AND REMEDIES IN THE SENATE.

3 (a) Commitment of the Senate.--The Senate reaffirms its
4 commitment to Rule XLII of the Standing Rules of the Senate
5 which provides as follows:

6 "No member, officer, or employee of the Senate shall, with
7 respect to employment by the Senate or any office thereof--

8 "(a) fail or refuse to hire an individual;

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"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap."

(b) Application to Senate Employment.--The rights and protections provided pursuant to the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Americans with Disabilities Act (S. 933, 101st Congress), the Civil Rights Act of 1964, the Age Discrimination in Employment Act of ~~1976~~¹⁹⁶⁷, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(c) Investigation and Adjudication of Claims.--All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in subsection (b), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S.Res.338, 88th Congress, as amended, or such other entity as the Senate may designate.

(d) Rights of Employees.--The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in subsection (b).

(e) Applicable Remedies.--When assigning remedies to individuals found to have a valid claim under the Acts referred to in subsection (b), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in subsection (b). Such remedies shall apply exclusively.

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(f) Matters Other Than Employment.--

(1) In General.--The rights and protections under the Americans with Disabilities Act (S. 933, 101st Congress) shall, subject to paragraph (2), apply with respect to the conduct of the Senate regarding matters other than employment.

(2) Remedies.--The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively, after approval in accordance with paragraph (3).

(3) For purposes of paragraph (2), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(g) Exercise of Rulemaking Power.--Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in subsection (b) and (f)(1) shall be ^{within} the exclusive jurisdiction of the United States Senate. The provisions of subsections (a), (c), (d), (e), (f)(2), and (f)(3) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.