No - I think the present law description takes care of your major points. Please let me know if there is a problem. Margaret

The conference agreement includes the provision contained in H.R. 5828.

Concurrent Applications for SSI and Food Stamps (Section 5040 of conference agreement)

Present Law

Public law 99-570, the Anti-Drug Abuse Act of 1986, amended the Social Security Act to require the Secretaries of HHS and Agriculture to develop a procedure to allow institutionalized individuals who are about to be released to make a single application for both SSI and food stamp benefits.

House Bill

No provision.

Senate Amendment (Section 6014 of Senate Amendment)

Under this provision, the Secretary of HHS could either: (1) use a single application form for the food stamp and SSI programs; or (2) take concurrent applications for the SSI and food stamp programs.

The provision would take effect on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment

Disregard of Trust Contributions (Section 5041 of conference agreement)

Present Law

The term "trust" is not defined in either SSI law or regulations. SSI policy, as expressed in the program's operating manual, is to treat a trust as a resource when an individual owns the assets in the trust and, acting on his own behalf or through an agent (such as a representative payee for SSI benefits), has the legal right to use them for his own food, clothing, or shelter. If, however, the individual does not have the legal authority to access trust assets for his own food, clothing, or shelter (e.g., there is an intervening trustee), the trust is not considered a

resource.

Cash payments made to an individual, including those from a trust (regardless of whether the trust is considered a resource), are considered income in the month received. Noncash payments for food, clothing, or shelter are also considered income. However, there are special rules under which noncash payments are presumed to have a maximum value of one-third of the Federal SSI monthly benefit amount, plus a $20-a-month income exclusion. If a person can show that any in-kind support and maintenance provided is less than the "presumed value," the lesser amount is considered income. Thus, any cash or noncash payment for food, clothing, or shelter affects SSI benefits and eligibility status. However, a payment for certain social, medical, educational, transportation, or other services does not count as income, and does not affect SSI benefits or eligibility status.

House Bill

No provision.

Senate Amendment (Sections 6016-6018 of Senate Amendment)

The SSI statute would be amended to specify that a trust established for an SSI recipient to which the recipient does not have legal access would not be counted as a resource, and certain non-cash contributions to a recipient would not be counted as income. In addition, the Secretary of HHS would be required to inform the family of a child who is awarded a retroactive payment as the result of the decision of the Supreme Court in Sullivan v. Zebley of the implications of such payments for SSI eligibility, that the family may be able to place the payment in a trust for the benefit of the child, and that legal assistance may be available. This information need not be provided in the form of a separate notice, but may be included in the notice of award of the retroactive payment.

Conference Agreement

The conference agreement includes the Senate amendment requiring the Secretary to inform the family of a child who is awarded a retroactive payment as the result of the decision of the Supreme Court in Sullivan v. Zebley that they family may be able to place the payment in a trust for the benefit of the child.

The conference agreement does not include the Senate amendment with respect to the establishment of trusts. However, the managers recognize that it is important for SSI

applicants and recipients to understand how different forms of income and resources are treated under the program, in order that they and their families can plan accordingly. They therefore intend that hearings be held during the 102nd Congress to address such issues as: whether statutory language should be enacted to specify the conditions under which funds placed in a trust may be excluded from countable income and resources; whether any limits should be placed on the amounts that can be placed in trust; and the purposes for which trust funds may be expended without affecting SSI eligibility and benefits. The omission of the Senate provision from the conference agreement is not intended in any way to change current SSA policy with respect to trusts.

Chapter 4--Aid to Families with Dependent Children

State Option to Require Monthly Reporting and Retrospective Budgeting (Section 5051 of conference agreement)

Present Law

Under section 402(a)(14) of the Social Security Act, States must require families with earned income or a recent work history to provide a monthly report on: (1) income and family composition during the prior month; and (2) estimates of the income and resources anticipated in the current or future months. With the approval of the Secretary, a State may select categories of these families to report at less frequent intervals, if monthly reporting is not cost effective.

AFDC eligibility and benefits are determined monthly. Generally, a family's eligibility for and amount of aid for a month are based on the family's income, composition and resources in that month. However, under section 402(a)(13) of the Social Security Act, for families who are subject to monthly reporting requirements, States are required to calculate benefits based upon retrospective budgeting. Under retrospective budgeting, although eligibility is based on the family's circumstances in the current month, payment amounts are based on the family's income in the first or second month preceding the current month.

House Bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the

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OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT OF 1989

The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities, and to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The ADA defines "disability" to mean, with respect to an individual: a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment.

Title I of the ADA specifies that an employer, employment agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any term, condition or privilege of employment. The ADA incorporates many of the standards of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973, including the obligation to provide reasonable accommodations unless it would result in an undue hardship on the operation of the business.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 (including injunctive relief and back pay). Title I goes into effect two years after the date of enactment. For the first two years after the effective date, employers with 25 or more employees are covered. Thereafter, employers with 15 or more employees are covered.

Title II of the ADA specifies that no qualified individual with a disability may be discriminated against by a department, agency, special purpose district, or other instrumentality of a State or a local government. In addition to a general prohibition against discrimination, title II includes specific requirements applicable to public transportation provided by public transit authorities. Finally, title II incorporates by reference the enforcement provisions in section 505 of the Rehabilitation Act of 1973.

With respect to public transportation, all new fixed route buses must be made accessible unless a transit authority can demonstrate that no lifts are available from qualified manufacturers. A public transit authority must also provide paratransit for those individuals who cannot use mainline accessible transportation up to the point where the provision of such supplementary services would pose an undue financial burden on a transit authority.

Title II takes effect 18 months after the date of enactment, with the exception of the obligation to ensure that new public buses are accessible, which takes effect for solicitations made 30 days after the date of enactment.

Title III of the ADA specifies that 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 operated by a private entity on the basis of a disability. Public accommodations include: restaurants, hotels, doctor's offices,

pharmacies, grocery stores, shopping centers, and other similar establishments.

Existing facilities must be made accessible if the changes are "readily achievable" i.e., easily accomplishable without much difficulty or expense. Auxiliary aids and services must be provided unless such provision would fundamentally alter the nature of the program or cause an undue burden. New construction and major renovations must be designed and constructed to be readily accessible to and usable by people with disabilities. Elevators need not be installed if the building has less than three stories or has less than 3,000 square feet per floor except if the building is a shopping center, shopping mall, or offices for health care providers or if the Attorney General decides that other categories of buildings require the installation of elevators.

Title III also includes specific prohibitions on discrimination in public transportation services provided by private entities, including the failure to make new over-the-road buses accessible five years from the date of enactment for large providers and six years for small providers.

The provisions of title III become effective 18 months after the date of enactment. Title III incorporates enforcement provisions in private actions comparable to the applicable enforcement provisions in title II of the Civil Rights Act of 1964 (injunctive relief) and provides for pattern and practice cases by the Attorney General, including authority to seek monetary damages and civil penalties.

Title IV of the ADA specifies that telephone services offered to the general public must include interstate and intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities (such as deaf persons) with opportunities for communications that are equivalent to those provided to individuals able to use voice telephone services.

Title V of the ADA includes miscellaneous provisions, including a construction clause explaining the relationship between the provisions in the ADA and the provisions in other Federal and State laws; a construction clause explaining that the ADA does not disrupt the current nature of insurance underwriting; a prohibition against retaliation; a clear statement that States are not immune from actions in Federal court for a violation of the ADA; a directive to the Architectural and Transportation Barriers Compliance Board to issue guidelines; and authority to award attorney's fees.

For further information, contact:

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Senator Durenberger - Carolyn Boos - 224-6715

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release August 2, 198

STATEMENT BY THE PRESS SECRETARY

The Administration has reached a consensus with key Senators from both parties on legislation that would expand the reach of this country's civil rights laws to include disabled Americans. This will be landmark legislation, not only for the 37 million Americans with some form of disability, but for all Americans, demonstrating, as the President said in his Inaugural Address, that "this is the age of the offered hand."

The President endorses this legislation as the vehicle to fulfill the challenge he offered in his February 9 address to the Nation: "Disabled Americans must become full partners in America's opportunity society."

The President has pursued a commonsense approach, seeking a practical bill that will help the disabled reach their full potential. He is committed to producing a bill that can be signed this year.

The discussions have resulted in an agreement we expect to be reflected in today's mark up in the Senate Labor and Human Resources Committee of the "Americans with Disabilities Act." The agreement provides for:

- Federal protection for the disabled against discrimination in the workplace, paralleling existing protections that apply to entities that receive federal funds. The requirement would initially apply to employers of 25 or more and phase down to employers of 15 or more. Covered employers would have to make reasonable accommodation to disabled persons.

- Prohibition of discrimination against the disabled in public accommodations. The agreement adopts a broad definition of public accommodations, including restaurants, stores, and health care providers. Public accommodations would be required to make readily achievable alterations to existing facilities to accommodate the disabled. This legislation is designed to achieve access for the disabled in the most efficient manner, with emphasis on making new buildings accessible.

- Enforcement of the new protections through the Equal Employment Opportunity Commission, and suits seeking injunctive relief.

The President is committed to bringing persons with disabilities into the mainstream, including full participation and access to all aspects of society. He wants to do this through a framework that allows for maximum flexibility to implement effective solutions, builds on existing law to avoid unnecessary confusion and litigation, and attains these goals without imposing undue burdens. The President believes this can be accomplished by using reasonable measures, phased over time, as this legislation does.

We are pleased that substantial progress has been made. We will continue to analyze the full ramifications of the legislation and look forward to working with the Senate and the House to complete the legislative process this year.

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COMPARISON BETWEEN S. 933, THE AMERICANS WITH DISABILITIES ACT AND THE SUBSTITUTE AMENDMENT
AUGUST 2, 1989

Set out below are the major changes included in the Substitute Amendment to S. 933.

GENERAL PROHIBITIONS

The Substitute deletes the general prohibitions set out in title I of S. 933 and in lieu thereof includes the basic concepts within the employment title and the public accommodations title.

EMPLOYMENT

The Substitute includes an effective date of 24 months after the date of enactment and a phase-in for coverage of employers. For the first two years after the effective date of the Act, only employers with 25 or more employees are covered. Thereafter, the number goes down to 15.

The Substitute incorporates many of the provisions from the regulations implementing section 504 of the Rehabilitation Act of 1973 and the language set out therein. The Substitute deletes the reference to "anticipatory discrimination."

With respect to drug addicts and alcoholics, the Substitute specifies that, notwithstanding any other provision of this legislation, a covered entity:

(1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act of 1988, and that transportation employees meet requirements established by the Department of Transportation with respect to drugs and alcohol; and

(4) 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, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individual.

Further, the Substitute specifies that nothing in this title shall be construed to encourage, prohibit, or authorize conducting drug testing of job applicants or employees or making employment decisions based on such test results.

The Substitute also defines key terms used in the title such as "undue hardship" and "reasonable accommodation."

The Substitute also incorporates by reference the remedies set out in title VII of the Civil Rights Act of 1964 and deletes the authority to seek compensatory and punitive damages for acts of intentional discrimination under section 1981 of the Civil Rights Act of 1866.

PUBLIC SERVICES

The Substitute includes three changes regarding public transportation. First, the Substitute includes limited relief to the obligation that all new fixed route buses must be accessible when no lifts are available from manufacturers.

Second, the Substitute includes an "undue financial burden" exception to the general rule that a public transit authority must make available paratransit services to supplement the mainline accessible buses.

Third, the Substitute provides twenty years for AMTRAK to make its stations accessible.

The Substitute also clarifies that when alterations are made to a facility, that the path of travel to the altered area needs to have accessible components if the facility is undergoing major structural alterations in accordance with criteria established by the Attorney General.

The effective date of this title is 18 months after the date of enactment with the exception of the provision applicable to new buses, which is effective on the date of enactment.

PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

The Substitute deletes the definition of the term "public accommodation" and substitutes in lieu thereof a list of categories of establishments. The list does not include religious institutions or entities controlled by religious institutions. Establishments included on the list must comply with all requirements of nondiscrimination. Public accommodations and potential places of employment (such as office buildings) constructing new buildings must ensure that such buildings are accessible to and usable by individuals with disabilities.

The Substitute defines such key terms as "readily achievable" and "auxiliary aids and services." The Substitute also incorporates many of the general forms of discrimination originally set out in title I of S. 933.

The Substitute includes clarifications that when alterations to a portion of a building are occurring, that the path of travel must be made accessible if the alteration consists of major structural changes. The Substitute also includes a special rule regarding the installation of elevators in new construction and where the entity is making major structural alterations. Elevators need not be installed if the building has fewer than three stories or fewer than 3000 square feet per floor unless the business is a shopping center, a shopping mall, or the professional office of a health care provider or the Attorney General determines that the usage of the building requires an elevator.

With respect to private transportation, the Substitute delays the effective date for the mandate to make all new over-the-road buses accessible for 6 years for small providers and 5 years for all other providers. It also mandates that a study be completed within 3 years from the date of enactment.

With respect to charter services and motel shuttle services, the Substitute provides that if over-the-road buses are used, they are subject to the delay of the effective date described above. New vehicles that seat more than 16 passengers (S. 933 included 12), which are not over-the-road buses, must be accessible unless the entity can demonstrate that it is already capable of meeting the needs of those using wheelchairs directly or through contract or other arrangement.

With respect to remedies, the Substitute deletes references to the enforcement scheme for private parties set out in the Fair Housing Act (compensatory and punitive damages) and incorporates in lieu thereof reference to title II of the Civil Rights Act of 1964, which provides for injunctive relief. The Substitute incorporates the provisions of the Fair Housing bill pertaining to pattern and practice suits by the Attorney General and the maximum allowable civil penalties provisions set out therein ($50,000 for first offense and $100,000 for second offense).

The Substitute also clarifies that injunctive relief includes retrofitting of new buildings and major alterations that were made in violation of the Act.

The effective date for the public accommodations title is 18 months from the date of enactment.

TELECOMMUNICATIONS RELAY SERVICES

The Substitute includes relay services as part of universal telephone services and permits states to establish their own systems in lieu of placing the responsibility on the common carriers.

MISCELLANEOUS PROVISIONS

The Substitute adds a construction section which clarifies that the ADA does not disrupt the current nature of insurance underwriting or the current regulatory structure of the insurance industry either in sales, underwriting, pricing, administrative and other services, claims and similar insurance-related activities based on classification of risks, as regulated by the states.

SUMMARY OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO THE AMERICANS WITH DISABILITIES ACT OF 1989
August 31, 1989

FINDINGS AND PURPOSE

The purpose of the Act is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities; provide enforceable standards addressing discrimination against individuals with disabilities; and ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

DEFINITIONS

The term "disability" is defined to mean, with respect to an individual -- a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. This is the same definition used for purposes of section 503 and section 504 of the Rehabilitation Act of 1973 and the recent amendments to the Fair Housing Act.

TITLE I: EMPLOYMENT

The provisions in title I of the bill use or incorporate by reference many of the definitions in title VII of the Civil Rights Act of 1964 (employee, employer, Commission, person, labor organization, employment agency, joint labor-management committee, commerce, industry affecting commerce). For the first two years after the effective date of the Act, only employers with 25 or more employees are covered. Thereafter, the number goes down to 15.

A "qualified individual with a disability" 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. This definition is comparable to the definition used for purposes of section 504.

Using the section 504 legal framework as the model, the bill specifies that no entity covered by the Act shall discriminate against any qualified individual with a disability because of such individual's disability in regard to application procedures, the hiring or discharge of employees and all terms, conditions and privileges of employment.

Discrimination includes, for example: limiting, segregating or classifying a job applicant or employee in a way that adversely affects his or her opportunities or status; participating in contractual or other arrangements that have the effect of subjecting individuals with disabilities to discrimination; and using criteria or methods of administration that have a discriminatory effect or perpetuate discrimination of others subject to common administrative control.

In addition, discrimination includes excluding or denying equal opportunities to a qualified nondisabled individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

Discrimination also includes not making reasonable accommodations to the known limitations of a qualified individual with a disability unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Discrimination also includes the denial of employment opportunities because a qualified individual with a disability needs a reasonable accommodation.

The definition of the term "reasonable accommodation" included in the bill is comparable to the definition in the section 504 legal framework. The term includes: making existing facilities accessible, 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 policies, examinations, and training materials, the provision of qualified readers and interpreters, and other similar accommodations.

Discrimination also includes the imposition or application of tests and other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria is shown to be job-related for the position in question and is consistent with business necessity.

The bill also includes the pre-employment inquiries provision from section 504 which permits employers to make preemployment inquiries into the ability of an applicant to perform job-related functions but prohibits inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability. Employers are permitted to undertake post-offer/pre-entrance medical examinations so long as the results are kept confidential, all entering employees take the examinations, and the results are used only in accordance with the provisions of the title.

The bill also prohibits employers from conducting or requiring a medical examination and inquiries as to whether an employee has a disability or the nature or severity of the disability unless such examination or inquiry is shown to be job-related and consistent with business necessity.

The bill also specifies several defenses to charges of discrimination under the Act. First, an employer need not hire an applicant or retain an employee who it shows has a currently contagious disease or infection that poses a direct threat to the health or safety of other individuals in the workplace.

With respect to drug addicts and alcoholics, the legislation specifies that, notwithstanding any other provision of this legislation, a covered entity: may prohibit the use of alcohol or illegal drugs at the workplace by all employees; 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 requirements established pursuant to the Drug-Free Workplace Act of 1988, and that transportation employees meet requirements established by the Department of Transportation with respect to drugs and alcohol; and 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, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individual.

Further, the legislation specifies that nothing in this title shall be construed to encourage, prohibit, or authorize conducting drug testing of job applicants or employees or making employment decisions based on such test results.

With respect to religious entities, the bill adopts the religious preference provision from title VII of the Civil Rights Act of 1964 and includes a religious tenet exemption which provides that a religious organization may require, as a qualification standard to employment that all applicants and employees conform to the religious tenets of such organization.

Consistent with title VII of the Civil Rights Act of 1964, every covered entity must post notices in an accessible format describing the applicable provisions of this Act. The Commission is also directed to promulgate regulations within 1 year in an accessible format.

The bill incorporates by reference the remedies and procedures set out in section 706, 707, 709, and section 710 of title VII of the Civil Rights Act of 1964.

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

TITLE II: PUBLIC SERVICES

Section 504 only applies to entities receiving Federal financial assistance. Title II of the bill makes all activities of State and local governments subject to the types of prohibitions against discrimination against a qualified individual with a disability included in section 504 (nondiscrimination) and section 505 (the enforcement procedures).

A "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, or the removal of architectural, communication, and transportation 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 a local government.

Title II also specifies the actions applicable to public transportation (not including air travel) provided by public entities that are considered discriminatory. 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.

1. New fixed route buses of any size, rail vehicles and other fixed route vehicles for which a solicitation is made later than 30 days after the date of enactment of this Act must be readily accessible to and usable by individuals with disabilities. No retrofitting of existing buses is required. A transit authority may apply to the Secretary of Transportation for relief only if there are no lifts available in this country for installation.

2. Used vehicles purchased or leased after the date of enactment need not be accessible but a demonstrated good faith effort to locate a used accessible vehicle must be made.

3. Vehicles that are re-manufactured so as to extend their usable life for five years or more must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

4. In those communities with fixed route public transportation, there must also be a paratransit system to serve those individuals with disabilities who cannot use the fixed route public transportation and to other individuals associated with such individuals in accordance with service criteria established by the Secretary of Transportation. Communities need not make expenditures that would result in an undue financial burden.

5. Communities that operate a demand responsive system that is used to provide public transportation for the general public (nondisabled and disabled) must purchase new buses for which a solicitation is made 30 days after the date of enactment of the Act that are accessible unless the system can demonstrate that the system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public; in which case all newly purchased vehicles need not be accessible.

6. All new facilities used to provide public transportation services must be readily accessible to and usable by individuals with disabilities.

7. When alterations are made to existing facilities that affect or could affect the usability of the facility, the alterations, the path of travel to the altered area, the bathrooms, telephones, and drinking fountains serving the remodeled area must be, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities. This obligation to make the path of travel accessible only applies where the covered entity undertakes major structural modification.

8. All stations in intercity rail systems must be accessible within 20 years and key stations in rapid rail, commuter rail and light rail systems must be made readily accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act except that the time limit may be extended by the Secretary of Transportation up to 20 years for

extraordinary expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

9. Intercity, light rail, rapid, and commuter rail systems must have at least one car per train that is accessible as soon as practicable, but in any event in no less than five years.

The bill directs the Attorney General to promulgate regulations within one year in an accessible format that implement the provisions generally applicable to state and local governments. These regulations must be consistent with the coordination of regulations issued in 1978 that governed the regulations applicable to recipients of Federal financial assistance, except with respect to "existing facilities" and "communications," in which case the Federally conducted regulations apply.

Within one year from the date of enactment, the Secretary of Transportation is directed to issue regulations in an accessible format that include standards which are consistent with minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

This title takes effect eighteen months from the date of enactment with the exception of the provision applicable to the purchase of new buses which takes effect on the date of enactment.

TITLE III: PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Title III specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

The bill lists categories of establishments that are considered public accommodations. The list includes restaurants, hotels, doctors' offices, pharmacists, grocery stores, museums, and homeless shelters. This list does not include religious institutions or entities controlled by religious institutions.

The bill includes general and specific categories of discrimination prohibited by the Act. In general, it is considered discriminatory to subject an individual or class of individuals, directly or indirectly, on the basis of disability, to any of the following:

(1) denying the opportunity to participate in or benefit from an opportunity;

(2) affording an opportunity that is not equal to that afforded others;

(3) providing an opportunity that is less effective than that provided to others;

(4) providing an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others; however, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Further, an entity may not directly or indirectly use standards or criteria or methods of administration that have the effect of subjecting an individual to discrimination on the basis of disability or perpetuate discrimination by others who are subject to common administrative control or are agencies of the same State. Nor can an entity discriminate against an individual because of the known association of that individual with another individual with a disability.

Specific categories of discrimination include:

-The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability unless such criteria can be shown to be necessary for the provision of the goods or services being offered.

-A failure to make reasonable modifications in rules and policies and procedures when necessary to afford meaningful opportunity unless the entity can demonstrate that the modifications would fundamentally alter the nature of the program.

-A failure to provide auxiliary aids and services unless the entity can demonstrate that such services would fundamentally alter the nature of the goods or services being offered or would result in undue burden. Auxiliary aids and services include: qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions.

-A failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles where such removal is readily achievable; and, where the entity can demonstrate that such removal 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.

-With respect to a facility that is altered, the failure to make the alterations in a manner that, to the maximum extent feasible, the altered portion, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities. The obligation to make the path of travel accessible only applies if the facility is undergoing major structural changes. Further, a covered entity need not install an

elevator if the building has fewer than three stories, has fewer than 3000 square feet per floor unless the building is a shopping mall, shopping center, or the professional office of a health care provider or the Attorney General determines that the category of usage requires an elevator.

With respect to places of public accommodation and potential places of employment, the bill also specifies that discrimination includes a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment 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. The elevator exception applicable to alterations is also applicable to new construction.

-A failure by a public accommodation to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and a refusal to purchase or lease vehicles that carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of the Act which are readily accessible to and usable by individuals with disabilities. Special rules apply to demand responsive systems (e.g., shuttles to and from an airport and hotel).

The bill also includes a specific section prohibiting discrimination in public transportation services (other than air travel) provided by private entities. In general, 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 not in the principal business of providing air transportation) and whose operations affect commerce.

Examples of discrimination include:

-the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability;

-a failure to make reasonable modifications to criteria, provide auxiliary aids and services, and remove barriers consistent with the standards set out above;

-new vehicles (other than automobiles) purchased 30 days after the date of enactment must be made accessible. Because there is no requirement that cars be made accessible, new taxicabs are not required to be made accessible. Taxicab companies are liable, however, if their drivers refuse to pick up an individual with a disability.

Special rules are included for entities using over-the-road coaches. Such buses must be readily accessible to and usable by individuals with disabilities within 6 years for small providers and 5 years for other providers. A study must be completed on how best to achieve this objective and its impact within 3 years from the date of enactment.

The bill uses the model of title II of the Civil Rights Act of 1964 (injunctive relief) and includes the pattern and practice authority (including civil penalties) from the recently enacted Fair Housing Act.

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

TITLE IV: COMMUNICATIONS

Title IV specifies that a common carrier that offers telephone services to the general public must also provide interstate or intrastate telecommunication relay services so that such services provide individuals who use non-voice terminal devices because of their disabilities opportunities for communications that are equivalent to those provided to their customers who are able to use voice telephone services, unless such services are provided pursuant to a State relay program.

Nothing in this title is to be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

The Federal Communications Commission is directed to issue regulations establishing minimum standards and guidelines for telecommunications relay services.

TITLE V: MISCELLANEOUS PROVISIONS

Title V explains the relationship between section 504 and this Act and this Act and State laws that provide greater protections. This title also explains that this bill is not to be construed as regulating the underwriting, classifying and administering of insurance risks. Title V also includes an anti-retaliation provision; a prohibition against interference, coercion or intimidation; directs the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines; and makes it clear that States are not immune under the 11th Amendment for violations of the Act.

With respect to attorneys' fees, the bill specifies that in any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for foregoing the same as a private individual.

QUESTIONS AND ANSWERS ON THE SUBSTITUTE AMENDMENT TO S. 933, THE AMERICANS WITH DISABILITIES ACT OF 1989
August 31, 1989

Set out below are questions and answers on some of the issues that may be raised about the Committee Substitute Amendment to S. 933, the Americans with Disabilities Act of 1989. If you have any additional questions, please contact Bob Silverstein, Staff Director and Chief Counsel, Senate Subcommittee on the Handicapped (224-6265) or Carolyn Osolinik, Counsel to Senator Edward M. Kennedy (224-7878).

1. What is the purpose of the Americans with Disabilities Act of 1989? (ADA)?

The purpose of the ADA is to provide, clear, strong, consistent, enforceable standards addressing all forms of discrimination against individuals on the basis of disability.

2. What is the scope of the ADA?

The ADA extends civil rights protections for people with disabilities to cover such areas as employment in the private sector, public accommodations (such as theaters, hotels, restaurants, shopping centers, grocery stores), services provided by state and local governments, transportation, and telecommunication relay services.

3. Why is the ADA necessary?

The National Council on Disability (an independent Federal agency whose current membership consists of 15 persons appointed by President Reagan), the Civil Rights Commission, and two recent polls conducted by Lou Harris all conclude that discrimination against individuals with disabilities in the areas listed above is still pervasive in our society. The historic Civil Rights Act of 1964 does not cover people with disabilities, and thus, they have no Federal protections against discrimination in these areas. Federal law only protects against discrimination in Federal employment (section 501 of the Rehabilitation Act of 1973), affirmative action by Federal contractors (section 503), discrimination by entities receiving Federal aid (section 504), and activities conducted by the Federal Government (section 504).

Discrimination is sometimes the result of prejudice; sometimes it is the result of patronizing attitudes; and still other times it is the result of thoughtlessness or indifference. But whatever its origin, the results are the same: segregation, exclusion, or the denial of equal, effective and meaningful opportunities to participate in programs and activities.

Discrimination affects all categories of people with disabilities, including those with mobility impairments, sensory impairments, mental retardation, and other physical and mental

impairments. It affects those who have hidden disabilities such as cancer, diabetes, epilepsy, heart disease and mental illness; people who have a history of a disability but are no longer disabled; persons who have been incorrectly classified as having a disability; and those who do not have a disability but who are treated or perceived by others as having a disability.

4. Who developed the provisions in the ADA?

In recent testimony before the Committee on Labor and Human Resources, former Senator Lowell Weicker, sponsor of last year's version of the ADA described the genesis of this legislation, "With the enactment of Section 504 of the Rehabilitation Act of 1973, Congress said that no longer will Federal funds support or assist discrimination [on the basis of disability] and last year we reaffirmed that commitment in the Civil Rights Restoration Act... The legislation before this committee today completes the work begun in 1973 to secure the civil rights of Americans with disabilities."

The ADA of 1988 had bipartisan support (17 Democrats and 9 Republicans). In the House of Representatives, the bill was introduced by Representative Tony Coelho (D. CA) and had 124 cosponsors. The bill was developed by the National Council on Disability, whose membership includes Justin Dart, long-time stalwart of the Republican Party, and Jeremiah Milbank, the founder of the Eagle Forum. All of the fifteen members of the National Council on Disability were appointed by President Reagan. The ADA was the product of two reports, Toward Independence and On the Threshold of Independence.

5. Does the ADA enjoy bipartisan support?

Yes. The ADA of 1989 was introduced on May 9, 1989 and was sponsored by Senator Tom Harkin (D. IA), Senator Edward Kennedy (D. MA), Senator Dave Durenberger (R. MN), Senator Jim Jeffords (R. VT), Senator John McCain (R. AZ) and others. The sponsors in the House include Steny Hoyer (D. MD), Major Owens (D. NY), and Silvio Conte (R. MA).

Currently, 59 Senators have cosponsored the ADA (43 Democrats and 16 Republicans). The Democratic Senators who support the ADA include Mr. HARKIN (IA), Mr. KENNEDY (MA), Mr. SIMON (IL), Mr. CRANSTON (CA), Mr. MITCHELL (ME), Mr. LEAHY (VT), Mr. INOUYE (HI), Mr. GORE (TN), Mr. RIEGLE (MI), Mr. GRAHAM (FL), Mr. PELL (RI), Mr. DODD (CT), Mr. ADAMS (WA), Ms. MIKULSKI (MD), Mr. METZENBAUM (OH), Mr. MATSUNAGA (HI), Mr. WIRTH (CO), Mr. BINGAMAN (NM), Mr. CONRAD (ND), Mr. BURDICK (ND), Mr. LEVIN (MI), Mr. LIEBERMAN (CT), Mr. MOYNIHAN (NY), Mr. KERRY (MA), Mr. SARBANES (MD), Mr. GLENN (OH), Mr. SHELBY (AL), Mr. HOLLINGS (SC), Mr. SANFORD (NC), Mr. SASSER (TN), Mr. DIXON (IL), Mr. KERREY (NE), Mr. ROBB (VA), Mr. FOWLER (GA), Mr. ROCKEFELLER (WVa), Mr. BIDEN (DE), Mr. BENTSEN (TX), Mr. DeCONCINI (AZ), Mr. KOHL (WI), Mr. LAUTENBERG (NJ), Mr. PRYOR (AR), Mr. BRADLEY (NJ), and Mr. BOREN (OK).

The Republican Senators who support the ADA include Mr. DURENBERGER (MN), Mr. JEFFORDS (VT), Mr. McCAIN (AZ), Mr. CHAFEE (RI), Mr. STEVENS (AK), Mr. COHEN (ME), Mr. PACKWOOD (OR), Mr. BOSCHWITZ (MN), Mr. HEINZ (PA), Mr. PRESSLER (SD), Mr. WILSON (CA), Mr. SPECTER (PA), Mr. D'AMATO (NY), Mr. DOLE (KS), Mr. HATCH (UT), and Mr. WARNER (VA).

6. Who endorses the ADA?

The ADA has been endorsed by more than 180 national organizations representing people with a wide variety of disabilities, including every major disability group. The ADA has also been endorsed by the Leadership Conference on Civil Rights, an umbrella organization representing 185 organizations active in the area of civil rights. Many religious groups have also endorsed the ADA.

7. Has the bill, as introduced, been subject to close scrutiny and review?

Yes. In April 1988, Senator Lowell Weicker, (R-CT) introduced S. 2345, the Americans with Disabilities Act of 1988. A joint hearing between the House and Senate was held on September 27, 1989 on S. 2345.

S. 933 was introduced on May 9, 1989. Four hearings have been held in the Senate on S. 933, the last of which occurred on June 22, at which time Attorney General Dick Thornburgh testified on behalf of the Bush Administration.

Extensive discussions have occurred between the Business and Disability communities and the Administration.

8. Does the Substitute Amendment take into consideration the cost burdens faced by small businesses?

Yes. With respect to employment, the bill totally exempts all employers with fewer than 15 employees. For those employers with 15 or more employees, the bill provides an exemption from making accommodations to the needs of disabled applicants or employees that will result in undue hardship on the business. Thus, for example, a small employer who hires a person with a hearing impairment will only incur nominal costs such as purchasing a $50 amplifier to be placed on a telephone headset.

The provisions in the bill regarding employment are not new; small employers doing business with the federal government or receiving federal aid have been complying with these provisions for almost 15 years. Every study has found that fear of costs has proven to be unfounded. In fact, the major conclusion of one study was the employers found that compliance was "no big deal." Another survey found that most accommodations cost between $50 and $100 and the benefit of having an exemplary employee far outweighed these expenses.

With respect to making the business facility accessible to customers who are disabled, the bill focuses on new construction, For example, Iowa law already mandates that new buildings be made accessible to the handicapped. This federal bill follows the lead of Iowa and other states in this regard. An establishment need only make changes to existing facilities if these changes are easily accomplishable and able to be carried out without much difficulty or expense. Other accommodations need not be provided if they impose an undue burden on the business.

With respect to new construction, a small business need not install an elevator if the building is fewer than three stories or fewer than 3000 square feet per floor, unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or the Attorney General determines that a particular category of such buildings should have elevators based on usage.

9. Will there be sufficient time for businesses to be educated before they must be in compliance with the ADA?

Yes. The ADA allows for regulations to be issued one year after the date of enactment. The employment provisions of the ADA become effective 24 months after the date of enactment and the remaining provisions become effective 18 months after enactment, with the exception of the purchase of fixed-route buses, which must comply with the ADA upon the date of enactment.

10. May an employer fire an employee who uses or sells drugs at the worksite or poses a direct threat to the health or safety of others?

Yes. An employer may prohibit the use of alcohol or illegal drugs at the workplace by all employees. He or she 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 requirements established pursuant to the Drug-Free Workplace Act; and that transportation employees meet requirements established by the Department of Transportation with respect to drugs and alcohol; and 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 even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individuals.

Further, the legislation specifies that nothing in this title shall be construed to encourage, prohibit, or authorize conducting drug testing of job applicants or employees or making employment decisions based on such test results. However, the bill ensures that an employer will not fire a person who is falsely accused of being an addict or a person who may have been an addict or an alcoholic sometime in the past but who has been rehabilitated.

11. Are people with AIDS covered by the ADA?

Yes. However, the ADA makes it clear that a person with a contagious disease or infection may be excluded or denied a job or benefit if the covered entity can demonstrate that the person poses a significant risk of transmitting the infection to others through the receipt of a position or benefit. If no reasonable accommodation on the part of the employer or service provider can eliminate such a risk, the individual may be denied the position or benefit.

The policy in the ADA is equivalent to the policy recently adopted by the Congress in the Civil Rights Restoration Act (the Harkin/Humphrey Amendment) and the Fair Housing Amendments Act of 1988. The policy is also consistent with the policy developed by the Office of Personnel Management under the Reagan Administration and the Reagan Administration's Presidential Commission on the Human Immunodeficiency Virus Epidemic. It is also consistent with statements by President Bush, C. Everett Koop (the former Surgeon General), the National Institute of Medicine, the American Medical Association, the American Public Health Association, and the American Nurses' Association.

12. Is the ADA a gay rights bill, protecting homosexuals from discrimination?

No. The ADA does not create any rights or protections against discrimination for homosexuals. Thus, a covered entity is not precluded by the ADA from discriminating against a person solely on the basis of homosexuality. The bill is modeled after section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act, as recently amended. These statutes have never been interpreted to afford homosexuals protections from discrimination.

13. Will the ADA bankrupt the private/intercity bus industry?

No. For over-the-road coaches, the ADA provides an effective date of 5 years from the date of enactment for large carriers and 6 years for small providers. During this time, the Architectural Transportation Barriers Compliance Board, in conjunction with an advisory board consisting of 50 percent disabled consumers and 50 percent transportation providers, will conduct an interim study. Also during this time, private/intercity bus operators must modify their policies to assist persons who use wheelchairs onto and off the bus and store batteries.

For charter bus service providers, if using over-the-road buses, 5 and 6 year effective dates apply. Further, if operating a demand responsive type system (not using over-the-road buses) every new vehicle need not be accessible if the operator can demonstrate it is providing equivalent services.

For hotel-type shuttles, the hotel need not make each vehicle with greater than 16 seat capacity accessible if the

service provider can demonstrate that it is already meeting the demand with current vehicles or through alternative arrangements.

14. Does the Substitute Amendment establish new or accept existing remedies which have been applied to minorities?

With respect to employment, the ADA accepts the remedies found in Title VII of the Civil Rights Act of 1964 (injunctive relief and back pay). No right to compensatory or punitive damages.

With respect to public accommodations, the ADA provides for injunctive relief comparable to Title II of the Civil Rights Act of 1964. In addition, the Attorney General is authorized to bring pattern or practice suits and seek penalties akin to those provided for in the Fair Housing Amendments Act (up to $50,000 for first offense and up to $100,000 for second offenses.)

15. Will compliance with the ADA hurt or help the economy?

Lou Harris recently found that "not working" is perhaps the truest definition of what it means to be disabled in America. Ending discrimination will have the direct impact of reducing the Federal government's expenditure of $57 billion annually on disability benefits and programs that are premised on dependency of the individual with a disability. It will also have the immediate effect of making people with disabilities into consumers and taxpayers.

The Department of Labor concluded that its rule implementing section 504 of the Rehabilitation Act (nondiscrimination by recipients of Federal aid) would have a substantial beneficial effect in the form of reduced need for veterans benefits, rehabilitation, disability, medical and food stamp payments. Furthermore, "when individuals move from being recipients of various types of welfare payments to skilled taxpaying workers, there are obviously many benefits not only for the individuals but for the whole society." 45 Fed. Reg. 66,721 (1980)

Persons with developmental disabilities are still being placed in institutions because of the lack of placement in the community and the availability of jobs. In Iowa, it costs $200 per day to place a person in an institution, which is $73,000 per year. if a person is institutionalized for 20 years, the cost to society is $1.46 million; for 40 years, the cost is $2.92 million, etc. Many of these persons, with appropriate early intervention and special education services and training can lead independent lives in the community and hold down a job. In this way, they can become taxpayers and consumers and reduce these staggering costs to society.

NATIONAL ASSOCIATION FOR DEVELOPMENTAL DISABILITIES COUNCILS

MAINSTREAM THE AMERICAN DREAM

43 million - 1 out of 6 - Americans have a disability. People with disabilities are the largest minority in the U.S.

3 million children and adults have developmental disabilities--disabilities which are severe, occur early in life, and usually require lifelong supports. These individuals may have conditions such as mental retardation, autism, cerebral palsy, spina bifida, traumatic brain injury or epilepsy.

ACCOMPLISHMENTS

Public policy has been instrumental in assisting people with disabilities and their families in community settings:

The number that were institutionalized decreased by over 50 percent (from a high of 194,650 in 1967 to 91,440 in 1989).

The number of infants, children and youth living away from their families in institutional settings also decreased by over 85 percent (from a high of 91,592 in 1965 to 12,026 in 1987).

Spending on community programs by states and the federal government increased four-fold in adjusted dollars between 1977 and 1988.

Over a 10-year period, the number of children who attended school with the assistance of the Education for All Handicapped Children Act rose 20 percent.

42 states initiated Family Support Programs which provide services--like respite care or specialized equipment--to families to help in keeping children with developmental disabilities at home.

Nearly 200,000 people with physical disabilities live independently in their own homes with the assistance of personal care attendants (based on 1984 data).

More people with developmental disabilities are working in the community then ever before, including 16,458 who receive employment services to help them move into mainstream jobs.

These are positive accomplishments. They represent changes in attitudes and policy direction; with the view that people with disabilities contribute to society and that society must help to assure that all citizens are able to participate fully.

ROLE OF CONGRESS

Persons with disabilities, their families and friends look to Members of Congress not only as legislators but as leaders in their community.

In this role, Congress needs to understand the underlying principles of vital importance to people with disabilities:

Assure that all children can live at home with their families, go to school with their brothers and sisters, and learn all that they need to be productive adults.

Recognize the importance of focusing on the needs of individuals and families that allow them to overcome their disabilities--and not be confined by outmoded or inappropriate services.

Expand access for adults with disabilities so that they will receive the supports that will make them employable and reach their maximum potential.

Assure that those unable to work have an adequate income and standard of living.

Foster public acceptance that all persons, regardless of their abilities or differences, have access to opportunities to live, work and contribute in society.

1990 AGENDA

In 1987, Congress had many questions about the effects of current policy on people with developmental disabilities and charged the State Developmental Disabilities Councils, funded under the Developmental Disabilities Act (P.L. 100-146) to prepare reports for governors, state legislatures, and the Congress to examine the effects of current policy on people with developmental disabilities.

As part of this effort, more than 14,000 individuals have been surveyed as part of the **National Consumer Survey** on Developmental Disabilities to find out what people's lives are like, what public policy has achieved for them and, most importantly, to illuminate what public policy and public acceptance can accomplish next.

These **"1990 Reports,"** can be a powerful resource for Members of Congress--a resource to address critical issues to respond to constituents in the states and districts and set the legislative agenda for working with people with disabilities and their families--responding to need for continued positive trends in public policy.

CHILDREN WITH DISABILITIES WANT AN EDUCATION

43 million - one out of 6 - Americans have a disability. People with disabilities are the largest minority in the U.S.

3 million children and adults have developmental disabilities--disabilities which are severe, occur early in life, and usually require lifelong supports. These individuals may have conditions such as mental retardation, autism, cerebral palsy, spina bifida, traumatic brain injury or epilepsy.

POLICY ISSUES:

Children and youth who have developmental disabilities have the right, guaranteed under the federal Education of the Handicapped Act, to a free appropriate public education, provided in the least restrictive environment.

Beyond this right, children with developmental disabilities and their families have strong beliefs about meeting each child's needs, encouraging the maximum participation of children with disabilities in regular school life, and preparing children with disabilities to become fully participating and contributing citizens.

School and related services can be federally assisted under the Education of the Handicapped Act until a child reaches age 22. These services can also include planning for the eventual transition to adult work and life.

ACCOMPLISHMENTS:

Early attention to children with special needs can make a difference. Two recent federal amendments to the Education of the Handicapped Act address services to children under the age of 5 and their families. By 1991, all states will be required to provide education and related services to children with disabilities between the ages of 3 and 5, with the support of federal funds. In addition, the Handicapped Infants and Toddlers Program makes federal support for services from birth to five available as an option to states.

Six million dollars was appropriated in FY1989 under the Education of the Handicapped Act for the critical area of secondary education and transition services. These projects respond to the recognition that schooling can prepare children--even children with disabilities--to use their full potential in the adult world.

More and more children--including those with severe disabilities--are going to school in regular classrooms with children who do not have disabilities. According to the Department of Education, in

the 1985-86 school year 26% of all students with special needs were educated in regular classrooms in regular schools. This included 4% of children with multiple disabilities and 7% of children who are both deaf and blind.

It is gradually being realized that youngsters without disabilities benefit from the presence of children with disabilities in their classrooms, by becoming more aware and more tolerant of human differences of all kinds.

FUTURE DIRECTIONS:

INTEGRATED SCHOOLS: Too many children are still educated in isolation from their families and other children. Although progress has been made in bringing children with special needs into regular schools and classrooms--where research shows it is more effective to educate them--children with severe disabilities are much more likely to go to school away from home, out of state or in a segregated facility with other children with disabilities. With the newest techniques and technology and effective support for teachers even a child with severe disabilities can learn with other children.

SUMMER SCHOOL SERVICES: Children with disabilities may need additional services and supports to get the most out of their school years. Summer school programs are optional, leaving many children without services and supports for critical periods. In the National Consumer Survey of Persons with Developmental Disabilities, 65% of families with children said they had a strong need for summer school services but only 34% say they are receiving them.

SUPPORTS FOR LIFE AT HOME: Children must be able to live at home, with their families, to benefit from the family environment. 42 states have initiated Family Support Programs which provide services--like respite care or specialized equipment--to families to help in keeping children with developmental disabilities at home. These services must be expanded.

IDEAS FROM THE STATES:

Excerpts from the 1990 Reports of Developmental Disabilities Councils:

CALIFORNIA

"WorkAbility (is a) model project was developed in 1981 to increase the employability of secondary special education students. Program components include assessment, employment preparation and training, community work experience and support services. WorkAbility has been extended in recent years to the community college level. More than 43,000 students have been served by WorkAbility programs during their 7 years of operation."

WISCONSIN

"Wisconsin has made significant strides in increasing general student awareness of students with disabilities through the student awareness (poster and essay) contest conducted in regular education classrooms. This has been a major cooperative effort of the Department of Public Instruction and the Wisconsin Council on Developmental DIsabilities. In the first year of the contest in 1986, there were 3,600 entries. In 1989, the entries increased to 35,000."

ILLINOIS

"Jim graduated from (Belleville) high school in 1989. A few years ago, Jim's future would have included helping his family in chores and business activities, living at home with his family and having a social life which revolved around his family. That is not the case for Jim, thanks to his high school. During the past few years, Jim became an active participant in choosing his goals. His goals changed. His high school encourages student participation in the choice of goals - they do it through transition planning meetings which begin as early as possible in a student's high school career. Jim's life now includes employment as a bagger at a local supermarket with the support of a job training specialist. He is also looking forward to moving into a community integrated living arrangement with a friend."

PEOPLE WITH DISABILITIES WANT TO WORK

43 million - one out of 6 - Americans have a disability. People with disabilities are the largest minority in the U.S.

3 million children and adults have developmental disabilities--disabilities which are severe, occur early in life, and usually require lifelong supports. These individuals may have conditions such as mental retardation, autism, cerebral palsy, spina bifida, traumatic brain injury or epilepsy.

Policy Issues:

People with disabilities--including those with severe disabilities--want to work. A job means independence, making a contribution, and contacts with other people. Technological advances, changes in attitudes and new public policies mean that more people with disabilities are working than ever before. But more opportunities and supports are needed.

In the National Consumer Survey of People with Developmental Disabilities, 80% said that being productive is important to them yet only 36% believed they were being as productive as they could be. In a Harris poll of people with disabilities, 66% of those not working want to work, thus becoming less dependent.

ACCOMPLISHMENTS:

The federally-assisted Vocational Rehabilitation Program provides funds to states to foster employment for people with disabilities. In 1988, nationwide demonstration projects provided supported employment services--targeted toward regular community jobs for persons with more severe disabilities--which helped 24,817 people in 27 states get and keep mainstream jobs. Supported employment services can include specialized training, individual job coaches, and technological adaptations. States also fund supported employment programs to meet the needs of adults with developmental disabilities.

Providing incentives to become gainfully employed is the purpose of the Social Security Act's 1619 (A) and (B) Programs. These programs allow people receiving Supplemental Security Income to maintain cash benefits and health care coverage while moving toward full employment. Use of these incentives increased 150% between March 1987 and September 1988, illustrating the eagerness of people to work.

The private sector has put people to work. IBM, McDonald's, Marriott and other key corporations have trained and hired thousands of people with all types and levels of disability, including people with developmental disabilities. Their experiences have been overwhelmingly positive.

Employers have worked together to encourage employment of people with disabilities. The privately-funded Job Accommodation Network provides information to employers on ways to meet the needs of people with disabilities in the workplace.

The costs of supporting people in employment need not be great. One industry study found that the majority of accommodations in the workplace cost under $50. In the Harris poll of people with disabilities, 60% of those working did not need ANY accommodation in order to work. Supported employment services cost less than custodial day programs for people with severe disabilities and the costs can decrease over time as the individual gains skills and earns more income.

FUTURE DIRECTIONS

Barriers to becoming fully productive, earning a living wage and becoming a tax payer still exist for people with disabilities.

Even when working, the people in the National Consumer Survey earned only an average of $51 per week. Many people who could work in community jobs are still served in sheltered workshops where they earn little and have no contact with the community at large.

While state and federal employment programs have made progress in meeting the employment needs of people with disabilities, individuals with more severe disabilities--who can and want to work--may not be able to get the continuing services they need, since many employment services are time-limited.

Housing, support services, transportation and health care affect the ability of people to be trained and become employed. When a person turns age 22, when education services end, there are often few services available to support them to live independently and thus be able to work.

IDEAS FROM THE STATES:

Excerpts from the 1990 Reports of Developmental Disabilities Councils:

MICHIGAN:

"The Handicapper Small Business Association (HSBA) is a private nonprofit organization that provides technical assistance to people with disabilities and service providers. HSBA does direct counseling with entrepreneurs with disabilities, on business and business-related disability issues. HSBA also provides consulting on a fee-service basis to public and private rehabilitation agencies on feasibility issues relating to client business development plans. HSBA is under contract with Michigan Rehabilitation Services. Other sponsors are the U.S. Small Business Administration, the Michigan Department of Commerce, and membership contributions."

TEXAS:

" 'Supported employment works. It allows school staff to train and place students in competitive work sites. We've done it in Waco. It must be more effective than any workshop.' " (Public testimony from a parent from Waco).

CALIFORNIA:

"(In California)...Approximately 4,000 individuals are being served in supported employment in FY1988-89, a 300% increase over FY1986-87. Average monthly wages earned range from $178 for workcrews to $483 for individual placements. Employers participating in the program include service industries, such as food and hotel/motel, retail sales, manufacturing, government agencies, health care and entertainment."

PEOPLE WITH DISABILITIES NEED HOMES

43 million - one out of 6 - Americans have a disability. People with disabilities are the largest minority in the U.S.

3 million children and adults have developmental disabilities--disabilities which are severe, occur early in life, and usually require lifelong supports. These individuals may have conditions such as mental retardation, autism, cerebral palsy, spina bifida, traumatic brain injury or epilepsy.

POLICY ISSUES:

Traditional views of people with developmental disabilities resulted in a large system of institutional services, services which were isolated and expensive. New ideas focus on helping parents to keep children at home, providing adults with the opportunities to live in communities and utilizing scarce resources for supports rather than buildings.

ACCOMPLISHMENTS:

Since 1965, the number of people residing in institutions has dropped by 50% as states and communities gradually realized that public policy and the needs of people were better served by supporting family and community life. The trend toward reducing use of institutions continues.

Some federal policies now support community and family living, rather than institutions or other group living situations: children with serious medical needs can live at home with their families under the "Katie Beckett" Medicaid waiver program; adults can move from an institution to a home in the community with the necessary supports under the Home and Community Based Services Medicaid Waiver.

The Fair Housing Amendments of 1989 promote acceptance of people with disabilities as members of the community and recognize the importance of improved physical accessibility in housing for people who use wheelchairs or have other mobility limitations.

FUTURE DIRECTIONS:

Some States have instituted programs --without federal assistance--to provide support services to families with children with disabilities. These programs have proven to be effective in providing the sometimes minimal assistance families need--like intermittent respite care--that can enable them to keep their family intact.

The waivers which allow use of Medicaid for non-institutional services are effective. But these programs serve only a small

percentage of those who need them and the overwhelming share of federal resources - approximately 65% - still goes to services in institutions. This bias needs to be tilted away from institutions and toward homes and supports.

Alternative financing, loan programs, cooperatives, private investment and other new ideas are working to make affordable and accessible housing available. Programs can then be centered around the person and not buildings.

IDEAS FROM THE STATES:

Excerpts from the 1990 Reports of the Developmental Disabilities Councils:

OHIO

"The funding mechanisms for assisting people with disabilities in securing housing should be separate from those used to fund support services. This will provide people much more freedom in choosing where they live and also allow services and funding to 'follow the person.' Develop an easy-to-use consumer guide concerning accessibility issues, designed and field tested with the assistance of people with disabilities, which can be used to educate architects, builders, inspectors and realtors concerning the housing needs of persons with disabilities."

VERMONT

"Housing policy goals for people with developmental disabilities must be redefined to focus on individual needs, to empower individuals to own or rent their own homes, and to emphasize that children live in a family home. Eligibility standards for various types of housing must include more flexibility to accommodate people requiring a variety of supports. For example, a single person requiring a personal care attendant should be eligible for a two-bedroom apartment, as was done in the South Meadow Project in Burlington."

MARYLAND

"Establish a centralized information and referral resources center for people with disabilities, possible within the Department of Housing and Community Development. This one stop center should have a community liaison and/or an access ombudsman and provide community education and training on housing programs and issues."

THE ADA: EVERYONE'S RESPONSIBILITY

BY JUDY HEUMANN AND MARILYN GOLDEN

Stories about the discrimination we as disabled people face every day are very powerful. We must tell these stories in order to enable people to understand how significantly discrimination effects us every day in our lives. We must tell these stories in order to enable Members of Congress, the media, our local communities and other disabled people to know that we are fighting for full equality in this country. We must make it clear to all, including ourselves, that we want full and equal opportunities in all aspects of our lives and we will settle for nothing less.

It is difficult to write about the discrimination we face every day. It is difficult because many of us have stopped believing that we have the same rights as non-disabled people. We have accepted the lack of accessible buses, taxicabs, movie theatres, restaurants, public shopping malls, the denial of jobs, the inability to get adequate interpreter services, reader services, accessible religious institutions, as a reality in our lives because we have a disability. Many of us have not stopped to think how we would be living our lives if we didn't have a disability. It is time that we document how discrimination adversely affects our lives.

For too long we have equated equality with our ability to return tax dollars to the American economy. Now we must equate equality with our ability to function in our communities on a day-to-day basis like all other people. Now we must document all of the barriers that exist in our daily lives and prohibit us from partaking of the American dream.

The following are good examples of acts of discrimination which have happened to some Americans with disabilities. We as disabled people, family members, or people working with people who have disabilities experience directly and indirectly the effects of discrimination on a regular basis. All people, disabled and non- disabled, must participate in helping to educate all segments of our community about discrimination. We urge you to write about the discrimination you face every day when writing your letters to Members of Congress.

The Americans with Disabilities Act is the most important piece of anti-discrimination legislation to come before the Congress since Section 504. It will not pass unless <u>every</u> person commits him or herself to its passage. You must make people understand the types of discrimination we face. Each one of us must tell our story. Our stories and hard work to improve our lives will result in the passage of the ADA.

The following are examples of portions of letters that other persons have sent to their Congressmen and Senators:

A blind man in Massachusetts wrote: The local commuter rail does not announce the stations even though it has a PA system that works. The same rails with platforms that drop off into pits, have no landmark or means of identifying the edge. Countless times I have come one step from falling off a raised platform...

A man from Pennsylvania who has a mobility impairment wrote: I was invited to a wedding reception. I could not go because the reception hall was inaccessible.

A wheelchair-user in Alaska said she was . . . .: Denied a taxi ride; the driver said "the cab was not equipped for a wheelchair. My chair will fit in any car with the possible exception of a VW bug.

An advocate in Missouri wrote: As a Vocational Rehabilitation Counselor, I had placed a young man in an analyst position with McDonnell-Douglas. The examining M.D. doing the job physical refused to believe that my client could do the computer work involved and told him "I don't think you can do it and if you don't get past me you don't get the job." My client graduated college with honors with a business and computer science degree. He had been accessing and working with computers for years.

A volunteer with learning-disabled people in Georgia testified: One gentleman would like to work for the local power company. He is highly capable in the skills required for the job he would like, but he cannot pass the test the company administers to applicants because of a reading disability.

A hearing-impaired man in New Mexico reported: Patients in hospitals, without interpreters, madly waving their hands, trying to communicate, have been thought to be going wild, have been sedated with thorazine and mistreated.

A Louisiana woman with epilepsy wrote: I myself have been discriminated against in the past because of epilepsy. This happened after I was working for a company for two and one half weeks. I am a keypunch operator and at that time had about four and one half years experience. I was honest and filled out my application saying that I had epilepsy. I was hired. After two and one half weeks my supervisor came to me and stated, "The manager is afraid you will have one of those fits, fall down the stairs, and sue the company." So I was laid off.

The New York City Commission on Human Rights told of: a man who worked as an instructor for a a beauty school for a number of years who took an authorized sick leave. During that leave he was diagnosed with AIDS. When his health stabilized and he attempted to return to work the school refused to reinstate him because of an alleged hiring freeze. The school eventually admitted that they refused to permit the man to return to work because of his AIDS condition. The man's doctor had provided documentation confirming his ability to return to work but the school insisted that a person with AIDS could not perform the job.

A blind woman in Mississippi reported: I am blind and have been refused entrance in restaurants because I have a guide dog.

An Illinois man whose wife is disabled complained: As a spouse of a person with a disability, I am offended by the constant choice we have to make concerning our family activities. There are too many instances, where we as a family were denied because we wouldn't separate from our disabled family member. Our children and myself are just appalled that we are put in the position of destroying family unity, to enjoy commonplace activities. Pass the ADA and bring families back together.

A Florida man who uses a wheelchair wrote: I went to a local bowling alley and asked for a lane. I was refused for "safety reasons" Naturally since I was in a wheelchair making it obvious that I didn't have the brains to understand such things, they didn't bother to explain the "safety reasons" to me.

A service-provider to hearing impaired people in Illinois testified: My staff and I are involved on a daily basis with severely hearing impaired persons who do not have access to public services. We have clients who are admitted into hospitals, undergo surgery, and are released without the benefit of a sign language interpreter to receive information critical for their health. We have clients who have been arrested and held in jail overnight without ever knowing their rights nor what they are being held for. We have clients whose children have been taken away from them and told to get parent information but have no place to go because the services are not accessible. What chance do they have to ever get their children back?

A man who lives in Montana and has a mental illness wrote: I have an advanced degree in art and lengthy experience in public relations and management. I was hired by a community mental health center to be a driver. When the center had an opening for a public relations person, I was stabilized and had not had any serious recurring problems related to my illness - so I applied. I was not even called for an interview although I met all of the listed qualifications.

A deaf Mississippi woman with hearing children reported: Deaf parents with hearing children wanted to fully participate in the school activities for their children. However, they were told that they must pay themselves if an interpreter was provided for the meetings. When a parent-teacher conference was held, the hearing child had to interpret for the conference about his progress at school. A hearing child is not expected to be present at a parent/teacher conference about himself. What does this do to the child to be present while parents and teachers discuss things that need to be freely discussed without his presence? What does this do for the effectiveness of the conference?

An advocate in Missouri told of: a person who is mentally retarded who was asked to leave a restaurant, for no apparent reason.

A hearing-impaired woman in Nebraska wrote: I live in "Tornado Alley" - Some TV stations issue a "Tornado Alert" and all you see are those words on the screen. It is very worrisome not to know where the tornado is headed - especially if you can't hear the sirens. I have written to those stations without results.

A New York who uses a wheelchair said that he: was asked to leave a factory outlet store which had a posted "no stroller" rule in effect.

A Pennsylvania woman who has multiple sclerosis wrote: My son's school was considering suspending him for two tardies. They told me I had to come to school to sign a paper. There are two flights of stairs that I couldn't climb. I told them that. So because I couldn't get there, he was suspended.

A woman who lives in Oklahoma and is deaf said: In hotels and motels there is no way for a deaf person to call out from the room. Even if I have my own TDD, I still have to get dressed and go to the lobby and find a pay phone...

These are only a few samples. Be creative! Members of Congress want to hear about what has happened to you and your friends. Write to your member of Congress and Senators at the following addresses:

The Hon. _____
U.S. House of Representatives
Washington, D.C. 20515

The Hon. _____
U.S. Senate
Washington, D.C. 20510

Thanks for joining this fight!

MEMO

TOM C. KOROLOGOS
PRESIDENT

9-1

TO:
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National Federation of
Independent Business
Suite 700
600 Maryland Ave. S.W.
Washington, DC 20024
(202) 554-9000

The Guardian of
Small Business

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EDITOR'S RESOURCE

Contact: Terry Hill (202) 554-9000

Sen Dole - You see this? Last Page has conclusion Doug

August 30, 1989

AMERICANS WITH DISABILITIES ACT
(S. 933 as Reported)

When Congress returns after Labor Day, the Senate is expected to resume action on the Americans With Disabilities Act, a bill which, if enacted, will have a major impact on American businesses. Introduced in both Houses of Congress in May, the bill seeks "to establish a clear and comprehensive prohibition of discrimination on the basis of disability" in employment, public accommodations, private businesses, public services, transportation and telecommunications. In early August, S. 933 was reported out of the Senate Labor and Human Resources Committee by a vote of 16-0. However, several senators referred to problems that still needed to be addressed.

BACKGROUND

Currently, federal contractors and recipients of federal aid must comply with the non-discrimination and affirmative action requirements of Sections 503 and 504 of the Rehabilitation Act to accommodate the disabled in return for receiving federal monies.

The ADA bill goes much farther than the Rehabilitation Act in that it applies to the vast majority of businesses in America even though these businesses receive no quid pro quo from the government. The ADA bill imposes costly requirements on businesses and provides for unlimited damage awards even if the discrimination was unintentional. And the bill is so broadly worded that business owners will never know if they are in compliance with the law.

ACTION NEEDED

Although a number of positive modifications were made in the Committee compromise bill, particularly in the employment provisions, the National Federation of Independent Business believes that much remains to be done to fairly balance the needs of the disabled with the ability of business owners to meet those needs. The following are several points that merit consideration and action.

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1. *A business owner can be forced to pay up to $50,000 for the first violation and $100,000 for subsequent violations plus unlimited monetary damages for not accommodating a customer, client or visitor with a disability. No administrative remedy is available under this section of the bill, unlike the employment section of the bill and prior civil rights laws. Keep in mind that one half of all businesses in America start up with less than $20,000 in total capital.*

2. *The ADA bill covers 900 types of disabilities. A business owner must accommodate all 900 types before any individual requests accommodation. For example, a business owner will have to purchase equipment for the deaf or provide a trained interpreter even if a hearing impaired person never enters the business. The bill does not use the more reasonable standard of addressing a known disability, but rather places the burden on the business owner to prepare for every possibility.*

3. *No differentiation is made between willful refusal to accommodate the disabled and unintentional violations of the law. It would be appropriate to differentiate between the two, providing for administrative relief in unintentional cases and reserving higher penalties for egregious cases.*

4. *A small business exemption is included in the employment section of the bill, as is present in past civil rights laws. However, there is no small business exemption with respect to the public accommodations section (accommodating customers, clients, and visitors). Since no studies have been conducted to determine the cost of compliance in this sweeping legislation, it would be reasonable and fair to include an exemption at this time.*

5. *No recognition of a good faith effort on the part of the business owner is included in the ADA bill. As presently drafted, a business owner could be sued if the owner fails to provide a specific type of accommodation even if a good faith effort is made to provide for other types.*

6. *The ADA bill requires retrofitting of existing structures when the structures are altered. However, the bill does not define what constitutes an alteration. A better approach would be to institute a standard of 50% of the value of the building, such as that incorporated in Pennsylvania law. This would give a business owner a clear understanding of what is expected.*

7. *No incentives are included in the bill to assist a business owner with voluntary compliance. Currently, Section 190 of the IRS Code permits a $35,000/year deduction for structural changes to accommodate the disabled. The cap should be lifted and the deduction should be broadened to included non-structural types of accommodations required by the bill such as raised desks, varied counter heights, wider aisles and the like.*

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8. In new construction, accommodation must be made for all "potential places of employment". However, the term is not defined. According to proponents of the bill, this might include catwalks, boiler rooms, stockrooms and the like. As currently drafted, compliance will be impossible without clear guidelines.

9. The bill retains language that states a business owner can be sued if a disabled person believes discrimination is "about to" occur. Such broad language needs to be dropped or significantly narrowed to clearly state what is intended at the outset.

10. The bill states that reasonable accommodation must be made unless it creates an undue hardship. However, the definition of undue hardship, an action requiring "significant difficulty or expense", is so subjective that no business owner will ever know when the requirements of the bill are met. While attempts have been made to clarify this language, they have not succeeded as yet. Further modification is necessary.

CONCLUSION

The purpose of civil rights legislation is to provide fairness. Unfortunately, the ADA bill provides access to the disabled at the expense of others. While much can and should be done to assist the disabled, fairness for all Americans should be the guiding principle. Appropriate modifications in the bill can lead to this result.

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ANALYSIS OF EMPLOYMENT PROVISIONS OF AMERICANS WITH DISABILITIES ACT OF 1989

INTRODUCTION

Fisher & Phillips has been requested by House Education and Labor Committee staff to provide a legal analysis of the employment provisions of H.R. 2273 and S. 993, the "Americans With Disabilities Act of 1989" ("ADA"). Fisher & Phillips is a national labor and employment law firm representing employers in a wide variety of industries and ranging in size from Fortune 500 companies to small entrepreneurships.

This analysis will address the likely legal ramifications of enactment of the ADA as currently drafted, as well as the relationship between the ADA and current federal anti-handicap discrimination laws. This analysis recognizes that equal employment opportunity for disabled persons is an important national goal. However, there are many aspects of the ADA as currently drafted that will make its interpretation by the courts difficult and compliance with its terms by employers unduly burdensome in many cases.

In general, two aspects of the ADA are especially problematic for employers. First, while the stated goal of the proponents of this legislation is simply to afford disabled persons the same rights to equal employment opportunities as other minorities, the ADA in fact goes well beyond those protections

...ded other minorities. While an analogy between the ADA and Title VII of the Civil Rights Act of 1964 is superficially appealing, it is also misleading. Title VII merely prohibits employers from discriminating based upon race, sex, national origin, etc. The ADA not only prohibits discrimination but requires affirmative action on the part of all covered employers to "reasonably accommodate" disabled individuals, often at significant cost to such employers. While this obligation is currently imposed, pursuant to Section 504 of the Rehabilitation Act of 1973, upon employers receiving federal financial assistance, the cost and disruption attending accommodation can be seen as a quid pro quo for such federal assistance. However, when such an obligation is imposed upon employers not receiving federal assistance, there is no quid pro quo to justify imposing severe and burdensome costs and disruption upon private employers.

The argument that, as this is civil rights legislation, costs of compliance under ADA should be irrelevant, is fallacious. None of the current civil rights laws requires a private employer to expend substantial resources on affirmatively accommodating a protected class. A prohibition against discrimination based upon race or sex or national origin is costless; i.e., while an employer may have to pay a penalty for violating the prohibition, there is no extra cost attributable to compliance. Thus, the greatest flaw of the ADA as drafted is the apparent lack of concern for the cost and workplace disruption that this legislation will impose upon private employers -- many of them small enterprises -- which receive no federal aid or assistance in return.

The second general defect in the ADA is that it fails sufficiently to distinguish between employers and providers of programs or services. This is particularly apparent in Title I of the ADA. While the basic principle of non-discrimination is certainly applicable to both employment and programs and services, the manner of its application will differ dramatically depending upon the context. In the programs or services context, the focus is upon providing equal (or "equally effective") benefits or services to all recipients, and the provider of the benefits or services generally does not compete in the marketplace. In the employment context, by contrast, the focus must be upon an individual's ability to meet the requirements of the job in question and contribute to the efficacy of a business that must turn a profit to survive in a free marketplace. Title I, by attempting to apply the same general requirements to both contexts, ignores these key differences and hence creates many uncertainties. This likely will unleash a maelstrom of litigation, leaving the precise nature of rights and obligations under the legislation unresolved for many years. It is therefore crucial that employment and programs and services be separated analytically under the ADA, with obligations, standards and defenses specifically tailored to fit each context.

With these general considerations in mind, this analysis will proceed to focus upon the specific provisions of the ADA relating to employment, in the order they appear in the legislation.

DETAILED ANALYSIS

1. Definition of "Disability"

Section 3(3) of the ADA defines "disability" using the same language used in 29 U.S.C. §706(7)(B). The problem with this definition is that it potentially includes both purely temporary and self-induced conditions. For example, an employee with a broken leg might rely upon the ADA, as currently drafted, to force his employer to expend substantial sums to "accommodate" him in the workplace during his six-week recovery period even though he may be fully covered by sick leave, workers compensation or short-term disability insurance benefits.

Likewise, an employee might, through simple overindulgence or lack of self-discipline, become so obese as to be unable to meet an employer's performance, appearance or weight standards. As drafted, the ADA could allow such an employee to demand that his job be "restructured" or that a "protocol" (which might include a weight standard) be "modified" to allow him effectively to flaunt the standard.[1] As a further example, an employee could show up for work under the influence of alcohol and unable to perform his normal duties and, so long as he did not pose a danger to others, he would be entitled to demand under the ADA

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[1] For example in Tudyman v. United Airlines, 608 F. Supp. 739 (C.D. Cal. 1984), a body builder sued under Section 504 of the Rehabilitation Act after he was rejected for employment as a flight attendant because he could not meet the employer's weight standards. He claimed his excessive weight was a "handicap." The court denied his claim under Section 504, but there is a substantial likelihood probability the result would have been different had the claim been brought under the ADA as currently drafted.

that he be "reassigned" to another job or be assigned to another shift after becoming sober.

As Section 3(2) is currently drafted, there thus remains a substantial probability that it will be abused by individuals who are not truly disabled, causing substantial expense and disruption to employers and much frivolous litigation. Such abuse may be avoided by inserting the phrase "other than a purely temporary or self-induced condition" after "impairment" in Section 3(2)(A).

2. Definition of "Reasonable Accommodation"

"Reasonable accommodation" is not currently defined by statute. Rather, the courts generally determine on a case-by-case basis whether a particular accommodation is reasonable. See Southeastern Community College v. Davis, 442 U.S. 397, 412-13 (1979). This permits some flexibility to account for technological and cost considerations.[2]

Section 3(3) of the ADA, as currently drafted, permits no flexibility and allows for no consideration of the cost of a particular accommodation. It provides that "The term 'reasonable

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[2] In Southeastern Community College the Supreme Court explained:

> We do not suggest that the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons always will be clear. . . . Technological advances can be expected to enhance opportunities to rehabilitate the handicapped or otherwise to qualify them for some useful employment. Such advances also may enable attainment of these goals without imposing undue financial and administrative burdens. . . .

442 U.S. at 412.

accommodation' shall include. . . ." and then lists a number of accommodations in the conjunctive, some of which are mutually exclusive (e.g., job restructuring vs. reassignment) and many of which are quite expensive (modification of facilities and equipment, provision of readers or interpreters). This is a departure from current regulations under Section 504, which state that "Reasonable accommodation may include . . . ." See, e.g., 29 CFR § 32.3 (emphasis added). The latter language represents a recognition that it is impossible to define all forms of accommodation that might be appropriate in every circumstance. For example, job restructuring or the provision of a reading assistant simply may not be feasible in certain situations. In other situations, the cost of acquisition or modification of special equipment may be prohibitive and reassignment to another job might be the more reasonable solution. If Section 3(3) of the ADA were changed from "shall" to "may" it would afford courts, regulators and employers the necessary flexibility in determining what accommodations will be reasonable and workable in a particular circumstance.

Moreover, Section 3(3), unlike even the current regulations under Section 504 (which define the obligations of entities that receive federal financial assistance), contains no reference to the cost of a particular accommodation in determining its reasonableness. While Section 202(b)(1) of the ADA provides that an employer need not accommodate a disabled person if it can "demonstrate that the accommodation would impose an undue hardship

on the operation of the business," there is no further definition of "undue hardship" provided as there is under current Section 504 regulations. See 29 CFR § 32.13(b). Essentially, Section 3(3) as currently drafted imposes a heavier burden on employers than Section 504 of the Rehabilitation Act, without the concomitant quid pro quo of federal financial assistance.

Finally, Section 3(3) adds obligations not currently contained in the regulations under Section 504 of the Rehabilitation Act, in requiring "appropriate adjustment or modifications of examinations and training materials." Compare 29 CFR § 32.3; 45 CFR § 84.12(b). While this is apparently designed to require that examinations and training materials be made accessible to sight- or hearing-impaired persons, it could also be read (perhaps in conjunction with Section 202(b)(1), which protects persons with "mental limitations") to support an attack on the substance of an employer's qualification examination by a person afflicted with nothing more than low aptitude or intelligence. This problem may be avoided by inserting the phrase "to make them accessible to sight- or hearing-impaired persons" after "modifications of examinations and training materials" in Section 3(3)(B).

3. Title I -- In General

The general prohibitions and obligations set forth in Title I are largely modeled on the programs and services context and then applied wholesale to the employment context. This is unworkable, as the issues involved in employment discrimination

are vastly different than those involving discrimination in programs and services.

In fact, the language of Title I does not even make sense in several places. For example, Section 101(a)(1)(C) prohibits providing a job to a disabled person that is "less effective" than that provided to others. Similarly, Section 101(a)(1)(D) prohibits providing a job that is "different or separate, unless such action is necessary to provide the individual or class of individuals with a . . . job . . . that is as effective as that provided to others." It is impossible to conceive of one job being more "effective" than another.

There are numerous other incongruities in Title I as well. Section 101(a)(2) on its face is not relevant to the employment context, but its inclusion in the "umbrella" of Title I suggests that it might be applicable to employment discrimination as well as discrimination in programs and services.

Section 101(a)(4) provides:

> "An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration . . . (c) that perpetuate the discrimination of others who are subject to common administrative control or are agencies of the same State."

The meaning of this provision on its face is not apparent; the manner in which it might be applied to private employers is particularly perplexing.

Section 101(a)(1)(G) prohibits "otherwise limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others." While this section is essentially redundant

and may be deleted entirely without diminishing the rights of disabled persons under the ADA, it contains dangerous implications for the employment context. For example, certain privileges may attend a higher rank in a company. This section suggests that such privileges might have to be provided to disabled individuals solely on account of their disability and without regard to their rank within the organization. Moreover, with respect to the term "advantage," this provision could conflict with an employer's affirmative action obligations imposed under other federal laws. As such, if this section is not deleted in its entirety, it should not be made applicable to the employment context.

Finally, Section 101(b)(1), which sets forth defenses, is so general in its coverage that its application specifically within the employment context may be difficult. For example, this section speaks in terms of an individual's ability "to take advantage of the essential components" of a "job, or other opportunity." While one may "take advantage" of a program or service, one does not "take advantage" of a job.

Each of these examples illustrates the need to delete Title I entirely from ADA and work its substantive provisions into the respective remaining titles where relevant and appropriate. As Section 101(a)(1)-(4) is oriented toward programs and services, references to "jobs" should be deleted and it should be made applicable only to Titles III through IV. The defenses set forth in Section 101(b)(1) should then be specifically set forth in each of Titles II through V, specifically tailored to fit the context covered by the respective titles. While such a move will increase

the number of words in the legislation, it likely will introduce substantial clarity and forestall much needless litigation over the application of general terms to specific situations that may be out of context.

4. No Reference to "Qualified Disabled" Individuals in Section 101(a)(1)

Nowhere in Section 101(a)(1) is there any reference to disabled persons. As currently written, the section simply states that it is discriminatory to treat "individuals" differently. If this section is to have any meaning at all, "individual" and "class of individuals" must be changed to read "qualified disabled individuals" and "class of qualified disabled individuals," respectively. This would be consistent with standards in force under Section 504 of the Rehabilitation Act.

5. Providing Assistance to an Organization that Discriminates

Section 101(a)(1)(E) prohibits "[a]iding or perpetuating discrimination by providing significant assistance to an agency, organization, or individual that discriminates." This is another provision that, while easily applicable to such entities as state governments, would cause serious problems if applied to private employers. It could conceivably expose a private company to a lawsuit liable under the ADA for contracting with another company for goods or services, where the second company discriminated against the disabled and the contractual relationship involved a "significant" portion of that Company's revenue. This would permit a plaintiff to, in effect, induce a "secondary boycott" against an alleged discriminating company via lawsuits against that company's

key customers and suppliers. The economic disruption that would result from such a scenario is obvious.

This problem may be eliminated by adding a proviso at the end of Section 101(a)(1)(E) stating: "where such assistance is not in the form of contracts for goods or services."

6. Prohibition of Discrimination Based Upon Relationships or Associations

Section 101(a)(5) prohibits the exclusion or denial of "equal services, programs, activities, benefits, jobs, or other opportunities" to a person because of his relationship or association with a person who is disabled. In the employment context this would involve denial of employment or benefits to a person based upon his having a disabled spouse, child or lover. This will create two serious problems with respect to insurance coverage, however.

First, depending upon state law and the terms of particular insurance contracts, insurance carriers may refuse to cover certain medical conditions under an employer's group health insurance plan. In such an event, the employer would be unable to offer a job with equal benefits to an individual related to a disabled person, and this section would render the employer liable for a situation over which it had no control.

Second, even if such insurance coverage could be made available, the cost could be exorbitant. This is another example of the failure of the drafters of the ADA to recognize that this legislation will impose significant costs upon private employers. Moreover, the costs imposed in this instance would have no direct

impact upon providing equal employment opportunities to disabled persons, which is the goal of this legislation.

7. Showing Required By Employer to Establish Defense

The burden that an employer must carry to establish a defense under Section 101(b)(1) -- showing that selection or performance standards or eligibility criteria are "both necessary and substantially related" to an individual's ability to perform the "essential components" of a job -- is completely unprecedented in the employment context.

The argument that the ADA is designed only to provide the same protection to disabled individuals as to other minorities is belied by the fact that the burden an employer must carry in establishing a defense under the ADA is substantially heavier than the similar burden under Title VII. To establish a defense based upon a "bona fide occupational qualification" ("BFOQ") under Title VII, an employer need only show that such standards or selection criteria are "reasonably necessary for the normal operations of the employer's business." 42 U.S.C.§2000e-2(e)(1) (emphasis added).

Even under Section 504 of the Rehabilitation Act an employer is not faced with such a heavy burden. Under that law an employer is required only to show that its selection criteria are "job related;" that is, that the individual involved cannot "safely and efficiently" perform the job in question. E.g, Prewitt v. United States Postal Service, 662 F.2d 292, 309-310 (5th Cir. 1981).

There can be no justification for forcing employers to carry such a heavy burden in ADA cases, therefore unless the object is to impose "strict liability" upon employers by making it virtually impossible to defend an ADA claim. If the ADA is designed simply to provide the same protection to disabled persons as is enjoyed by other minorities, Title VII's "BFOQ" defense should be applicable in ADA cases.

Moreover, the reference in Section 101(b)(1) to the "essential" components of a job (and the subsequent references in Sections 201(5) and 202(b)(3) to the "essential" functions of a job) is unprecedented and likely to lead to an explosion of litigation. This is an invitation to plaintiffs to seek to have the courts analyze every element of every job at issue, to second-guess the employer as to which functions of a job may be "essential" and which may be "peripheral." This provision, coupled with Section 3(3)(B)'s requirement of "job restructuring," will inject federal judges into the day-to-day management of private businesses, as every job description or assignment of duties will be laid open to attack and judicial review.

The term "essential" may be deleted without any diminution of the rights of disabled persons. Job requirements should be taken as they are found. The focus should be upon whether a proposed accommodation is reasonable in a particular case, as opposed to giving plaintiffs "two bites at the apple" to both attack the legitimacy of job requirements and argue that an accommodation should be made to exempt them from the requirements or help them meet them.

8. Qualification Standards

Section 101(b)(2) provides that an employer may establish certain "qualification standards" for alcoholics, drug abusers and individuals with a currently contagious disease or infection, but only to the extent that such individuals pose a "direct" threat to the health, property or safety of others "in the workplace or program."

As currently drafted, Section 101(b)(2)(A) will pose a direct conflict with the Drug-Free Workplace Act, 41 U.S.C. § 701, et seq., and the regulations issued by the various agencies within the Department of Transportation ("DOT") that mandate testing to detect drug use and prohibit employers from using certain employees (for example, airline flight crews and mechanics, railroad engineers, truck drivers) who have drugs in their system. The Drug-Free Workplace Act prohibits the possession and use of unlawful drugs in the workplace of any federal contractor or recipient of a federal grant. Regulations of DOT agencies are even more explicit. For example, Federal Aviation Administration regulations, 14 CFR § 65.46, prohibit an air carrier, as a condition of holding an operating certificate, from employing a pilot or mechanic who has drugs in his system or who has failed to pass a drug screen urinalysis. As currently written, however, Section 101(b)(2)(A) would expose an airline employer to liability for obeying FAA regulations unless the employer could establish that the pilot or mechanic reporting for duty with drugs in his system posed "a direct threat to property or the safety of others

in the workplace or program."

This problem partially may be eliminated by replacing the current language of Section 101(b)(2)(A) with language such as the following:

> (A) prohibiting the current use of alcohol or drugs by an alcoholic or drug abuser on the job or at such times as could affect or impair job performance, or constitute a threat to the safety or property of others, or
>
> (B) requiring that employees comply with requirements of the Drug-Free Workplace Act or regulations concerning drug testing or drug use promulgated by any department or agency of federal, state or local government and applicable to such employees.

Section 101(b)(2)(A) and (B) as currently drafted, are also problematical in that they recognize the need for protecting the property, health and safety of others "in the workplace or program" but make no mention of protecting customers, passengers or the general public. This is a departure from the terms of the Rehabilitation Act of 1973, as amended just last year in the Civil Rights Restoration Act, 29 U.S.C. § 706(8)(B) and (C), which does not contain the phrase "in the workplace or program." For example, a truck driver who drives a truck under the influence of alcohol may not be a danger to other truck drivers in his "workplace," but he clearly would present a "direct threat to the property and safety" of other motorists and pedestrians. Accordingly, the phrase "in the workplace or program" should be deleted from Section 101(b)(2)(A) if that section is not completely redrafted as suggested above.

Notwithstanding what has been stated above, active alcohol and drug abusers should not be included within the definition of qualified disabled Americans. Both §504 and the case law interpreting it include such individuals only where they are undergoing or have successfully completed a rehabilitation program and are not active users. In contrast, this proposed language of the ADA goes beyond §504 and the Court interpretations, and would render disabled those individuals who voluntarily and recreationally use alcohol and drugs, giving them equal dignity with those individuals who are disabled through no fault of their own. Moreover, such approach counteracts the billions of dollars being spent through many governmental programs and agencies at all levels seeking to eliminate alcohol and drug abuse.

9. Coverage Threshold

Section 201(3)(A) provides that the ADA shall cover employers of 15 or more employees. While this is the coverage threshold of Title VII, significant differences exist between the obligations imposed by Title VII and those imposed by the ADA. Title VII does not obligate an employer to incur significant costs in complying with its terms, it simply prohibits an employer from discriminating on the basis of race, sex, national origin, etc.[3]

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[3] While an employer is obligated to reasonably accommodate an employee's religious observance or practice, 42 U.S.C. §2000-e(j), there is no obligation to make accommodations that involve more than a de minimis cost to the employer. Trans World Airlines v. Hardison, 432 U.S. 63 (1977).

As such, a lower coverage threshold under Title VII is not a threat to small business. The ADA, by contrast, may impose significant costs related to accommodation upon an employer, which often may present a real threat to the continued viability of small businesses. As such, a more appropriate coverage threshold would be 100 employees. This is the coverage threshold applied in the Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. § 2901, et seq., the most recent piece of employment legislation enacted by Congress which imposed affirmative obligations upon employers (although the advance notice requirements imposed by WARN are far less burdensome than the accommodation obligations imposed by the ADA).

10. Definition of "Discrimination"

There are a number of aspects of Section 202(b)(1) that bear comment. First is that "undue hardship" is nowhere defined. As noted earlier, it is crucial that some recognition of the costs of the accommodations required by the ADA be made. Such a recognition currently exists in the regulations under Section 504 of the Rehabilitation Act, and those regulations provide a model for a further definition of "undue hardship," which might read as follows:

> In determining whether an accommodation would impose an undue hardship on the operation of an employer's business, factors to be considered include:
>
> (1) The size of the employer's business with respect to number of employees, number and type of facilities, number of employees at each facility, and the employer's revenues and financial condition;
>
> (2) The type of the employer's business, including the composition and structure of the employer's workforce

and the duration and the type of any training program involved; and

(3) The nature and cost of the accommodation needed.

Second, Section 202(b)(2) essentially re-phrases the definition of "discrimination" set forth in Section 202(b)(1), but with one important exception. Section 202(b)(2) does not contain the proviso that reasonable accommodation shall not be required where the entity "can demonstrate that the accommodation would impose an undue hardship on the operation of the business." This is inconsistent as it suggests that "undue hardship" may exempt an employer from having to make reasonable accommodations for a disabled person, but would not exempt an employer from refusing to hire such a disabled person on account of the accommodations that would be required. As Section 202(b)(2) is essentially redundant to Section 202(b)(1), it should simply be deleted. At a minimum, the phrase "unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business" should be added to the end of the section.

11. Enforcement

Section 205 provides remedies and procedures available under both Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. These are inconsistent remedies, and the latter is inappropriate in this context.

Title VII provides for filing of a discrimination charge with the Equal Employment Opportunity Commission ("EEOC") and for that agency's investigation of the charge and attempting to resolve the dispute via conciliation prior to the initiation of any

litigation. Should conciliation prove ineffective, the aggrieved person may file a lawsuit, which has priority on the docket. See 42 U.S.C. § 2000e-5(f)(4). Remedies of reinstatement, injunctive relief, back pay and attorneys fees are available, and a plaintiff is provided with a bench trial which generally is faster and more economical than a jury trial. In addition, a 180-day statute of limitations applies, so that claims will be brought when memories of events are fresh and witnesses and documents are still available. Finally, the EEOC may itself file a lawsuit and vindicate the rights of a complaining party. The focus of the Title VII remedy is first upon resolution of the dispute short of litigation, and then upon a rapid procedure to make the plaintiff whole if conciliation is unsuccessful.

Section 1981, by contrast, was never designed for the employment discrimination context. Rather, it was enacted following the Civil War to give blacks the same right to enter into contracts as whites. While some black plaintiffs have used it in employment discrimination cases, it is a cumbersome and protracted procedure. There is no statute of limitations provided and no agency to engage in conciliation to attempt to resolve the case short of litigation. A plaintiff may demand a jury trial and seek compensatory damages for items such as "pain and suffering," as well as punitive damages. These features often necessitate much more extensive pretrial discovery and the use of expert witnesses and counter-experts. As such, they increase the cost of litigation dramatically and cause such litigation to last much longer than if

they were not at issue.

Moreover, Section 1981 as it applies to the private sector is under attack. The United States Supreme Court is expected to rule momentarily on this issue in Patterson v. McLean Credit Union, where it is argued that the Civil Rights Act of 1866 (Section 1981) was the enabling statute for the Fourteenth Amendment which applies only to the states and not individuals. The Supreme Court realizes that the real purpose of bringing a Section 1981 action in addition to a Title VII claim is to obtain compensatory and punitive damages. Such damages are moving out of favor with the courts in that it is now recognized that juries often award damages in an amount disproportionately high to the misconduct shown. Many state statutes have been enacted in the last several years capping punitive damages, and the Supreme Court has under consideration the contention that such damages should be limited or held within range of criminal penalties for similar misconduct. Therefore, Section 1981 should be eliminated as a remedy as being unnecessary, itself subject to abuse, and being jurisdictionally questionable.

Title VII provides a streamlined, effective means to make whole victims of unlawful employment discrimination. It is ideally-suited for the ADA. To permit plaintiffs to resort directly to litigation under Section 1981 would be unduly costly, would create conflicting processes and limitations periods, and would not be necessary to provide discriminatees with full and fair relief. Accordingly, the reference to Section 1981 should be deleted from Section 205.

MEMORANDUM OF CALL

TO: MO W

☐ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Kelly Brand

OF *(Organization)* S.W. Bell

☐ PLEASE CALL → PHONE NO. CODE/EXT. 293-8577

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

Admin - view Evan Kemp as advocate Held CR
- Gordon Mansfield PVA
- Martin Geary - Sp Ed
- Mike Vader - Calif. DeVilli - OSERS → to watch DeVilli
-

RECEIVED BY BL | DATE 7-7 | TIME 9:24

GPO: 1989 98-063 (m)

FCC/OTB

SUBSTITUTE FOR TITLE 5

To ensure access to telecommunications services and systems so that persons with hearing and speech impairments are able to participate more fully in society, to further the purposes of Sections 1, 201, and 710 of the Communications Act, and for other purposes, be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title

Section 2. Telecommunications Relay Services

Title VII of the Communications Act of 1934 (47 U.S.C. 601 et seq.) as amended, is amended by adding at the end thereof the following new section:

Section 714. Telecommunications Relay Services.

(a) DEFINITIONS.-- As used in this section:

(1) COMMISSION. -- The term "Commission" means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES.-- The term "telecommunications relay services" means services that enable two-way communications to take place between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(3) TDD.-- The term "TDD" means a Telecommunication Device for the Deaf, a machine that employs graphic communications in the transmission of coded signals through a telecommunications system.

(b) INTERSTATE RELAY SERVICE.-- Each interstate common carrier, as defined in Section 3(h) of the Communications Act of 1934 (47 U.S.C 153 (h)), as part of its common carrier obligations, shall provide, individually or with other carriers, not later than two years after the date of enactment of this Act, interstate telecommunications relay services that shall provide users of TDDs with access to interstate telecommunications services that is functionally equivalent to the access offered users of voice telephone service.

(c) INTRASTATE RELAY SERVICE.-- Each intrastate common carrier, as defined --- , as part of its common carrier obligations, shall provide, individually or with other carriers, not later than three years after the enactment of this Act, intrastate telecommunications relay services to users of TDDs with access to intrastate telecommunications services that is functionally equivalent to the access offered users of voice telephone service.

(d) REGULATIONS.-- Not later than 1 year after the enactment of this Act, the Commission shall issue regulations to carry out this title, and such regulations shall establish functional requirements and guidelines for telecommunications relay services. The Commission shall establish criteria addressing factors relevant to functionally equivalent access. Where the Commission finds that full compliance with the requirements of this section would unduly burden a particular carrier, the Commission may extend the date for full compliance by that particular carrier for a period not to exceed two additional years. In making such a determination, the Commission shall specifically consider costs and benefits to all telephone users. The Commission shall ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology.

(e) ENFORCEMENT (see attached)

(1) The Commission shall enforce the provisions of this section.

(2) The remedies, procedures, and rights set forth in sections 206, 207, 208, and 209 of the Communications Act of 1934 (47 U.S.C. 206, 207, 208, and 209), and in title IV of the Communications Act of 1934 (47 U.S.C. 401 et seq.) shall apply with respect to the enforcement of this section, except that any reference to "common carrier" shall be considered a reference to a carrier covered by this section.

(3) Whenever, after full opportunity for hearing, on a complaint or under an order for investigation and hearing made by the Commission on the initiative of the Commission, the Commission shall be of the opinion that any carrier is or will be in violation of this section or of any regulation issued under this section, the Commission shall--

(A) order that the carrier or State cease and desist from such violation to the extent that the Commission finds that such violation exists or will exist; and

(B) take such other actions as it finds appropriate and necessary.

(4) Referral for State proceedings--

(A) Whenever a complaint alleges a violation of this section with respect to intrastate service and--

(i) the State within which the carrier operates has issued a regulation requiring TDD relay services; and

(ii) the State agency has been certified by the Commission under this section;

the Commission shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(B) Except with the consent of such certified agency, the Commission, after that referral is made, shall take no further action with respect to such complaint unless--

(i) the certified agency has failed to take final action on such complaint --

(a) within 180 days after the complaint is filed with the State, or

(B) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint; or

(ii) the Commission determines that the certified agency no longer qualifies for certification under this section.

(C) The Commission may certify an agency under this section only if the Commission determines that--

(i) the substantive rights protected by such agency;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency;

(iv) and the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this section.

(f) FEDERAL COMMUNICATIONS COMMISSION.—Not later than 1 year after the date of enactment of this Act, the Chairman of the Federal Communications Commission shall promulgate regulations for the implementation and enforcement of this Act as such Act applies to those engaged in the business of broadcasting or of communicating by wire. When promulgating regulations concerning television broadcast stations, the Chairman shall include require-

Same as 2345

ments for progressively increasing the proportion of programs, advertisements, and announcements that are captioned.

(g) EFFECTIVE COMMUNICATION.—

(1) REGULATIONS.—Regulations promulgated under this section shall include requirements for the prohibition or removal of communication barriers, and for making reasonable accommodations to assure effective communication with a particular individual who has a physical or mental impairment, perceived impairment, or record of impairment.

Section 602

(2) COMMUNICATION BARRIERS.—As used in this section, the term ''communication barriers'' means the absence of devices, services, systems, or signage and information media, or modifications of devices, services, systems, or signage and information media that are necessary to achieve effective communication with individuals with a physical or mental impairment, perceived impairment, or record of impairment in regard to a service, program, activity, benefits, or other opportunity.

602

(3) TYPES OF REQUIREMENTS.—Under appropriate circumstances, the prohibiting or removing of communication barriers or the making of a reasonable accommodation may require—

(A) the provision and maintenance of devices such as Telecommunications Devices for the Deaf, visual aids such as flashing alarms and indicators, decoders, and augmentative communication devices for nonvocal individuals such as language symbol or alphabet boards;

(B) the provision of such services by qualified personnel interpreting, reading, audio or videotaping, and notetaking;

(C) the development and effective operation of systems such as captioning, assistive listening systems, including audio induction loops, and infrared FM or AM communications, and telephone relay services systems;

(D) the development and effective use of alternative signage and information media, such as brailled or audio information, and visual alerts for audio announcements and other information; and

(E) the modification of devices, services, systems, and signage and information media, such as audio input and output on a computer terminal, adapted software, flashing lights attached to a telephone, and amplifiers on telephone handsets.

RLO staff mtg
1/3/94

LIKELY 1ST FIVE BILLS

S. 1 Unfunded Mandates -- Kempthorne, Dole

S. 2 Congressional Coverage -- Dole, Grassley, Roth

- Apply to Congress a number of laws that affect the private sector.

These include:

- Fair Labor Standards Act
- Title VII of Civil Rights Act of 1964
- OSHA
- Family and Medical Leave Act

Not included:

- FOIA

S. 3 Crime Bill -- Dole, Hatch

Will incorporate 10 amendments Senate Republicans sought to offer last session.

Amendments include:

- Mandatory minimum sentences.
- Striking $5 billion dollars in social spending
- Bill also block grants police money to give states and localities more flexibility.

S. 4 Line Item Veto

S. 5 Peace Powers Act -- [The Post Cold War Powers Act] -- Dole

- Repeals War Powers Resolution of 1973.
  - Retains consultation and notification provisions while deleting "time clock" and automatic withdrawal provisions.

- Limitations on U.S. participation in United Nations peacekeeping activities.
  - No foreign command of U.S. forces.
  - Mandatory credit for <u>all</u> Department of Defense contributions to U.S. peacekeeping.
  - Mandatory identification of funding source <u>before</u> U.S. votes to establish, extend or expand U.N. peacekeeping operations.

<u>Other early initiatives</u>:

- S.J. Res. 1 -- Balanced Budget amendment
- Private Property Rights Bill
- Regulatory Relief Bill being prepared

<u>Likely schedule</u>:

1st day: Ceremonial, swearing in

1st legislative floor action: Congressional coverage (time agreement still uncertain).

<u>Other issues</u>:

- Term limit hearings on January 24.
- Unfunded mandate hearings week of January 4th.

{ Cong cov
unfunded

— mtg w/ chairman today
— first 2 wks schedule
— mtg w/ Gingrich today

S.2209 Title and Report Options (Screen A - 1 of 1)

S.2209 by DOLE (R-KS) -- Employment Opportunities for Disabled Americans Act of 1986

Official Title (Caption):
A bill to make permanent and improve the provisions of Section 1619 of the Social Security Act (Title amended 10/8/86).

Introduced on Wednesday, March 19, 1986

S.2209 was incorporated into HR 5595

H.R.5595 Title and Report Options (Screen A - 1 of 1)

H.R.5595 by FORD, HAROLD (D-TN) -- Employment Opportunities for Disabled Americans Act (P.L.99-643, Approved 11/10/86)

Official Title (Caption):
An Act to make permanment and improve the provisions of Section 1619 of the Social Security Act, and for other purposes. (As Amended 10/16/86) (Title amended 10/8/86).

Introduced on Thursday, September 25, 1986

H.R.5595 Legislative History (Screen F - 4 of 4)

10/18/86 -- In The SENATE
Considered (debated) in the Senate (CR Page S-17325)
Motion by DOLE (R-KS) to agree to House amendment(s)
Agreed to motion by DOLE (R-KS) (by Voice Vote)

10/29/86 -- In The SENATE
Signed in the Senate

10/29/86 -- In The HOUSE
Signed in the House

10/30/86 -- In The HOUSE
Presented to the President

11/10/86 -- In The HOUSE
Signed by the President
Became Public Law No. 99-643

S.2703 by DOLE (R-KS) -- Air Carrier Access Act of 1986 (P.L.99-435, Approved 10/2/86)

Official Title (Caption):
A bill to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers.

Introduced on Wednesday, July 30, 1986

09/23/86 -- In The HOUSE
Signed in the House

09/23/86 -- In The SENATE
Signed in the Senate

09/24/86 -- In The SENATE
Presented to the President

10/02/86 -- In The SENATE
Signed by the President
Became Public Law No. 99-435

101ST CONGRESS
1ST SESSION

S. RES. 13

To amend Senate Resolution 28 to implement closed caption broadcasting for hearing-impaired individuals of floor proceedings of the Senate.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 3), 1989

Mr. DOLE (for himself, Mr. MITCHELL, Mr. MCCAIN, Mr. HARKIN, Mr. WILSON, Mr. LEAHY, Mr. DURENBERGER, Mr. DANFORTH, Mr. MURKOWSKI, Mr. BOSCHWITZ, and Mr. HATCH) submitted the following resolution; which was referred to the Committee on Rules and Administration

---

RESOLUTION

To amend Senate Resolution 28 to implement closed caption broadcasting for hearing-impaired individuals of floor proceedings of the Senate.

Resolved, That subsection (a) of the first section of Senate Resolution 28, agreed to February 27, 1986, is amended by adding at the end thereof the following: "All coverage under this resolution shall be made available to hearing-impaired individuals via closed captions.".

○

New From NARF's SE Demonstration Project

Alternative Paths to Implementation is designed for administrators and supervisors who are considering expanding services to new populations, adding on supported employment, or providing transitional services to youth. A practical workbook format, it guides the reader through strategic planning into implementation. Members: $10; nonmembers: $14 (75 pp).

National Scope Supported Employment Demonstration Project: Final Report. Details project activities from 1987 to 1991, including conduct of a census of over 6,000 facilities and a survey of over 2,000; national competition to identify exemplary practices; conclusions from research reports; and information gleaned from NARF's wide-scale networking during the project. The report contains information on service delivery, staffing, staff training, administration, conversion, and unresolved issues. Members: $12; nonmembers: $18 (35 pp.).

Job Coaching Revisited is designed to reduce job coach turnover rates and enhance supported employment outcomes. Includes profile for successful job coaches, recruitment and training concerns, and valuable information on modifying programs for greater effectiveness. Members: $11; nonmembers: $16 (50 pp.).

Publications are postpaid from NARF, P.O. Box 17675, Washington, D.C. 20041; (703) 648-9300. Send payment with order and your street address for UPS delivery. ■

Baylor Study...

(Continued from page 3)

Employee Referral: Eighteen percent are interested.

Medical Provider Training: Fourteen percent are interested.

It should be noted that this was not a random survey of the entire Dallas business community, but generally of the largest and/or most successful organizations. These, it is assumed, will more likely experience the initial impact of ADA legislation. It might also be assumed that these companies are better informed and better prepared than the general business community.

Another limitation of the survey which may have affected respondents' willingness to provide their names is that the cover letter did not make clear that identifying information would not be used in reporting survey results, i.e., "Company XYZ has no plans to make environmental modifications," but will only be used as a mailing list for programs and services to be offered. Also, it has been suggested by several business persons that those who lack knowledge or are least prepared for ADA compliance are least likely to return a questionnaire on the subject, which would mean that there is an even greater need for services than results indicate.

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International Rehabilitation and Therapy Bureau Proposed

Senators Bob Dole (R-KS) and Jessie Helms (R-NC) introduced an amendment to S.1435, the International Security and Economic Cooperation Act of 1991, to amend the foreign assistance Act to establish an Office for International Rehabilitation and Therapy for the purpose of providing medical, technical, and scientific assistance to children and young adults who have disabilities incurred as a result of war, or exacerbated by former Marxist-leninist regimes. The amendment was accepted on July 25 without opposition.

According to Senator Dole, the purpose of the Office is to "provide technical assistance and encourage scientific and technical exchange with governmental and private entities in foreign countries providing medical and rehabilitation related assistance including but not limited to, prosthetic and vocational rehabilitation and training for children who have physical or mental disabilities including rehabilitation training for families of these children." The amendment also authorizes funding to provide grants to and enter into cooperative agreements with or contract for the provision of goods and services by private and voluntary organizations or nonprofit entities in the United States.

(Continued on page 5)

Baylor Institute Study Shows Need for ADA Training

In preparation for formation of a Baylor Rehab ADA consulting service, a market survey was conducted April 18 through May 2, 1991, to determine industry awareness, preparedness and perceived need for services regarding their compliance with ADA legislation. The four-page 27-item questionnaire was sent to 642 businesses listed in the *Dallas Business Journal 1991 Book of Lists*. The industry distribution was:

17 construction	2 wholesale sales
35 education	38 retail sales
37 government	418 services
33 health care	39 other
23 manufacturing	

Seventy-one responses were received for an 11 percent return with a two-week period. Thirty-eight (54%) of the respondents included their names and addresses. The oil industry, listed under other, had the highest percentage of returns. Data from ten more questionnaires which were returned after the two-week deadline are not included in this report.

Respondents generally represent large companies with 89 percent having over 25 employees at their location (almost half report they are part of a larger entity). Most of their employees are categorized as professional/technical and clerical with the predominant educational level of bachelor's degree, closely followed by high school diplomas.

Only 29 percent conduct pre-employment physicals and most do not plan to change this. Almost all (92%) are confident that their facilities are accessible to workers, customers, and visitors. Thirty-nine percent did not check any of the disability categories when asked whether they currently have employees with disabilities, which probably indicates that they do not. The primary disabled worker category is back injury. (Interestingly, one respondent wrote in "broken ankle" as a disability.)

Respondents generally report an understanding of their ADA obligations (86% checked "somewhat" to "very well") and 78 percent do not expect the legislation to have much impact on their employment practices and procedures. Almost half have attended formal programs to learn about ADA legislation. The majority (nearly 90%) either do not have funds or do not know whether funds have been budgeted for ADA compliance.

The survey confirmed that services which Baylor Rehabilitation is well-suited to provide are perceived as needed by the Dallas business community. Fifty-six respondents answered the question about services they might use, and most checked more than one box.

Disability Awareness Training: The highest number (32 or 57%) want Disability Awareness Training with an emphasis on information about disabling conditions (49% of question 19 respondents). They would expect Human Resources personnel (60%), then direct supervisors (33%) and upper management (28%) to attend, and expect to pay $50 to $100 for a half-day workshop.

Instruction for Writing Job Descriptions and/or Test Batteries: Fifty-two percent might want instruction for writing job descriptions, sixteen percent for test batteries. Over half (55%) say they are somewhat to very interested in attending a workshop on writing job descriptions. Yet, 36 of the 66 respondents to question 22 report they have no current plans to write or revise job descriptions.

Environmental Modifications: Thirty-four percent might use help for individual work stations, thirty percent for public accommodation. But on question 24, the overwhelming majority (82%) report they're already accessible. Six percent plan to hire outside consultants for assessment and modifications.

Adaptive Equipment: Twenty-five percent indicate a desire for information. The last question about interest in assistive technology was the least answered of the questionnaire, with only 45 of 71 respondents. Computer access, communication and workstation adaptions each received about 25 percent response, environmental control units 14 percent.

Job Training: Twenty-one percent say they might use individual on-site employee training. On follow-up question 26, most of the 59 respondents (71%) expect their human relations staff to handle specialized testing and training, though 17 percent plan to contract with a vocational specialist.

(Continued on page 4)

SSI Issue Paper Developed — Comments Requested

The Social Security Administration's issue paper on the Supplemental Security Income Modernization Project, as a result of numerous hearings throughout the country, on July 21, to "create a dialogue that provides full examination of how well the SSI law and the policies developed by SSA to implement the law to serve the needy, aged, blind and disabled."

The purpose of the paper is to create an initial dialogue to exchange ideas and information about a program. SSA invites comments by September 30, 1991. Comments should be sent to: SSI Modernization Project Staff, Room 311, Altmeyer, P.O. Box 17073, Baltimore, MD 21235, or call Peter Spencer at (301) 965-3571. ■

Bureau Proposed...

(Continued from page 4)

The legislation provides $10 million to be available to carry out programs of assistance to disabled children in sub-Saharan African countries, $3 million for assistance to Romanian children, and $250,000 to establish a joint Latin American/Caribbean and U.S. disability exchange program and conference.

It is important to note that in introducing both Senator Dole's amendment and report language that mention is made of the passage of the Americans with Disabilities Act. Senator Dole remarked that "the ADA, which is the most comprehensive disability law to receive consideration anywhere in the world, ensures the inclusion of millions of citizens with disabilities into American society. It is our duty to provide assistance to other nations as they struggle to design medical and rehabilitation services for their citizens with disabilities."

In a related matter, the Senate Foreign Operations Appropriations bill included language in its report to provide that "not less than a total of $10 million shall be made available for the health, child survival and human development accounts for the purpose of providing assistance through U.S. voluntary organizations, acting in collaboration with indigienous private organizations to enable persons with disabilities to attain independence and become productive in the workforce in their communities. This assistance shall include but not be limited to vocational rehabilitation and manpower training, educational services, the provision of assistive devices, social services and independent living programs to enable access to facilities and services and programs to facilitate the exercise of civil and human rights. Persons with disabilities include persons who are vision or hearing impaired, physically disabled, mentally retarded or mentally ill. Priority shall be given to utilizing organizations of disabled persons in these programs." ■

National Conference on Independent Living to be Held

The Center for Independent Living, Berkeley, The National Council on Independent Living and the World Institute on Disability are jointly sponsoring a three-day national conference titled, "Independent Living: Preparing for the 21st Century." The conference is scheduled for October 2-4, 1991 at the Parc Oakland in Oakland, California.

Some of the attendees include: the Honorable Tom Harkin, U.S. Senator from Iowa, sponsor of the Americans with Disabilities Act; Chairperson of the Presidents Committee on Employment of People with Disabilities, Justin Dart; Henry Enns, Canadian Director of Disabled Peoples International; and Co-author of the Americans With Disabilities Act, Robert Burgdorff.

Oakland Mayor Elihu Harris said, "'Since Oakland is the most accessible city in the United States, I take great pride in welcoming and hosting the first national conference of this magnitude in 16 years."

Fifty workshops will be presented exploring the past, present and future of the independent living movement. For more information, contact Dianna Dal Aguilar, Conference Coordinator, (415) 841-4776. ■

Tri-County Receives PWI Grant

Tri-County Industries, a work-oriented rehabilitation facility in Rocky Mount, NC, has just been awarded a $1.5 million Project With Industries (PWI) grant in conjunction with Hardee's Food Systems and Fast Food Merchandisers. The major thrust of the project is to provide employment opportunities to about 2,000 people with physical, mental, and emotional disabilities over the next five years.

For more information, contact Deborah Baker at (919) 977-3800. ■

ANNOUNCING....

NARF is pleased to announce a NEW service, enabling you to charge for products and services.

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National Association of
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Washington, D.C. 20041

VOCATIONAL/
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REHABILITATION REVIEW

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Maureen West
Assist./Disability Affairs
Office of Senator Robert Dole
141 Hart SOB
U.S. Senate
Washington DC 20510

201

VOCATIONAL/
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REHABILITATION REVIEW

A weekly discussion of issues for rehabilitation facility professionals

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IN THIS ISSUE:

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Executive Director and Publisher,
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National Association of Rehabilitation Facilities

Proclamation 6327, National Rehabilitation Week, 1991

By the President of the United States of America

A Proclamation

Thanks, in large part, to the variety of rehabilitative programs and services that are available in the United States, millions of Americans with disabilities are leading fuller, more independent, and productive lives. These men and women are utilizing their knowledge and skills in virtually every field of endeavor, and our entire Nation is richer for their achievements. Thus, it is fitting that we pause to recognize the many dedicated processions and volunteers who help to promote the rehabilitation of persons with disabilities.

Rehabilitation is a collaborative process that involves health care providers, therapists, educators, employers, and many others. For example, through advances in technology, scientists and engineers are helping persons with disabilities to overcome the physical barriers that once prevented them from participating in the mainstream of American life.

Effective rehabilitation technology and techniques are also helping to change the attitudinal barriers that have, in the past, limited opportunities for persons with disabilities. Today these members of our society are refuting age-old myths and misconceptions, proving that a disability need not be an obstacle to success. Continuing advances in rehabilitation services and in related education and research—coupled with implementation of the Americans with Disabilities Act of 1990—will further open the door to their social and economic advancement.

Of course, challenges remain in the effort to help more and more Americans with disabilities achieve their fullest potential. These challenges range from the development of a wider array of rehabilitation services to improved cooperation among human service agencies. Nevertheless, by working together, we can meet them.

In recognition of the courage and determination of persons with disabilities, and in honor of all those who assist in their rehabilitation, the Congress, by Senate Joint Resolution 72, has designated the week of September 15-21, 1991, as "National Rehabilitation Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 15-21, 1991, as National Rehabilitation Week. I encourage all Americans to observe this week with appropriate programs and activities, including educational activities that will heighten public awareness of the rehabilitative services that are available in this country and the many ways in which these services benefit persons with disabilities. ■

Senate Panel Recommends Increase in Nonprofit Postal Rates

The Senate Appropriations Subcommittee on Treasury, Postal Service and General Government passed a provision that would allow for increased postal rates for nonprofit organizations on certain mailings. The recommendation by the Subcommittee might increase postal rates for nonprofit organizations from between 10% and 25% depending on classification of mailing involved.

Under the Senate passed provision, mailings contained in envelopes larger than business size would not receive the nonprofit postal rate, but rather the regular business rate. The House provision contains no such increase in rates.

Over the years nonprofit rates have been offset by full Federal funding of "revenue forgone" provisions -- funding provided by Congress to the postal service to offset preferred rates for nonprofit organizations. The House Appropriations Committee authorized full funding at $649 million. Meanwhile, the Senate Appropriation Subcommittee has recommended significantly less funding. In February, nonprofit preferred rates increased approximately 30%. If the Senate provision passes nonprofit rates may increase by as much as 40% this year.

The Chairs of the House and Senate Appropriations Committees have recommended that full funding be provided to offset the preferred rates for nonprofit organizations. NARF has contacted the Committees to express support for the House provision. ■

Older Americans Act Awaits Floor Action

House and Senate Committees, with jurisdiction to reauthorize the Older Americans Act of 1964, have cleared the way for floor action for programs for the elderly poor to cover Federal meals, transportation and employment assistance. The bills authorize about $3.7 billion for programs and services.

Both bills, H.R. 3967/S.243, are somewhat controversial. The White House has threatened to veto the House legislation because of provisions that would "impinge on executive branch prerogatives and improperly politicize the interests of the elderly." Language in the Senate version, which would require that benefits to workers whose companies had defaulted on an agreement to provide pensions years before Federal protections were established in 1973, is also opposed by the President.

Congress expects to vote on these measures when they return from the August recess. ■

GAO Calls for Expansion of Apprenticeships

A recently released study by the General Accounting Office (GAO) calls for expansion and improvement of high school apprenticeships to train non-college bound students in the workplace. The study entitled "Transition from School to Work: Linking Education and Worksite Training," calls on businesses and local school districts to play a leadership role in forming apprentice programs, improve job skills and reduce drop out rates.

Representative James Scheuer (D-NY), Chairman of the House Joint Education and Health Subcommittee, called for the report to help determine strategies for implementation. No Federal funds are currently available for the apprenticeship programs, however, these programs can be supported with Federal funds under the Carl D. Perkins Vocational and Applied Technology Education Act, Public Law 101-392.

The release of the report coincides with the establishment of the Department of Labor's Federal Committee on Apprenticeship, which met in Washington, D.C. on July 15, 1991. The Committee was established to permit and expand apprenticeships and worker training.

Copies of the report can be obtained by writing the General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20877; or calling (202) 275-6241. ■

June 1995

Dear DSQ subscriber:

Since Irv Zola, the founder and editor of DSQ, died in December 1994, many of you have wondered about the future of this quarterly. You will be pleased to know that DSQ **will** continue on in the same tradition. For the next year and a half David Pfeiffer has agreed to be the editor, a role which includes the task of finding others to co-edit special theme issues. Moreover, we feel confident that sufficient funds will be raised from subscription fees and other sources to cover the production and distribution costs. We also plan to continue producing tape and disk versions of DSQ as well.

From now on, however, we will have to require that almost all of you who get DSQ pay the modest annual subscription fee (see below). For those of you residing outside of North America, we will continue to offer DSQ on an exchange basis and welcome either books or periodicals with a disability theme. If you are with an organization serving low-income persons and are unable to pay the regular fee, please write and request a complimentary subscription. A limited number will continue to be available.

With this letter we are urging all of you to send in your annual subscription fee. Even if it is less than a year since your last check was sent, we urge you to make a contribution at this time to ensure that we meet our production and distribution costs for the next year. All checks should be made out to: Disability Studies Quarterly and sent to: DSQ, Sociology Dept., PO Box 9110, Brandeis University, Waltham, MA 02254. Please do not make checks out to Brandeis University.

It is exciting that so many individuals have come forward to help keep DSQ going. In doing so, we both honor Irv and keep together a vibrant network of thoughtful and creative people. Thank you for your part in this, and we look forward to receiving your subscription (please send in the form below).

Sincerely,

Members of the Boston-based DSQ Steering Committee:
Adrienne Asch, Howie Baker, Janet Boudreau, Gunnar Dybwad, Elaine Makas, Judy Norsigian, and David Pfeiffer

---

PLEASE RETURN THIS SUBSCRIPTION FORM TO: DSQ, Sociology Department, PO Box 9110, Brandeis University, Waltham, MA 02254. Rates for SDS members are in parentheses.

NAME _____

INSTITUTION _____

ADDRESS _____

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Enclosed is (check one):

__ $35 Individual ($30, SDS)

__ $45 Institution ($40, SDS)

__ $20 Student ($15, SDS)

__ Foreign - exchange

__ US$50 Foreign

FACSIMILE TRANSMISSION

THE NATIONAL DISABILITY POLICY CENTER
2100 Connecticut Avenue, N.W., Suite 208
Washington, D.C. 20008
USA
(202) 667-1193 (voice)
(202) 667-1850 (Sharp 511 fax)

Date: May 31, 1993 (Monday)

To: Paul Hearne

From: R. Alexander Vachon, Ph.D.

Message:

Immediate Attention

Paul: FYI, enclosed are the nomination forms for Hugh Gallagher. I will bring by final copy for signature tomorrow, Tuesday, June 1, as they must be postmarked that day. I'll call ahead.

Also, could you have someone prepare the enclosed cover letter on Dole Foundation letterhead.

See you tomorrow. Thanks much. BTW, Hugh is very grateful and would like to have dinner with you sometime.

Best regards.

There are 5 pages, including this cover sheet. If problems, call (202) 667-1193.

[Dole Foundation Letterhead]

June 1, 1993

Secretary
The Henry B. Betts Award
303 East Wacker Drive
Suite 1031
Chicago, IL 60601

Dear Sir or Madam:

Enclosed for your consideration are nomination papers for Hugh G. Gallagher.

If you have any questions, please let me know.

Thank you.

Sincerely yours,

Paul G. Hearne
President

The Henry B. Betts Award

1993 Nomination Form

NOMINEE

Mr./Ms.-Name Hugh G. Gallagher
Position or Title
Organization
Address 7600 Cabin John Road
City Cabin John State MD Zip 20818
Area Code 301 Phone (Day) 229-3465
Area Code Phone (Evening)

NOMINATOR

Mr./Ms.-Name Paul G. Hearne
Position or Title President
Organization The Dole Foundation
Address 1819 H Street, N.W.
City Washington State D.C. Zip 20006
Area Code 202 Phone (Day) 457-0318
Area Code Phone (Evening)

BIOGRAPHICAL SKETCH

PLEASE PROVIDE A BRIEF BIOGRAPHICAL PROFILE OF THE NOMINEE.

The profile is to be typed and limited to this side of the form.

Gallagher, Hugh Gregory, writer, consultant, b. Palo Alto, CA, Oct. 18, 1932; BA (*magna cum laude*), Claremont Men's Coll., 1956; BA, MA, Oxford (Eng.) Univ., 1959. Marshall Scholar, Oxford Univ., 1956-59; legis. asst., U.S. Senator John A. Carroll, 1959-62; admin. asst., U.S. Senator E.L. Bartlett, 1962-66, 67-68; legis. coord., Bureau of Budget, Exec. Office of the President, 1966-67; Washington rep., British Petroleum, 1968-74; consultant gov't affairs, 1974-Pres.; Visiting Fellow, Woodrow Wilson Int'l Ctr. for Scholars, Smithsonian Institution, 1981-82; Kennedy Inst. Bioethics Scholar, Georgetown Univ., 1987-89; consult., Library of Congress, 1989-91; consult., U.S. Holocaust Museum, 1992. Author: Architectural Barriers Act of 1968 (P.L. 90-480); *Advise and Obstruct: The Role of United States Congress in Foreign Policy Decisions* (Delacorte Press), 1969 (Pulitzer Prize Nominee); *Etok, A Story of Eskimo Power* (G.P. Putnam's Sons), 1974; *FDR: A Splendid Deception* (Dodd, Mead), 1985 (Best Book of the Year, President's Committee on Employment of People with Disabilities, 1986; Medal, United Nations Writers Society, 1991); *By Trust Betrayed: Patients, Physicians, and the License to Kill in the Third Reich* (Henry Holt), 1990; contr. articles to *NY Times*, *Washington Post*, *Bull. Atomic Scientists*, other jours. Subject film, "Coming to Terms", 1991 (awarded Blue Ribbon, American Film & Video Festival). (Profile adapted from *Who's Who*, 1992.)

SUMMARY OF NOMINEE'S CONTRIBUTIONS TO IMPROVING QUALITY OF LIFE FOR PEOPLE WITH PHYSICAL DISABILITIES

Summarize the reasons for the nomination. The summary is to be typed and limited to the space on this side of the form.

For over thirty years, Hugh Gallagher has sought to improve the quality of life of people with disabilities in two fundamental and essential respects:

> ***First***, **as an advocate, Gallagher has led the fight for disability rights, by pressing for accessibility of public buildings through direct action and legislation;**
>
> ***Second***, **as an author, he has expanded our knowledge of the history of disability, and has lifted the "historical amnesia" around two important episodes: concerted efforts to keep from the American public the extent of FDR's disability, and the mass killing of people with disabilities during Third Reich. His books contain important lessons of continuing and contemporary significance.**

Gallagher's work reflects his personal experience with disability. In 1952, at the age of 19 and then a junior in college, Gallagher developed polio. For six weeks he was completely paralyzed and encased in an iron lung. Since then, he has been a wheelchair user. His disability prompted his:

- ***Personal Fight for Accessibility***. **One example: In the early 1960's as an aide to Senator E.L. Bartlett of Alaska, Gallagher wanted to be able to enter the National Gallery of Art unassisted, but the lack of a ramped entrance made this impossible. He wrote to the Gallery asking for a ramp at the Constitution Avenue entrance, and was told that a ramp would "destroy the architectural integrity of the building." Gallagher eventually got his wish, following an appeal by Senator Bartlett to the Gallery's board of directors. A temporary, nearly invisible wooden ramp was installed in 1965, which today, covered by about an inch of paint, still serves. Among the many other buildings ramped because of his efforts were the Kennedy Center and Dulles Airport.**

- ***Legislative Activity***. **To redress such injustices he and many others routinely encountered, in 1966 Gallagher wrote an accessibility bill with the assistance of Senate Legislative Counsel. As he recalls, he wanted a bill that was "short and simple and that would put in a civil rights context," the mandate that "buildings constructed wholly or in part with federal funds be available to all citizens." On January 12, 1967, in the opening days of the 90th Congress, Senator Bartlett introduced this bill, later enacted as the Architectural Barriers Act of 1968. As described in the accompanying page, this legislation was the nation's first disability rights statute.**

- ***Writer and Historian. FDR: A Splendid Deception*** **was the first study of the impact of disability on President Franklin Delano Roosevelt, and how FDR was able to function (and at what sacrifice) in a time of much prejudice against the disabled. In another book, Gallagher documented a national program of euthanasia of people with disabilities in the Third Reich, the complicity of physicians, and the implications for any state-sanctioned program of euthanasia. Because of his work, the U.S. Holocaust Museum called upon Gallagher to assist in developing their exhibits on this subject.**

WHAT IS THE SINGLE MOST OUTSTANDING ASPECT OF THE NOMINEE'S CONTRIBUTIONS TO IMPROVING THE QUALITY OF LIFE FOR PEOPLE WITH PHYSICAL DISABILITIES?

Comments are to be typed and limited to the space on this side of the form.

The most outstanding aspect of Hugh Gallagher's varied contributions to improving the quality of life of people with physical disabilities was to successfully place disability rights onto Congress's legislative agenda — and in the consciousness of its members — for the first time. Without hyperbole and largely unrecognized for his contribution, Gallagher may be rightly called the "father of federal disability rights law."

In 1966, based on extensive personal experience with architectural impediments as a wheelchair user, Gallagher drafted the Architectural Barriers Act of 1968, the first federal disability rights statute. Within this short text — scarcely a page long — are key provisions that would be the model for two decades of subsequent legislation, culminating in the Americans with Disabilities Act of 1990 ("ADA").

The stated purpose of the Architectural Barriers Act was "to insure that certain buildings financed with federal funds are so designed and constructed as to be accessible to the physically handicapped." The Architectural Barriers Act contained several provisions:

Section 1 of the legislation mandated that buildings either owned, leased, or financed by federal funds be accessible to people with disabilities.

Sections 2 through 5 directed various government agencies to develop accessibility standards.

These simple provisions became templates for later expansion of disability rights. For example, Section 504 of the Rehabilitation Act of 1973 enlarged Section 1 beyond buildings to all activities operated or funded by the Federal Government. And later to improve accessibility standards, Congress ~~under the Rehabilitation Act~~ created the Architectural and Transportation Barriers Compliance Board.

Today, because of Gallagher's seminal contribution (and of course the hard work of hundreds of other advocates and their families), we take it for granted that people with disabilities have a right to participation, inclusion, and integration, however imperfect in practice.

Perhaps, on reflection, the single most outstanding aspect of Gallagher's contributions has been his refusal to accept the world as it is, and to imagine how it might be — and finding a way to achieve it.

Submitted by:

Name Paul A. Hearne

Signature _____ Date _____

THE VILLAGES, INC.

REORGANIZATION UPDATE

TO: All Trustees
FROM: Executive Committee, Board of Directors
DATE: February 7, 1994

INTRODUCTION:

In September, 1992, following the departure of Gary Duncan, executive director, the Board of Directors discovered The Villages was in serious trouble organizationally, financially, and programmatically. To help us approach these problems in a systematic and professional manner, we retained two outside consultants to recommend a course of action(s).

Brother Peter Clifford, F.S.C., president of St. Mary College, Leavenworth, Kansas was retained as an organizational expert. Mr. Marvin Mikelson, M.B.A., was retained as a financial expert.

Based on the assessments of these experts, the Board of Directors took the following actions:

a. On February 26, 1993, eliminated fourteen (14) positions in the headquarters staff that were not essential to the provision of care to children in our custody.

b. Created five new, scaled-down secretarial and bookkeeping positions necessary for operating the headquarters and business office. All of the employees who were laid off were given the opportunity to apply of these new positions. Only three of these positions were filled, because the new executive director determined that two of the positions were not necessary.

c. Employed for a period of two (2) months Mr. Bruce Anderson, C.P.A., to redesign the accounting and financial control systems; to develop an operating budget; and to hire accounting staff.

d. Recruited and employed a strong new executive director with business and management experience. On June 28, 1993, Mr. Mark W. Brewer came to work as our new executive director.

e. Established adoption, education and nature as "stand alone" departments, charged with the responsibility of generating sufficient revenue to cover their operating costs.

d. Authorized Mr. Brewer, executive director, to initiate negotiations with the Kansas Department of Social and Rehabilitation Services to develop alternate, complementary, or extended service programs consistent with changes in reimbursements implemented by that department.

All of these actions were necessary. If changes were not made, The Villages would have been literally bankrupt in three (3) years. Even though we had no choice, these changes created a sense of unease with some remaining staff.

Previously, staff had a sense of lifetime employment. None of the staff was prepared for the layoff of fourteen (14) of their peers. When this happened, every employee who remained understood that their employment was dependent on the ability of The Villages to finance its cost of operations.

Organizational changes recommended by the outside consultants and the new executive director created further discomfort among certain long-term staff members. It was discovered that there had previously been numerous concessions made to the benefit of these employees that worked to the detriment of the organization. The elimination of biased privileges and inappropriate authority led to these employees becoming disgruntled.

ORGANIZATIONAL CHANGES:

Brother Peter found a profound lack of organizational responsibility and management authority as he assessed The Villages. It was discovered that much of what the Board of Trustees and Directors were being told about operations was inaccurate, and that there were no systems in place for detecting management short-comings.

He found that in the void created by poor executive management, employees vied for and assumed authority beyond their capacities or their intended duties. As a result, secretaries, bookkeepers, and other line employees were making critical management decisions for The Villages. When disagreements developed, management deferred to the employee with the strongest personality or following.

It was in this environment that employees such as Mr. and Mrs. Budahl flourished. In fact, the Budahl's had left The Villages three years ago and it was the recommendation of the social work staff and the assistant director of Kansas Homes that they not be rehired. Yet, they were rehired less than six months later without even consulting the assistant director about why it had been recommended that they not be rehired.

It was in this environment that the Budahl's converted the relief staff quarters in their Village home to personal quarters for their adult daughter and child. As a result, overnight staff did not have sleeping quarters.

It was in this environment that the Rothwell's employed their daughter and son-in-law (Jack and Sheila Toon) as relief house parents. Then proceeded to turn in timesheets that resulted in more than $20,000 in overtime pay in one year. It should not have been a surprise when the Toon's subsequently hired their sister and brother-in-law and turned in outrageously excessive overtime.

When the new executive director implemented a no over-time policy, the Budahl's told him that without overtime their daughter would be eligible for welfare and it was the responsibility of The Villages to keep her off of welfare. Mr. Toon told him that he had no authority to limit overtime in his house schedule. An investigation of overtime expenses revealed that it was quite likely that work hours were turned in for relatives when they did not work.

These actions led Mr. Brewer, executive director, to implement a nepotism policy that prohibited relatives from directly supervising relatives. Employees effected by this policy were given an opportunity to transfer to other homes. One such employee has become a house parent, and another was promoted to a senior child care position. The others who chose not to accept a transfer were given 90 days to find other employment.

The effort to get a handle on overtime costs uncovered a simple, but critically important failing in organizational management. We are legally required by licensing regulations to place the children in our care in the direct supervision of a licensed social worker. We had developed organization charts and filed licensing applications stating that this was the case. This, however, was not being done.

With no organizational authority the social workers could not control the staffing, work schedules, overtime, or any other program/budget area in their homes. The house parents reported to no one.

To correct this problem, and not violate our licensure, Mr. Brewer, executive director, placed the social work staff in the required supervisory capacity. There were three house parents that strenuously objected to having this supervision. They were Deanna Buduhl, Loren Buduhl, and Pat McPhail. (They, also, all had relatives working for them.)

Other than promoting Sylvia Crawford, M.S.W., to Director of Kansas Homes and eliminating the position of Program Director, Kansas Homes, no other organizational changes have been made.

POLICY CHANGES:

The Villages previously provided certain staff with automobiles. It was determined that a substantial savings in transportation costs could be achieved if these automobiles were placed in a motor pool available to all staff. **Mr. Brewer, executive director, implemented a policy that The Villages would not provide automobiles for staff.**

All department heads and some line staff had American Express Cards provided by The Villages. They were told to charge whatever expenses they had on these cards. If they wanted office supplies, or equipment, they were to purchase them with these cards. If they had a meal that was to

be charged to The Villages, they were to use these cards. **Mr. Brewer retrieved these cards and established a purchasing/reimbursement procedure.**

Because of the use of the American Express Card, employees had developed a habit of only buying the best, staying in the best hotel and eating in the best restaurants. They had developed an attitude that The Villages should pay for any meal they had, if business called them away from the office. As a result, lots of meetings were scheduled away from the office at 11:00 in the morning. It did not matter if the meeting was a block away from the office, if they were away from the office at lunch time their meal was to be reimbursed. **Mr. Brewer established criteria requiring the employee be at least 60 miles from the office and spend the night out of town before a meal could be reimbursed.**

It was discovered in the expense control study that many of the house parents were taking their houses out to eat in restaurants as often as three days per week. As a result, the cost of food had skyrocketed. **Mr. Brewer implemented a policy that the houses could eat out a maximum of once per week.**

In short, there were no expense controls and senior management did nothing to curtail these extravagances, because they, too, took full advantage of them.

FINANCIAL CONDITION:

House parents receive a fixed amount of money daily for each child they have in their Village home to pay for house expenses. Though one would assume that the per diem would fluctuate based on the occupancy level in the homes, it was discovered that the homes were paid for a minimum of seven (7) children even if there were fewer in residence. New house parents were encouraged by other house parents to keep their census below seven, because it was easier to care for fewer children and the per diem minimum provided extra money for the house parents to use as they wished.

Mr. Brewer, executive director, implemented a program reimbursing only for the number of children in residence. As a result, The Villages has had their highest occupancy levels in years.

Having reduced administrative staff by fourteen, implementing cost control measures and increasing occupancy, The Villages has been able to dramatically improve its financial condition.

Immediately following the introduction of policies controlling overtime, The Villages began cash flowing. In the six months that the new executive director has been on the job, we have actually produced excess revenues over expenses for the past four consecutive months.

Each home has available more staff hours than previously. By eliminating the one and one-

half times cost of overtime, we have been able to hire additional people and actually spend less money. As a result, the children are getting more supervision and attention.

TURNOVER:

These changes have not been easy for any member of the staff, Board of Directors, or Trustees to experience. **Some of the policy changes have directly resulted in some employees resigning.** However, not one single employee has been fired for failure to comply with them.

The Toon's gave their notice when they were told that they could not schedule their in-laws to work an average of 90 hours per week overtime when there were other staff who could be scheduled without incurring overtime.

The Budahl's quit for several reasons. Mrs. Budahl did not prepare a single meal for her house. The once per week limit on dining out put an undue burden on her. Both were extremely upset with the overtime and nepotism policies. They got very upset when we promoted their daughter to a position in another home with more pay and responsibility, but no free room and board. Most difficult for them to accept was the counselling they received from their social worker for abusive behavior to the boys in their home.

Mrs. McPhail felt degraded that she could not report directly to the executive director. She organized a meeting with Kent Hayes and Alex Lazarino of the Menninger Foundation. It was her hope that they would contact the Board of Directors/Trustees to overrule the policy changes on supervision and nepotism. When this did not work, she tried daily for several weeks to organize a boycott/walkout of the house parents.

The Kern's resigned as house parents during the time that Mrs. McPhail was working on the boycott/walkout. They went directly to work for The Villages as relief staff, and continue in that capacity full-time.

We recently received resignations from two sets of house parents in Lawrence. The Mings resigned when it became obvious they would not be able to meet our expectations and standards as house parents. We employed a married couple who are both social workers with the Topeka school system to work with the Mings daily for three months during the summer. Unfortunately, the 90 days of intensive training was not sufficient. Sensing that we were getting ready to make a change, they resigned.

The other couple in Lawrence is the Williams. They quit because we refused to send the entire house to Miami during Christmas break so Mr. Williams could attend the Orange Bowl. He made plans, and told the children in the home before getting approval to go. Some of the children canceled Christmas home visits as a result. There were several reasons why their trip was not approved. First,

there was not going to be adequate supervision of the children during the Orange Bowl. Their van is the absolute worst that The Village owns, and could not have been relied upon to get them there and back. There was not any money in the budget for the trip. And, we wanted all the children who could to be with their families during the holiday.

Though excessive, and unwanted, the turnover during the last year simply could not have been avoided unless the status quo was accepted, or worse, sub-standard care was accepted.

REPORT ON MRS. MCPHAIL:

Mrs. McPhail resigned her position in October. She has gone to Virginia to work with Gary Duncan, our past executive director. She will be a training consultant for a new group home there. In her termination interview, Mrs. McPhail stated that she had always wanted to devote full-time to promoting her book and training.

Following her notice, but before she left, Mrs. McPhail began contacting members of our board seeking donations for her project in Virginia. As a result of complaints from these members following the November board meeting, the Chairman and President directed the executive director to prohibit Mrs. McPhail from this activity while in The Villages employ.

Her decision to leave placed Mr. McPhail in a difficult situation. He was not invited to go to Virginia. He asked if he could stay as a house parent. We have added staff to compensate for the loss of Mrs. McPhail. Although they miss her, the children have been able to make the adaptation to Phillip being their house dad. Mr. McPhail has made the adjustment and is doing a very good job.

SUMMARY:

The past eighteen (18) months have been difficult. We were confronted with a choice of 1) ignoring our problems and going bankrupt, 2) closing our doors and giving our fiscal resources to another agency to use, or 3) doing the best job we could to correct them and build toward a solid future. We all wished that we did not have to make a choice, but we did. We chose to do our very best to correct our mistakes and build a solid foundation to provide care to children.

The fact is The Villages was not being managed as professionally as we were led to believe prior to September, 1992. Our fiscal assets were not being protected; there was an inordinate amount of waste; and there was virtually no supervision of the homes. This was discovered by Brother Peter Clifford, F.S.C., our consultant, when we engaged him to perform a comprehensive audit of our operations. We began the process of correcting these problems in 1993. It is perhaps unfortunate that these changes were necessary. However, they were.

It is unfortunate that it is often the people who have been with an organization the longest that

have the hardest time accepting change. We have found that to be the case with our staff. Some of them have left. But, many of them have stayed.

We have developed a house-parent-in-training program that allows us to develop a cadre of trained house parents to be promoted when a vacancy occurs. Given time, this program will add great strength to our service to children.

The Villages is once again being fiscally responsible. As we enter 1994, we have every confidence that we will be able to provide quality care to children for the foreseeable future, provided that we can maintain the financial support of our friends and fellow trustees. The remaining staff is trying its level best to provide quality care.

We have established a positive working relationship with the State Department of Social and Rehabilitation Services (SRS) that has resulted in The Villages obtaining more referrals. The increase in referrals has resulted in higher occupancy levels than we have maintained in past years. Thus, we are caring for more children than we have in recent years.

Through the Kellogg Foundation's "Families for Kids" initiative, we are coordinating the development of a statewide initiative to assure that every Kansas child has an opportunity for a permanent family. We are working with leaders in the legislature, judicial system, SRS, other service providers and families to develop an adoption system in Kansas that works "in the best interest of the child."

We have begun working with SRS to develop services that are not available to families and children in our service area that are complimentary to our philosophy of caring for children in a family-style setting. Included in these services is our "Diversion Foster Care" program that provides specialized foster care for children who need more care, services and attention than we can provide in our homes.

We are planning the development of partial-day care services for children and families that are currently intact. This is a program need which has been identified by SRS. The advantage to The Villages for such a program would be 1) we would have a defined resource for implementing an independent living plan for children currently in our care; 2) we would have an "internal" resource for providing education, training, counseling and other support services to parents of children in our care whose case plan is to be reintegrated with their families; 3) we would have an "internal" counseling resource for children in our care; and 4) we would have a beneficial use for our vacated office building.

SRS has also identified a need for an intensive, short-term, residential program for children with intact families. This program would concentrate on providing services necessary for making the family home a safe and productive environment for the child. This program would direct its

services to both the child and the family (parents, siblings, etc.). Use of the partial-day care program for parental education, training and counseling would complement this program. Further, such a program would provide a continuum of services to better serve children whose families might otherwise disrupt.

These additional services augment our primary program of providing homes and families to children for whom a return their biological parents is not an viable option. **Our philosophy of providing families and homes for the care of children has not changed.** The family model of care created by Dr. Karl Menninger continues to be the cornerstone for the group homes.

Because we have effectively responded to the challenges that we were confronted with more than a year and one-half ago, we will continue to provide homes for these children into foreseeable future.

the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

(c) SPECIFIC WILDERNESS ACCESS.--

(1) IN GENERAL.--Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) DEFINITION.--For purposes of paragraph (1), the term ``wheelchair'' means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

SEC. 508. TRANSVESTITES.

For the purposes of this Act, the term ``disabled'' or ``disability'' shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.--

(1) IN GENERAL.--Notwithstanding any other provision

of this Act or of law, the provisions of this Act shall apply in their entirety to the Senate, except as provided in paragraph (2).

(2) EXERCISE OF AUTHORITY.--Authorities granted under this Act to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation shall be exercised by the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.--

(1) IN GENERAL.--Notwithstanding any other provision of this Act or of law, the purposes of this Act shall, subject to paragraphs (2) through (4), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE OF REPRESENTATIVES.--

(A) APPLICATION.--The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.--

(i) In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.--The resolution referred to in clause (i) is House Resolution 15 of the One

Hundredth First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.--The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) MATTERS OTHER THAN EMPLOYMENT.--

(A) ~~HOUSE BUILDINGS~~ IN GENERAL.--The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives ~~with respect to buildings or parts thereof within the jurisdiction of the House~~ of ~~Representatives~~, regarding matters other than employment.

(B) REMEDIES.--The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and

procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) APPROVAL.--For purposes of subparagraph (A), the Architect of the Capitol shall submit proposed remedies and procedures to the Speaker of the House of Representatives. The remedies and procedures shall be effective upon the approval of the Speaker, after consultation with the House Office Building Commission.

(c) INSTRUMENTALITIES OF CONGRESS.--

(1) IN GENERAL.--The rights and protections under this Act shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.--The chief official of each instrumentality of the Congress 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.

(3) REPORT TO CONGRESS.--The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.--For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.--Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel act of 1980 and regulations promulgated pursuant to that Act.

SEC. 510. ILLEGAL USE OF DRUGS.

(a) IN GENERAL.--For purposes of this Act, the term ``individual with a disability'' does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) RULES OF CONSTRUCTION.--Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who--

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

that mobility and independence are not hampered.

Furthermore, it will allow people with speech and hearing impairments to effectively use telephone systems.

Tremendous barriers exist for many individuals with handicaps, preventing them from functioning as full partners in America. Someone who uses a wheelchair cannot go into a store if there is only a flight of stairs and no entrance ramp, or if the door is not wide enough to allow the wheelchair to pass through. Those using wheelchairs may not be able to get on the bus to get to that store, and may be unable to work in that store. Discrimination against those with disabilities is not just in our minds and attitudes, it also lies in the physical environment, which is geared toward non-disabled people. ADA signals to the Nation that we must all contribute toward changing not only attitudes but also the physical environment, so that full integration will finally be achievable.

We are asking the transportation industry, the telephone industry, and other American businesses, large and small, to join in this effort. What we are are asking in this bill is reasonable. It is the product of intense negotiations and shows a willingness to compromise on the part of many. I wholeheartedly commend those who were involved in the discussions, particularly the authors of this bill, Senators HARKIN, DURENBERGER, and KENNEDY, as well as other concerned Senators, including the distinguished Republican leader. Moreover, the consensus package before us would not have been possible without President Bush's strong commitment to end discrimination toward those with disabilities.

The Americans with Disabilities Act is critical to ensuring that individuals with disabilities will be embraced by mainstream America. Yet, it is not the only reform we need to make. I have introduced the Medicaid Home and Community Quality Services Act, S. 384, to amend the Medicaid Program to provide people with disabilities with options for care. S. 384 will create a system of services so that people with disabilities can live and work in their communities. For too many years, individuals with physical or mental impairments have been locked away in institutions. My legislation would enable many Americans with disabilities to remain in their communities and still receive assistance from the Medicaid Program. Community placement allows many to gain independence and a sense of self-worth.

Full integration of those with disabilities requires a concerted effort from us all. Our Nation must work together to change our past discriminatory behavior and create a future of hope for all Americans, including those with disabilities. I urge my colleagues to support the compromise measure. Thank you, Mr. President.

Mr. HARKIN. Mr. President, might I ask the status, what amendment are we considering on the floor?

The PRESIDING OFFICER (Mr. LEVIN). The pending amendment is the amendment of Senator DOLE, No. 719.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HARKIN. If the Senator will withhold.

AMENDMENT NO. 715, AS MODIFIED

Mr. HELMS. Mr. President, inadvertently the text of the amendment that was approved earlier did not include some stylistic language changes. I ask unanimous consent that this version be substituted for the version that was sent inadvertently to the desk.

The amendment, as modified, is as follows:

AMENDMENT NO. 715, AS MODIFIED

At the appropriate place in Title I, insert the following new section:

SEC. . AMENDMENTS TO THE REHABILITATION ACT.

(a) HANDICAPPED INDIVIDUAL.—Section 7(7)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking out "Subject to the second sentence of this subparagraph, the" and inserting in lieu thereof "The"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "Notwithstanding any other provision of law, but subject to subsection (C) with respect to programs and activities providing education and the last sentence of this paragraph, 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.

(C) For 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. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions."

(D) For purposes of sections 503 and 504 of this Act as such sections related 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.".

(b) Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The Term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of federal law.".

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 715, as modified) was agreed to.

Mr. HARKIN. I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 720

(Purpose: To include Congress as a beneficiary of this Act)

Mr. GRASSLEY. I send an amendment to the desk and ask for its immediate consideration. It is an amendment by Senators DOLE, SPECTER, and HUMPHREY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for himself, Mr. DOLE, Mr. SPECTER, and Mr. HUMPHREY, proposes an amendment numbered 720:

At the appropriate place add the following:

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

Mr. GRASSLEY. Mr. President, you have just heard the amendment read in its entirety.

This amendment is very straightforward. It says that, starting today, and at long last, Congress will begin to live by the same laws it passes for others.

It goes to a simple question: Are there two sets of laws in this country—one that applies to Congress and one for the rest of America?

I am frank to note that Congress has been, historically, quite good at exempting itself from the laws it passes for others.

Mr. President, this breeds contempt among the public—the practice says that Congress somehow thinks it's above the law.

At a minimum, it goes to a lack of public accountability. At its worst, it is raw hypocrisy.

The practice ought to stop, and today is as good a time as any to start.

Here is a short list of some of the major laws—laws imposing substantial obligations on the American public—all passed by the Congress, on which Congress has exempted itself: This list is by no means inclusive, I may have missed some, and the list was recently published in a book called, aptly enough, "The Imperial Congress."

They are: The Social Security Act of 1933, the National Labor Relations Act of 1935, the Minimum Wage Act of 1938, the Equal Pay Act of 1963, the

CC SB, JW, MO WBH

SENATE RECORD VOTE ANALYSIS—TEMPORARY

101st Congress
2d Session

Vote No. 110

June 6, 1990, 1:47 p.m.
Page S–7448 (Temp. Record)

DISABILITIES ACT/AIDS-Infected Food Handlers

SUBJECT: Americans with Disabilities Act of 1989 . . . S. 933. Mitchell motion to table the Helms motion to instruct conferees.

ACTION: MOTION TO TABLE FAILED, 40-53

SYNOPSIS: On September 7, 1989, the Senate passed S. 933, the Americans with Disabilities Act (see vote Nos. 170-171 and 173, 101st Congress, 1st Session), which prohibits discrimination on the basis of disability in employment, public services, public accomodations, and telecommunications services.

On May 22, 1990, the House passed S. 933, as amended. As amended by the House, the bill allowed employers to refuse to assign employees with infectious or communicable diseases to food-handling tasks, as long as the employer offers an economically equivalent alternative employment opportunity.

Upon receipt of the House message on S. 933, and after, by unanimous consent, disagreeing to the House amendments to the Senate bill and agreeing to the House request for a conference, the Senate considered a motion by Senator Helms to instruct Senate conferees. The Helms motion would require Senate conferees to include in their conference report the House food-handling amendment.

During debate, Senator Mitchell moved to table the Helms motion, and asked for the yeas and nays. The motion to table was not debatable; however, some debate preceded the making of the motion. Generally, those in favor of the motion to table opposed the Helms motion to instruct; those opposed the motion to table supported the Helms motion to instruct.

NOTE: Following the vote, the Helms motion to instruct was adopted by voice vote.

Those favoring the motion to table the Helms motion to instruct contended:

We urge our colleagues to table the Helms motion to instruct conferees to accept the House amendment allowing food-handling employees to be transferred from their jobs if they suffer from infectious or communicable diseases.

(See other side)

YEAS (40)

Republicans (7 or 17%)	Democrats (33 or 65%)	
Cohen	Adams	Lautenberg
Danforth	Akaka	Leahy
Domenici	Biden	Levin
Durenberger	Bingaman	Lieberman
Hatfield	Bradley	Metzenbaum
Jeffords	Burdick	Mikulski
Packwood	Cranston	Mitchell
	Daschle	Moynihan
	Glenn	Pell
	Gore	Riegle
	Graham	Robb
	Harkin	Rockefeller
	Hollings	Sanford
	Inouye	Sarbanes
	Kennedy	Simon
	Kerrey	Wirth
	Kohl	

NAYS (53)

Republicans (35 or 83%)		Democrats (18 or 35%)
Armstrong	Lugar	Bentsen
Bond	Mack	Boren
Burns	McCain	Breaux
Coats	McClure	Bryan
Cochran	McConnell	Bumpers
D'Amato	Murkowski	Byrd
Dole	Nickles	Conrad
Garn	Pressler	Dixon
Gorton	Roth	Exon
Gramm	Rudman	Ford
Grassley	Simpson	Fowler
Hatch	Specter	Heflin
Heinz	Stevens	Johnston
Helms	Symms	Nunn
Humphrey	Thurmond	Pryor
Kassebaum	Wallop	Reid
Kasten	Warner	Sasser
Lott		Shelby

NOT VOTING (7)

Republicans (3)	Democrats (4)
Boschwitz—2	Baucus—2
Chafee—2	DeConcini—2
Wilson—2	Dodd—2
	Kerry—2AY

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Compiled and written by the staff of the Senate Republican Policy Committee
William L. Armstrong, *Chairman*

While the amendment's language seems innocuous, it is in fact directed against those who suffer from AIDS. The motion to instruct would only codify fear as a guiding rationale of public health policy.

Contrary to the public concerns which both the House amendment and this motion to instruct exploit, there is no credible medical evidence that neither air nor food can serve as AIDS-transmission vectors. Yet the House amendment, which was approved by only twelve votes, would allow employers to transfer employees in spite, not on the basis, of medical fact. Not too long ago we passed the AIDS C.A.R.E. bill (see votes No. 91-97), dedicated to the memory of Ryan White, who valiantly fought against AIDS discrimination during the 1980s. While many of us stood up to note his nobility at his passing a few months ago, this motion to instruct Senate conferees makes a mockery of those sentiments. Ryan White, and many others like him, would not be allowed to work at his local Burger King, McDonald's, or Eddie's Cafe, even though he poses no threat to the health of either fellow employees or restaurant patrons. Has it been so long that we have forgotten the idiocy of baseless discrimination that manifest itself in separate facilities, laws, and mores for blacks and whites? As a society, we found such behavior reprehensible, and as the legislature of the United States, we moved to stamp out such discrimination with the historic civil rights bills of the 1960s. Yet now, this motion would endorse the very discrimination we have all worked to extirpate.

To vote to table the Helms motion to instruct conferees would require the courage of Ryan White, to stand up against discrimination and for equality, rationale public health policy, and medical truth. We hope our colleagues will summon that courage and add their votes to ours.

Those opposing the motion to table the Helms motion to instruct conferees contended:

Originally, the Americans with Disabilities Act prohibited the transference of food-handling employees unless they posed a significant risk to the health and safety of others. Admittedly, according to current medical thinking, AIDS does not meet that criterion, and so employers could not transfer employees away from contact with food. Yet the history of the AIDS epidemic is replete with examples of food establishments being forced to close thanks to community knowledge that food handlers had AIDS. Yes, such patron behavior is discriminatory and unfair, not based on medical fact. Yet John Q. Public often does not know medical facts; he only knows the unease of this insidious disease that seems to kill all it infects. Such terror cannot be legislated out of existence, nor should it be ignored. We believe that such small businesses should have the opportunity to avoid the drastic agony of closure by allowing them to transfer AIDS sufferers from food-production lines, as long as their remuneration is not diminished. We think it is far better that businesses remain open and all workers keep their jobs, rather than forcing businesses to cease serving the public, and supporting their employees because we threaten them with Federal law if they transfer AIDS-infected food handlers out of contact with food. The House amendment does not allow employers to fire employees, just give them other jobs with equivalent pay.

Often both Houses pass common-sense legislative provisions, only to see them eliminated in conference committee. The Helms motion to instruct Senate conferees to accept the House amendment calls on all Senators to stand up to protect restaurant owners, workers, and patrons Nationwide, and we believe that the tabling motion should be defeated.

CC SB; JW, M. West

SENATE RECORD VOTE ANALYSIS—TEMPORARY

101st Congress
2d Session

Vote No. 149

July 11, 1990, 6:05 p.m.
Page S–9556 (Temp. Record)

ADA CONFERENCE REPORT/Reassignment of Food Handlers

SUBJECT: Conference report to the Americans with Disabilitites Act of 1990 . . . S. 933. Hatch amendment No. 2118 to the Ford motion to recommit the bill to conference with instructions.

ACTION: AMENDMENT AGREED TO, 99-1

SYNOPSIS: As reported by the conferees, the conference report to S. 933, the Americans with Disabilities Act, prohibits discrimination on the basis of disability in employment, public service, public accommodations, and telecommunications services.

The Ford motion to recommit the bill would instruct the conferees to insert provisions in the bill reaffirming the Senate's commitment to Rule XLII of the Standing Rules of the Senate regarding employment discrimination. In addition, the motion would instruct the conferees to apply the rights and protections of the Civil Rights Acts of 1964 and 1990, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 to employees of the United States Senate, grant the Senate Ethics Committee exclusive adjudicatory control over any complaints brought by Senate employees under the various specified Acts, and instruct the Senate Ethics Committee to conduct its investigation of any complaints made to it under the provisions of S. Res. 338 of the 88th Congress, as amended. The Ford motion to recommit the bill also instructs the conferees to include provisions instructing the Ethics Committee, where practicable, to order remedies identical to those applicable to all other employees covered by the various Acts. Finally, the Ford motion to recommit the bill instructs the conferees to instruct the Architect of the Capitol to establish remedies and procedures consonant with the intent of the ADA, and implement such remedies and procedures following approval of the Senate Committee on Rules and Administration.

The Hatch amendment to the motion to recommit would further instruct the conferees to:

- require the Secretary of Health and Human Services (HHS), no longer than 6 months after the bill's enactment, to publish a list of infectious and communicable diseases that may be transmitted through the food supply, and the methods of transmission;
- require the HHS Secretary to widely disseminate this information and update it yearly;
- permit employers to refuse to assign or continue to assign an individual to a food handling job if that individual is infected with a disease on the HHS list; and

(See other side)

YEAS (99)

Republicans (44 or 98%)

Armstrong, Bond, Boschwitz, Burns, Chafee, Coats, Cochran, Cohen, D'Amato, Danforth, Dole, Domenici, Durenberger, Garn, Gorton, Gramm, Grassley, Hatch, Hatfield, Heinz, Humphrey, Jeffords, Kassebaum, Kasten, Lott, Lugar, Mack, McCain, McClure, McConnell, Murkowski, Nickles, Packwood, Pressler, Roth, Rudman, Simpson, Specter, Stevens, Symms, Thurmond, Wallop, Warner, Wilson

Democrats (55 or 100%)

Adams, Akaka, Baucus, Bentsen, Biden, Bingaman, Boren, Bradley, Breaux, Bryan, Bumpers, Burdick, Byrd, Conrad, Cranston, Daschle, DeConcini, Dixon, Dodd, Exon, Ford, Fowler, Glenn, Gore, Graham, Harkin, Heflin, Hollings, Inouye, Johnston, Kennedy, Kerrey, Kerry, Kohl, Lautenberg, Leahy, Levin, Lieberman, Metzenbaum, Mikulski, Mitchell, Moynihan, Nunn, Pell, Pryor, Reid, Riegle, Robb, Rockefeller, Sanford, Sarbanes, Sasser, Shelby, Simon, Wirth

NAYS (1)

Republicans (1 or 2%)

Helms

Democrats (0 or 0%)

NOT VOTING (0)

Republicans (0)

Democrats (0)

• assure that nothing in this Act would preempt, modify, or amend any State, county or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health and safety of others.

NOTE: For related debate, see vote No. 148; and votes 171 and 173, 101st Congress, 1st session. Following this vote, the Senate agreed to the Ford motion to recommit the bill, as amended, by voice vote.

Those favoring the amendment contended:

There is no question that we in Congress want to protect all citizens from wrongful discrimination. At the same time, there are occasions when there may be a public health threat if we permit certain people with communicable or infectious diseases to expose or transmit these diseases to others. We urge our colleagues to support this amendment because it provides public health protections against diseases that can be transmitted through the food supply and it retains important local and State public health ordinances.

Our public health service has the expertise and the research capacity to provide Americans with information on these diseases. Requiring them to make such information broadly available is one way to ensure that there would be no reparations against those who would employ individuals with infectious or contagious diseases that cannot be transmitted by certain activities. These are important issues, and this amendment helps to solve them. The amendment requires the Secretary of Health and Human Services to come up with this list of infectious and communicable diseases based upon the best available science, not somebody's best available fears.

Some of our colleagues want to take this amendment one step further by automatically including AIDS on the HHS list. We feel the HHS list should be based upon science, not conjecture, fear, or misperception. In this amendment, HIV and AIDS will be subject to the HHS Secretary's scrutiny. If they are indeed found to be infections or communicable, then they will be included on the list, but not before. We cannot discriminate against people who pose no genuine health hazard just because of overactive imaginations.

This is a public-oriented amendment, not based on fears but upon sound science. The amendment addresses this public health dilemma, and we urge our colleagues to adopt it.

Those opposing the amendment contended:

We guarantee that the vast majority of Americans who eat in restaurants do not want to have their food prepared or handled by people who have AIDS or who are HIV positive. That's not hysteria, that's common sense. Yet our colleagues want to force Americans to take that chance. We urge our colleagues to err on the side of caution by defeating this weakened version of the Helms amendmennt (see vote No. 148).

People who operate eating establishments in this country know their livelihood depends largely on public perception. If the public is led to believe that there is a health risk, the business will be destroyed. There is no question that this has already happened all over the country.

Yet, our colleagues on the other side of this issue do not seem to care if countless restaurants go out of business due to their shortsightedness. To them, keeping the infected person in the kitchen is more important than protecting all of the patrons, other employees, and the livelihood of the owners. Again, it just doesn't make sense.

Remarkably, the Health Services Division of the Bureau of Prisons prohibits prisoners who are HIV positive from engaging in any aspect of prison food service operations. Yet we are not willing to take those same precautions to protect mainstream America. It just doesn't make sense. Neither does this amendment. Therefore, we urge our colleagues to vote against it.

101st CONGRESS
2nd Session

H.RES._____

Insert title here

Providing for the consideration of the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

IN THE HOUSE OF REPRESENTATIVES

May 16, 1990

Mr. Gordon from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed.

RESOLUTION

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, and the first reading of the bill shall be dispensed with. All points of order against consideration of the bill are hereby waived. After general debate, which shall be confined to the bill and the amendments made in order by this resolution and which shall not exceed two hours, with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Education and Labor, with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Energy and Commerce, with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, and with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text printed in part one of the report of the Committee on Rules accompanying this resolution as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered as having been read, and all points of order against the amendments printed in the report are hereby waived. No amendment to said substitute shall be in order except those printed in part two of the report of the Committee on Rules accompanying this resolution. Said amendments shall be considered in the order and

manner specified in the report, shall be considered as having been read, shall be debatable for the period specified in the report, equally divided and controlled by the proponent and a Member opposed thereto. Said amendments shall not be subject to amendment except as specified in the report. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except 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, it shall be in order to take from the Speaker's table the bill S. 933 and to consider said bill in the House, and it shall then be in order to move to strike out all after the enacting clause of the Senate bill and to insert in lieu thereof the provisions contained in H.R. 2273 as passed by the House, and all points of order against said motion are hereby waived.

H.R. 2273--Americans with Disabilities Act

1. Modified open.

2. Debate time allocated amongst four committees.

3. Waives all points of order against consideration of the bill.

4. Makes in order the text that appears in part one of the report accompanying this resolution as original text for the purpose of amendment to be considered as having been read. Waives all points of order against the substitute.

5. No amendments to the substitute are in order except those 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. Debate time provided on the amendments. The amendments are not subject to amendment, except as specified in the report. Waives all points of order against the amendments.

6. Makes in order the following amendments: (1) Rep. Campbell or LaFalce for 20 minutes; (2) Rep. McCollum for 20 minutes; (3) Rep. Olin for 30 minutes; (4) Rep. Hansen for 20 minutes; (5) Rep. Chapman for 30 minutes; (6) Rep. Lipinski for 40 minutes; (7) Rep. Shuster for 40 minutes; and (8) Rep. Sensenbrenner for 1 hour.

7. Provides one motion to recommit with instructions, if offered by Rep. Michel or his designee, or without instructions.

8. After passage of H.R. 2273, makes it in order to take S. 933 from the Speaker's table and consider the bill in the House. 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 the House. Waives all points of order against the motion.

cc SB, JW, M. West

SENATE RECORD VOTE ANALYSIS—TEMPORARY

101st Congress
2d Session

Vote No. 148

July 11, 1990, 5:41 p.m.
Page S–9555 (Temp. Record)

ADA CONFERENCE REPORT/Reassignment of Food Handlers

SUBJECT: Conference report to the Americans with Disabilities Act of 1990 . . . S. 933. Helms amendment No. 2119 to the Ford motion to recommit the bill to conference with instructions.

ACTION: AMENDMENT REJECTED, 39-61

SYNOPSIS: As reported by the conferees, the conference report to S. 933, the Americans with Disabilities Act, prohibits discrimination on the basis of disability in employment, public service, public accommodations, and telecommunications services.

The Ford motion to recommit the bill would instruct the conferees to insert provisions in the bill reaffirming the Senate's commitment to Rule XLII of the Standing Rules of the Senate regarding employment discrimination. In addition, the motion would instruct the conferees to apply the rights and protections of the Civil Rights Acts of 1964 and 1990, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 to employees of the United States Senate, grant the Senate Ethics Committee exclusive adjudicatory control over any complaints brought by Senate employees under the various specified Acts, and instruct the Senate Ethics Committee to conduct its investigation of any complaints made to it under the provisions of S. Res. 338 of the 88th Congress, as amended. The Ford motion to recommit the bill also instructs the conferees to include provisions instructing the Ethics Committee, where practicable, to order remedies identical to those applicable to all other employees covered by the various Acts. Finally, the Ford motion to recommit the bill instructs the conferees to instruct the Architect of the Capitol to establish remedies and procedures consonant with the intent of the ADA, and implement such remedies and procedures following approval of the Senate Committee on Rules and Administration.

The Helms amendment to the motion to recommit would further instruct the conferees to:

- require the Secretary of Health and Human Services (HHS), no longer than 6 months after the bill's enactment, to publish a list of infectious and communicable diseases, including the HIV virus, that may be transmitted through the food supply and the methods of transmission;
- require the HHS Secretary to widely disseminate this information and update it yearly;
- permit employers to refuse to assign or continue to assign an individual to a food handling job if that individual is infected with a disease on the HHS list; and

(See other side)

YEAS (39)

Republicans (27 or 60%)	Democrats (12 or 22%)
Armstrong	Baucus
Bond	Bumpers
Boschwitz	Byrd
Burns	Conrad
Coats	Exon
Cochran	Ford
D'Amato	Fowler
Garn	Heflin
Gramm	Johnston
Grassley	Pryor
Helms	Sasser
Humphrey	Shelby
Kasten	
Lott	
Mack	
McClure	
McConnell	
Murkowski	
Nickles	
Pressler	
Roth	
Rudman	
Simpson	
Stevens	
Symms	
Thurmond	
Wallop	

NAYS (61)

Republicans (18 or 40%)	Democrats (43 or 78%)	
Chafee	Adams	Kerrey
Cohen	Akaka	Kerry
Danforth	Bentsen	Kohl
Dole	Biden	Lautenberg
Domenici	Bingaman	Leahy
Durenberger	Boren	Levin
Gorton	Bradley	Lieberman
Hatch	Breaux	Metzenbaum
Hatfield	Bryan	Mikulski
Heinz	Burdick	Mitchell
Jeffords	Cranston	Moynihan
Kassebaum	Daschle	Nunn
Lugar	DeConcini	Pell
McCain	Dixon	Reid
Packwood	Dodd	Riegle
Specter	Glenn	Robb
Warner	Gore	Rockefeller
Wilson	Graham	Sanford
	Harkin	Sarbanes
	Hollings	Simon
	Inouye	Wirth
	Kennedy	

NOT VOTING (0)

Republicans (0) Democrats (0)

Compiled and written by the staff of the Senate Republican Policy Committee
William L. Armstrong, *Chairman*

• assure that nothing in this Act would preempt, modify, or amend any State, county or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others.

NOTE: For related debate, see vote No. 149; and votes 171 and 173, 101st Congress, 1st session. Following votes 148 and 149, the Senate agreed to the Ford motion to recommit the bill by voice vote.

Those favoring the amendment contended:

The amendment gives employers the freedom to move employees with communicable diseases, such as AIDS, to non-food handling positions without fear of being sued for illegal discrimination, and we urge our colleagues to support it.

In recent years, numerous restaurants have been forced to go out of business because of the fear that an infectious disease may be transmitted to the general public through the food handling process. Under this amendment, if a restaurant employer determines that it would pose a health hazard to assign an employee who suffers from AIDS, the flu, chicken pox, or some other communicable disease to a food handling position, he may move that employee into another job within the same establishment. The employee must be qualified for the alternative position, and would sustain no economic damage from the job change. Under no circumstances could the owner commit an act of discrimination by firing or disciplining the employee merely because he or she suffers from such a disease. Instead, the employee would be guaranteed an assignment to other restaurant duties without loss of pay or benefits.

This amendment gives employers a way to avoid losing their businesses as a result of the public's understandable fear of catching one of these infectious diseases. It would serve no useful purpose to either the employer or the employees for a good service establishment to be forced out of business because it could not legally reassign employees with certain infectious or communicable diseases to duties other than handling food.

This amendment does not discriminate against individuals with communicable or infectious diseases. It gives them job and financial protection while permitting employers to address a public perception that will threaten their businesses and their livelihoods. The amendment serves to strengthen the Americans with Disabilities Act by adding some degree of flexibility and sensitivity to a difficult situation by enabling small businesses to comply easily to its provisions. We urge our colleagues to support this important amendment.

Those opposing the amendment contended:

It is the responsibility of every member of this body to stand up for the rights of all American citizens. We must take great care to enact legislation on the basis of public health considerations, and not fear and prejudice. This amendment runs counter to the whole purpose of the ADA bill and must be defeated.

The amendment requires the HHS Secretary to list any disease that may be transmitted food, rather than those that are positively transmitted in this manner. This is clearly wrong. The amendment would allow a gigantic loophole for discrimination on the basis of fear and conjecture and not on scientific fact. We feel food workers must be protected from discrimination unless scientific evidence shows that they have a disease which actually poses a threat of transmission through food.

In the late 1600s men feared witches and many women were hanged. This is the 1990s, yet the Senate appears to be on a newfangled witch hunt against people with communicable diseases. We must reaffirm what the ADA already provides--that people will not be discriminated against on the basis of fear, prejudice, or irrationality--by rejecting these appeals to witchcraft and by rejecting this amendment.

CC SB, JW, M. WEST

SENATE RECORD VOTE ANALYSIS—TEMPORARY

101st Congress
2d Session

Vote No. 152

July 13, 1990, 9:34 a.m.
Page S-9695 (Temp. Record)

ADA CONFERENCE REPORT/Passage

SUBJECT: Americans with Disabilities Act of 1989 Conference Report . . . S. 933. Agreeing to the Conference Report.

ACTION: CONFERENCE REPORT AGREED TO, 91-6

SYNOPSIS: As reported by the conferees. S. 933 prohibits discrimination on the basis of disability in employment, public service, public accommodations, and telecommunications relay services. The conference report:

- Defines "disability" as a physical or mental impairment that substantially limits one or more of the major life activities of an individual.
- Bars employers from discriminating against people with disabilities in job application procedures, hiring and firing, compensation, job training and other terms, conditions, and privileges of employment.
- Precludes suits against businesses that employ 25 or fewer workers and that have gross receipts of $1 million or less until 2 years after enactment. Suits against businesses that have 10 or fewer employees and that have gross receipts of $500,000 or less could not be brought until 30 months after enactment. All other firms are covered by the bill beginning 18 months after enactment.
- Protects every person with a disability who can perform the "essential functions" of a particular job against discrimination in the workplace, but gives consideration to an employer's judgment as to what functions of a job are essential.
- Prohibits discrimination on the basis of disability "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation." The conference report definition of public accommodations includes motels, restaurants and bars, theaters, lecture halls, bakeries, hardware stores, laundromats, funeral parlors, shoe repair shops, professional offices, museums and libraries, parks and zoos, schools and day care centers, homeless shelters, food banks, health spas, bowling alleys and golf courses. All public accommodations, irrespective of the number of people they employ, are covered under the Act.
- Requires the consideration of the following factors when deciding if failure to remove barriers to public accommodation is "readily achievable:" 1) the nature and cost of the action; 2) the financial resources, the number of employees, and the impact of the action on the facility; 3) the composition, structure, and functions of the workforce of the facility.

(See other side)

YEAS (91)

Republicans (37 or 86%)

Armstrong
Boschwitz
Burns
Chafee
Coats
Cochran
Cohen
D'Amato
Danforth
Dole
Domenici
Durenberger
Gorton
Gramm
Grassley
Hatch
Hatfield
Heinz
Jeffords
Kassebaum
Kasten
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Packwood
Pressler
Roth
Rudman
Specter
Stevens
Thurmond
Warner
Wilson

Democrats (54 or 100%)

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Breaux
Bryan
Bumpers
Burdick
Byrd
Conrad
Cranston
Daschle
DeConcini
Dixon
Dodd
Exon
Ford
Fowler
Glenn
Gore
Graham
Harkin
Heflin
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Metzenbaum
Mikulski
Mitchell
Moynihan
Nunn
Pell
Pryor
Reid
Riegle
Robb
Sanford
Sarbanes
Sasser
Shelby
Simon
Wirth

NAYS (6)

Republicans (6 or 14%)

Bond
Garn
Helms
Humphrey
Symms
Wallop

Democrats (0 or 0%)

NOT VOTING (3)

Republicans (2)

McClure—2
Simpson—2AY

Democrats (1)

Rockefeller—2

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

• Permits employers to ban the use of alcohol and illegal drugs in the workplace and to prohibit employees from being under the influence of such substances at work.

• Allows an employer to discharge a worker who is illegally using drugs, but protects those who have enrolled in or have completed, drug rehabilitation programs from adverse job actions.

• Permits religious entities to give preference in employment to members of their own faith.

• Allows the Secretary of Transportation to grant a 30-year extension to make rapid rail or light rail systems accessible to people with disabilities where "extraordinary structural changes are required" and where at least two-thirds of the key stations are accessible after 20 years; otherwise, they must be accessible within 3 years after enactment.

• Requires that rail systems make at least one car per train accessible to the disabled, provided the trains have more than one car, "as soon as possible" but in at least 5 years.

• Mandates accessibility of intercity and commuter rail train platforms to disabled 3 years after the effective date. This deadline may be extended when raising entire passenger platforms is the sole means of attaining accessibility.

• Directs the Secretary of Transportation to issue regulations for over-the-road buses which would take effect 7 years after enactment for small providers and 6 years after enactment for others, and not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

• Deletes the Senate-passed provision that prohibits telecommunications companies from imposing a fixed monthly charge on residential customers to recover the costs of providing interstate relay services.

• Removes the "undue burden" aspect of the Senate-passed provision which requires common telecommunications relay services carriers to implement the requirements of the bill within 3 years unless the FCC finds that such implementation would impose an "undue burden."

• Requires closed captioning of television public service announcements produced or funded by Federal government.

• Provides that nothing in the bill can be construed to preclude the prohibition of, or the imposition of restrictions on, smoking.

• Excludes people with certain impairments or conditions from the Act's definition of disability. For example, homosexuals, bisexuals, transvestites, pedophiles, transsexuals, exhibitionists, people with other sexual disorders, and people with psychoactive substance use disorders are excluded from coverage under the Act.

• Encourages alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials and arbitration, where appropriate and to the extent authorized by law.

• Applies the bill's provisions to the House of Representatives, subject to the provisions of H.R. 15 (101st Congress), and H. Res. 558, the Fair Employment Practices Resolution (100th Congress).

• Reaffirms the Senate's commitment to Rule XLII of the Standing Rules of the Senate regarding employment discrimination. In addition, the conference report applies the rights and protections of the Civil Rights Acts of 1964 and 1990, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 to employees of the United States Senate, and grants the Senate Ethics Committee exclusive adjudicatory control over any complaints brought by Senate employees under the various specified Acts. The Senate Ethics Committee will conduct its investigation of any complaints made to it under the provisions of S. Res. 338 of the 88th Congress, as amended.

• With respect to compliance by both Houses of Congress, instructs the Architect of the Capitol to establish remedies and procedures consonant with the intent of the ADA, and to implement such remedies and procedures following approval of the Senate Committee on Rules and Administration and the Speaker of the House, after consultation with the House Office Building Commission.

Those favoring final passage of the conference report contended:

We are pleased to strongly support final passage of the Americans With Disabilities Act. This landmark legislation will mark a new era for the disabled in our Nation. For too many years, we have ignored the talents and gifts of certain Americans, but now we are proudly reasserting America's claim as the world's torchbearer of freedom and opportunity by passing this important legislation.

For far too long we have wasted the valuable resources disabled Americans possess. This conference report to the ADA bill is a final proclamation that the disabled will never again be excluded or treated by law as second-class citizens. We are proving that we will no longer subject persons with disabilities to isolation.

By passing this conference report we are unlocking these resources and bringing individuals with disabilities into the mainstream of the economic structure of our country. In employment, public accommodations, transportation, and communications services--all of which many of us take for granted--we will not tolerate the exclusion of the disabled because of ignorance, fear, or intolerance.

We urge final passage of this conference report because it is high time that we judge people by their abilities, not their disabilities. It is time that those in wheelchairs, or those with hearing or sight impairments be able to attend the theater or shop for their own groceries. These are facets of the American life which we are privileged to have at our disposal, and we must not deny our disabled people those same privileges.

No arguments were expressed against final passage of the conference report.

cc SB, JW, M. WEST

SENATE RECORD VOTE ANALYSIS—TEMPORARY

101st Congress
2d Session

Vote No. 153

July 13, 1990, 11:46 a.m.
Page S-9710 (Temp. Record)

TEXTILE-FOOTWEAR IMPORT QUOTAS/GATT Support Negotiations

SUBJECT: Committee substitute to the Textile, Apparel, and Trade Act of 1989 . . . H.R. 4328. Thurmond motion to table the Gorton amendment No. 2141.

ACTION: MOTION TO TABLE AGREED TO, 69-29

SYNOPSIS: The committee substitute to H.R. 4328, the Textile, Apparel, and Footwear Trade Act of 1989, establishes import quotas for textiles, textile products, and non-rubber footwear, barring certain textiles and textile products from Canada and Israel.

The Gorton sense of the Senate substitute amendment would insert in lieu of the bill a statement of strong support for the purposes and progress of the negotiations at the Uruguay Round of the General Agreement on Tarriffs and Trade (GATT), and would recognize the undesirability of enacting trade legislation, including legislation to establish general import quotas for textiles, apparel, and footwear, that would jeopardize the progress and successful conclusion of the Uruguay Round.

During floor debate, Senator Thurmond moved to table the amendment, and asked for the yeas and nays. The motion to table was not debatable. However, some debate preceded the making of the motion. Generally, those favoring the motion to table opposed the amendment; those oppposing the motion favored the amendment.

Those favoring the motion to table the amendment contended:

The Gorton amendment is an effort to do nothing about protecting an important industry that is beginning to falter in this country. Our textile trade deficit has quintupled in the last decade, and our textile industry holds only 40 per cent of our own market, while foreign governments erect barriers or lavishly subsidize their industries to give them a competitive edge in the global market. Europe subsidizes their agriculture at three times the rate that the U.S. does. Passing a "sense of the Senate" amendment in answer to the problems facing the textile industries is an approach full of sound and fury, signifying nothing.

H.R. 4328 accomplishes something that clearly needs to be done, leveling the advantage enjoyed by foriegn

(See other side)

YEAS (69)

Republicans (23 or 53%)	Democrats (46 or 84%)	
Bond	Bentsen	Kerrey
Cochran	Biden	Kerry
Cohen	Boren	Kohl
D'Amato	Breaux	Lautenberg
Dole	Bryan	Leahy
Domenici	Bumpers	Levin
Garn	Burdick	Lieberman
Grassley	Byrd	Metzenbaum
Hatch	Conrad	Mikulski
Heinz	Daschle	Mitchell
Helms	DeConcini	Moynihan
Humphrey	Dixon	Nunn
Jeffords	Dodd	Pell
Kasten	Exon	Pryor
Lott	Ford	Reid
McConnell	Fowler	Riegle
Murkowski	Gore	Robb
Roth	Harkin	Rockefeller
Rudman	Heflin	Sanford
Specter	Hollings	Sarbanes
Stevens	Inouye	Sasser
Thurmond	Johnston	Shelby
Warner	Kennedy	Simon

NAYS (29)

Republicans (20 or 47%)	Democrats (9 or 16%)
Armstrong	Adams
Boschwitz	Akaka
Burns	Baucus
Chafee	Bingaman
Coats	Bradley
Danforth	Cranston
Durenberger	Glenn
Gorton	Graham
Gramm	Wirth
Hatfield	
Kassebaum	
Lugar	
Mack	
McCain	
Nickles	
Packwood	
Pressler	
Symms	
Wallop	
Wilson	

NOT VOTING (2)

Republicans (2) Democrats (0)

McClure—1
Simpson—2

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

governmentally-subsidized textile industries that has so devastated our industry in the U.S. The GATT negotiations and similar treaties are impotent and anachronistic fatuities that have not helped American manufacturing industries. The textile industry alone has suffered the loss of over 360,000 jobs with such agreements in effect. While the negotiators at the GATT fiddle, American textile manufacturers burn. They will sacrifice our industries, and give us nothing in return.

Nevertheless, this bill does not interfere with the GATT negotiations that some of our colleagues want to preserve. We gave thorough attention to the GATT treaties while drawing up the Textile bill so that it conforms to the treaty. We can vote to protect our industries without jeopardizing these agreements. If we turn our backs on our manufacturing industries by voting for the Gorton amendment, our trade deficit will expand, and we will lose jobs and entire industries. We urge our colleagues to support American manufacturing and vote to table the Gorton amendment.

Those opposing the motion to table the amendment contended:

The Gorton amendment serves to restrict the harmful protectionist policies that are being included in H.R. 4328, and to remind Senators of the great gains made in each of their States as a result of previous liberalized trade agreements similar to the General Agreement on Tariffs and Trade (GATT) negotiations presently underway. The Textile bill in its present form would seriously undermine those negotiations, and would consequently result in damage not only to the textile industry, but to the industries of almost every State.

Several years ago, the textile industry was pushing for trade protection, and predicting dire consequences for the industry should we fail to enact protectionist policies. Such policies were never enacted, yet the textile industry has only grown stronger and healthier, principally as a result of looser restrictions on global trade. Obviously, the textile industry does not need the protectionism found in H.R. 4328 to thrive, but the free markets that H.R. 4328 would kill.

However, not only the textile industry would suffer as a result of the trade barriers that this bill will foster. Due to unfair protectionist trade practices worldwide, the United States loses many billions of dollars each year. If we are unable to liberalize international trade rules at the ongoing GATT negotiations, the service industries in which the United States is still highly competitive will find their growth hobbled in the future, and the U.S. will continue to lose some $60 million a year in stolen intellectual properties, which presently have no international protection agreements. The greatest damage done by an unsuccessful GATT agreement will be done to the agriculture industry, which presently faces the most crippling international trade barriers, and which are most repugnant to the present Administration. These foreign trade barriers do immeasurable damage to American agriculture in particular and to the American people generally.

The liabilities of an unsuccessful GATT will far outweigh anything to be gained by this bill. We urge Senators to vote for economic opportunity and prosperity with their support for the Gorton amendment.

Sen Harkin	04/28/88
Sen Simon	04/28/88
Sen Stafford	04/28/88
Sen Kennedy	04/28/88
Sen Dodd	04/28/88
Sen Matsunaga	04/28/88
Sen Chafee	04/28/88
Sen Kerry	04/28/88
Sen Packwood	04/28/88
Sen Leahy	04/28/88
Sen Inouye	04/28/88
Sen Cranston	04/28/88
Sen Dole	04/28/88
Sen McCain	04/29/88
Sen Riegle	05/25/88
Sen Burdick	07/28/88
Sen Moynihan	07/28/88
Sen Wilson	07/28/88
Sen Durenberger	08/01/88
Sen Wirth	08/08/88
Sen Pell	08/10/88
Sen Adams	09/08/88
Sen Stevens	09/08/88
Sen Mikulski	09/08/88
Sen Boschwitz	09/15/88
Sen Levin	09/28/88

COSP, PAGE 2 OF 2. READY FOR NEW COMMAND, OPTION OR PG #:

ENFORCEMENT/SECTION 1981

Problem: The enforcement scheme provided under the ADA, which includes jury trials, punitive and compensatory damages, will encourage litigation.

Solution: Eliminate Section 1981 provisions from the bill; inclusion of Title VII enforcement provisions which would make a victim whole.

Rationale: The remedies, administrative procedures and defenses provided under Title VII have been proven successful in cases alleging discrimination based on race, sex, religion and national origin. Further, there is an extensive body of law interpreting these provisions thus providing guidance to employers and the courts regarding the scope of coverage under this Title. Individuals who believe that they have been subjected to practices proscribed by this title would be entitled to file a complaint with the EEOC, and if the EEOC decides not to proceed with the case, the individual would still be entitled to file suit in Federal District Court.

Language: Sec. 205 ENFORCEMENT

(a) Any individual who believes that she or he has been subjected to discrimination on the basis of disability in violation of the provisions of this Title may file a charge of discrimination with the Commission, and subsequently a civil action in federal court, pursuant to the procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §§2000e-5, 2000e-8, 2000e-9).

(b) In any action filed under this Section, the remedies and defenses set forth in sections 706(g) and 703(e)-(j) of the Civil Rights Act of 1964 (42 U.S.C. §§2000e-5(g) and 2000e-2(e)-(j) shall be available.

(c) In any action filed under this Section against an employer which is subject to the provisions of sections 503 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§793, 794), that employer's compliance with the requirements of Section 503 or Section 504 shall be deemed to fulfill that employer's obligations under this Act.

(d) This Title is intended to provide the sole rights and remedies concerning employment discrimination arising under this Act.

ENFORCEMENT/DUPLICATION OF REHABILITATION ACT COVERAGE

Problem: A significant number of employers are already covered by the federal prohibition on handicap discrimination in Section 503 and Section 504 of the Rehabilitation Act. The ADA would not repeal those requirements, yet nothing in ADA seeks to assure that these employers are not subjected to inconsistent standards and duplicative enforcement by various agencies.

Solution: Add language to Title II to provide that, in any action filed under the ADA against an employer which is subject to the Rehabilitation Act, the employer's compliance with Rehabilitation Act standards will be deemed compliance with the ADA.

Rationale: Neither the purposes of the ADA, nor the well-established purposes of the Rehabilitation Act will be served by administrative schemes which place inconsistent standards on employers covered by both laws, or by duplication of enforcement efforts. Employers who are currently covered by Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, may continue existing procedures which comply with the Rehabilitation Act, and such employers may rely upon their compliance with those Rehabilitation Act standards.

Language: Sec. 205 ENFORCEMENT

(a) Any individual who believes that she or he has been subjected to discrimination on the basis of disability in violation of the provisions of this Title may file a charge of discrimination with the Commission, and subsequently a civil action in federal court, pursuant to the procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §§2000e-5, 2000e-8, 2000e-9).

(b) In any action filed under this Section, the remedies and defenses set forth in sections 706(g) and 703(e)-(j) of the Civil Rights Act of 1964 (42 U.S.C. §§2000e-5(g) and 2000e-2(e)-(j) shall be available.

(c) In any action filed under this Section against an employer which is subject to the provisions of sections 503 or 504 of the Rehabilitation Act of 1973 (29 U.S.C.

§§793, 794), that employer's compliance with the requirements of Section 503 or Section 504 shall be deemed to fulfill that employer's obligations under this Act.

(d) This Title is intended to provide the sole rights and remedies concerning employment discrimination arising under this Act.

ENFORCEMENT/ANTICIPATORY DISCRIMINATION

Problem: The bill provides relief for individuals who believe that they "are about to be" discriminated against, and doesn't require allegations of actual discrimination.

Solution: Eliminate the provision which would allow such speculative complaints.

Rationale: No other civil rights in employment legislation provides such a right, which will lead only to unnecessary or premature lawsuits.

Language: Sec. 205 ENFORCEMENT

(a) Any individual who believes that she or he has been subjected to discrimination on the basis of disability in violation of the provisions of this Title may file a charge of discrimination with the Commission, and subsequently a civil action in federal court, pursuant to the procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §§2000e-5, 2000e-8, 2000e-9).

(b) In any action filed under this Section, the remedies and defenses set forth in sections 706(g) and 703(e)-(j) of the Civil Rights Act of 1964 (42 U.S.C. §§2000e-5(g) and 2000e-2(e)-(j) shall be available.

(c) In any action filed under this Section against an employer which is subject to the provisions of sections 503 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§793, 794), that employer's compliance with the requirements of Section 503 or Section 504 shall be deemed to fulfill that employer's obligations under this Act.

(d) This Title is intended to provide the sole rights and remedies concerning employment discrimination arising under this Act.

REASONABLE ACCOMMODATION/MANDATORY LANGUAGE

Problem: The definition of reasonable accommodation uses mandatory terminology, by requiring that reasonable accommodation "shall" include a specific list of possibilities.

Solution: Use the permissive term "may" to clearly reflect the Congressional intent to allow flexibility in crafting a response.

Rationale: The mandatory terminology currently in the bill is troublesome because of its potential to limit an employer's flexibility in crafting the most cost efficient and appropriate response to a customer, applicant or employee with disabilities.

Language:

Change "shall" to "may" on p. 6, ln. 17.

AUXILIARY AIDS AND SERVICES/MANDATORY LANGUAGE

Problem: The definition of auxiliary aids and services uses mandatory terminology, by requiring that reasonable accommodation "shall" include a specific list of possibilities.

Solution: Use the permissive term "may" to clearly reflect the Congressional intent to allow flexibility in crafting a response.

Rationale: The mandatory terminology currently in the bill is troublesome because of its potential to limit an employer's flexibility in crafting the most cost efficient and appropriate response to a customer, applicant or employee with disabilities.

Language:

Change "shall" to "may" on p. 5, ln. 21.

REASONABLE ACCOMMODATIONS/"PROCEDURES OR PROTOCOLS"

Problem: The definition of reasonable accommodation includes "adoption or modification of procedures or protocols." Although the remainder of the definition is lifted from Section 504, this clause is new and its purpose unclear.

Solution: Drop the clause in its entirety.

Rationale: Dropping the clause "adoption or modification of procedures or protocols" would conform the language to the definition contained in Section 504. Employers charged with making accommodation need to have clear guidance on what their obligations will be.

Language:

Delete the term "adoption or modification of procedures or protocols" on pp. 6-7, ln. 25-1.

REASONABLE ACCOMMODATION/UNDUE BURDEN

Problem: As defined, there is no limitation on "reasonable accommodation"; the only limitation is included as a defense, where reasonable accommodation is not required if it would pose an "undue burden." Undue burden is not defined. The absence of such a definition, against a legislative history backdrop which defined undue burden as anything that threatens the existence of a business makes this a critical problem.

In addition, under Section 202 (b) (2), it is discriminatory to deny employment opportunities to qualified individuals with disabilities if the basis for such a denial is "because of the need of the individual for reasonable accommodation." Reasonable accommodation in this provision is not limited by a defense of undue burden. An employer could therefore be sued by an individual alleging he or she wasn't hired because they needed reasonable accommodation, and an employer could not defend itself by saying that it didn't know of the need or that the accommodation would cause the employer undue burden. An employer could only say that it didn't refuse to hire the individual because of his or her need for accommodation.

Solution: Define reasonable accommodation to specifically provide that it shall not include a fundamental alteration or result in an undue financial or administrative burden to the business or facility. Include a definition of undue burden as a part of reasonable accommodation.

Rationale: The definition of reasonable accommodation should have a boundary of reasonableness; employers should have clear notice of what Congress intends for them to do. Unless defined, employers will be in a position of having to "know it when they see it," and run the risk of failing to meet their obligation as someone else sees it. The solution would simply codify the provisions of Section 504 regulations and provide additional guidance to employers regarding their obligations.

Language:

Add (C) (D) and (E) to definition of reasonable accommodation; p. 8, ln. 4:

(C) Provided that reasonable accommodation shall not require a fundamental alteration or result in an undue financial or administrative hardship to a business or facility.

(D) Provided, further, that "reasonable accommodation" does not require an employer to:

1. Hire one or more employees, other than the disabled person, for the purpose, in whole or in part, of enabling the person with disabilities to be employed; or

2. Reassign duties of the job in question to other employees without assigning to the employee with disabilities duties that would compensate for those reassigned; or

3. Reassign duties of the job in question to one or more other employees where such reassignment would increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or

4. Alter, modify, change or deviate from bona fide seniority policies or practices; or

5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally.

(E) Undue financial or administrative hardship to a business or facility shall include an analysis of at least the following criteria:

1. the overall size of facility with respect to the number of employees, and number and type of facilities, and capacity for structural change;

2. the type of the employer's operation, including the composition and structure of the employer's workforce;

3. the nature and cost of the accommodation needed;

4. the impact on bona fide seniority systems and collective bargaining agreements; and

5. the existence of suitable alternative accommodation.

DRUG/ALCOHOL ABUSERS

Problem: The bills limits an employer's ability to adopt and implement a drug-free workplace policy by protecting current abusers of alcohol or drugs, unless the employer can demonstrate "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." Presumably, an individual who tests positive for drug use could not be discriminated against unless the employer can prove he or she poses a serious danger.

Solution: Clarify that nothing in the ADA is intended to protect individuals who currently abuse alcohol or drugs, and protect the employer's right to adopt a "zero-tolerance" policy with respect to drug abuse.

Rationale: Administration (Executive Order 12564; DOD, DOT, and NRC drug testing regulations) and Congressional (Drug-Free Workplace Act) policy is to promote a drug-free workplace. The ADA should not contradict this national policy by protecting current drug/alcohol abusers.

Language: Delete section 101(b)(2)(A),_ and insert at the end of Title I the following new subsection:

> "Notwithstanding any other provision of this Act, an individual with a disability shall not include any individual who uses, or is addicted to, alcohol or drugs."

TITLE I/OVERLAP WITH TITLE II

Problem: It's unclear what additional burdens are imposed on employers in Title I which are not included in other Titles of the bill. This is particularly true as it applies in the employment context.

Solution: Eliminate the term "job" from the Title, to ensure that all allegations of employment discrimination are governed by Title II of the bill.

Rationale: Employment discrimination is covered by Title II of the Act, and Title II should be the sole provision of the bill governing the employment relationship. Drafters of the bill have simply lifted regulations implementing Section 504 of the Rehabilitation Act, which are targeted to federal grant recipients, and made amendments to broaden the scope to cover the employment relationship. In doing so, new terms are used which have not historical interpretation, and are broad or ambiguous. Clarity is needed for employers to understand their obligations.

Language:

Eliminate the word "job" wherever it appears in Title I.

DISCRIMINATION BY ASSISTANCE

Problem: Under Title I, an employer who isn't even aware that the recipient of its charity or assistance is discriminating would be violating the law.

Solution: Provide that an employer who knowingly engages in such activity violates the law.

Rationale: This provision punishes an innocent contributor for the illegal acts of the beneficiary of the contributor's generosity. Employers will be much more cautious in making charitable contributions.

Language:

Page 8, ln. 13, add "knowingly" after "by" and before "providing."

DISCRIMINATION IN "BENEFITS"

Problem: As drafted, Title I creates incredible new liabilities for an employer if they provide persons with disabilities with a benefit which is "less effective than" or "is different or separate" from that provided to others. Group health insurance benefits, which are offered under the same terms and conditions to all employees, may still be "less effective" or "different or separate" for a person with disabilities.

Solution: Ensure that employers will not be required to provide benefits which are as "effective" or "different or separate" as those provided to others, but only be required to offer the same package to all employees, regardless of whether or not a person is disabled.

Rationale: If employers are obligated to provide persons with disabilities with benefits which are as "effective" or "different or separate" as those provided to others, the costs could be in the billions of dollars. Employers would begin to drop health insurance for all employees rather than assume the costs. Insurance companies would be unable to provide and/or underwrite group health insurance policies.

Language:

On p. 14, ln. 18, add:

> 202(c) Notwithstanding any other provision of this Act, an employer shall not be required to provide an individual with disabilities any employment benefits which are different from or in addition to the benefits otherwise provided by that employer.

In addition, Committee Report language should clearly provide that an employer is not required to provide specific medical coverage, purchase medical insurance with pre-existing condition waivers or provide insurance because of the employment of a qualified individual with a disability.

DISCRIMINATION BASED ON ASSOCIATION

Problem: It is illegal to discriminate against someone because of an individual's "relationship to, or association of, that individual or entity with another individual with a disability." (Sec. 101(a)(5)) This provision is an open invitation for frivolous lawsuits alleging discrimination based on association, and requiring employers to prove a negative -- that they weren't aware of the association.

Solution: Strike the provision.

Rationale: This provision is an unparalleled expansion in civil rights law and will become a vehicle used by every disgruntled employee to challenge adverse employment actions, unnecessarily draining the financial resources of both government enforcement agencies and employers.

Language: Delete Sec. 101(a)(5).

GOOD FAITH EFFORTS

Problem: The provisions of Title I may put employers in a "Catch 22" position if, as required by Sec. 101 (a) (1) (D), they provide a program or activity that is "different or separate," because it is "necessary to provide the individual" with a program or activity that is "as effective as that provided to others," but the individual with a disability demands under Sec. 101 (a) (3) that they "not be denied the opportunity to participate in such programs or activities that are not separate or different."

Solution: Ensure that employers are <u>not</u> caught in this "Catch 22," but stating that deference must be given to an employer's good faith efforts to comply with their obligations under the law.

Rationale: When faced with the need to make accommodations for a person with disabilities, there should be recognition in the law for an employer's good faith efforts to achieve compliance. The concept of good faith efforts is well recognized under existing civil rights laws. If employers are denied this flexibility, and are confronted with a "damned if we do, and damned if we don't" choice, the likely consequence will be inaction -- it's safer to simply avoid the issue. The result: no one benefits.

Language:

On p. 9, ln. 8, add:

> however, good faith efforts to achieve reasonable accommodation provisions of this statute shall not constitute a violation of this section of this statute.

In addition, committee report language should be added that directs that this provision should not be construed in a formalistic manner. Employers must have discretion to manage their workplaces and be judged by their good faith efforts.

CONSISTENCY WITH EXISTING LAW

Problem: Sec. 101 (a)(4) of Title I seems to adopt the adverse impact theory for proving discrimination against persons with disabilities. It is unclear whether or not the authors intend to follow Alexander v. Choate, or overturn that decision.

Solution: Spell out the intent of the authors in the Committee Report to follow Choate, in which Justice Marshall of the U.S. Supreme Court discussed the appropriate application of the adverse impact theory of discrimination based on claims involving persons with disabilities.

Rationale: Employers would face almost insurmountable problems in validating all section criteria. With over 900 categories of disabilities, there is no way possible for an employer to ensure that selection devices don't "have the effect" of discrimination on the basis of disability.

Language: See above.

DEFENSES

Problem: The provisions of Title I which set forth defenses (Sec. 101(b)) are unnecessary and actually appear to limit the defenses which otherwise would be available under the Act.

Solution: Drop the entire section.

Rationale: The nature of the defenses available to an employer in discrimination cases has been adequately developed by the courts and agencies under the Rehabilitation Act, as well as under Title VII of the Civil Rights Act of 1964. Moreover, the language of Section 101 (b) (1) as drafted imposes a burden of proof which is contrary to the burden of proof applied under the Section 504 regulations.

If it is necessary to incorporate specific defenses, the most appropriate approach would be to simply include a reference to the defenses allowed in Title VII (Section 703).

Language: Delete Section 101 (b) (1).

TITLE II/COVERAGE

Problem: The bill imposes substantial new burdens on employers, and will be particularly difficult for smaller employers to comply with.

Solution: Adopt a phased-in approach of coverage, similar to that used with the Civil Rights Act of 1964. Over a five year period from the effective date, cover employers of 100, 75, 50, 25, and 15.

Rationale: With the substantial burdens imposed by this bill, there will be a period of intensive education of the employer community to ensure that they are aware of their new obligations. It is unfair to impose these burdens without some period of adjustment.

Language: In Sec. 201(3)(A) after "person" and before ".":

> Provided that during the first year after the effective date, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers, and, during the fourth year after such date, persons having fewer than twenty-five employees (and their agents) shall not be considered employers, and, during the fifth year after such date, persons having fewer than fifteen employees (and their agents) shall not be considered employers.

FAILURE VERSUS WILLFUL FAILURE TO ACT

Problem: As drafted, an employer will be guilty of discrimination for its "failure" to act; therefore, unintentional discrimination is treated as seriously as intentional discrimination.

Solution: Define discrimination as a "willful failure" to act.

Rationale: Employers should not be penalized for inadvertent errors, especially where employers have new, affirmative obligations imposed by this law.

Language: Add the word "willful" before failure wherever it appears in Title II.

DISCRIMINATION DEFINED INCONSISTENT WITH SECTION 504

Problem: The bill is inconsistent with Section 504's definition of discrimination.

Solution: Provide that an employment action is not discriminatory against an "otherwise" qualified individual for purposes of this Act unless it is "solely" based on an individual's disability.

Rationale: This change would make the provision consistent with existing Section 504 law and reduces confusion.

Language: Insert the word "otherwise" after "any" and before "qualified" on p. 13, ln. 10, and insert the word "solely" after "disability" and before "because" on p. 13, ln. 10.

JOB APPLICATIONS -- CONSISTENCY WITH REHABILITATION ACT

Problem: In seeking to assure nondiscrimination in the processing of employment applications, Section 202(a) of the ADA uses a new term which differs from the language used in the regulations issued under Section 504 of the Rehabilitation Act, creating uncertainty about whether the new law will be interpreted to require something other than the application process which meets the requirements of Section 503 and Section 504 of the Rehabilitation Act.

Solution: Modify the language in Section 202(a) to replace the new term ("job application procedures") with the term which has been used for many years in the Section 504 regulations ("processing of applications for employment").

Rationale: Absent some specific reason for changing the language used in the Section 504 regulations, there is no need to make arbitrary variations in the language incorporated into the ADA. Consistency is important in building upon the body of law already developed under the Rehabilitation Act. By replacing the established term ("processing of applications for employment") from the existing regulations with a new term in Section 202(a) of the ADA ("job application procedures"), the drafters have raised questions about the meaning of this section and whether it will be interpreted to require something other than the Rehabilitation Act. This is particularly important with regard to the application stage of the employment process because under Section 503 of the Rehabilitation Act employers are required to follow certain procedures which provide an individual with a handicap an opportunity to identify himself or herself to the employer and to discuss the possible need for an accommodation. (See application procedures set forth in the Section 503 regulations, 41 CFR § 60-741 Appendix). The new term in the ADA raises questions about whether the ADA might be interpreted to prohibit these same procedures.

Language: In Section 202(a), p.13, ln.12, delete phrase "job application procedures" and replace it with "processing of applications for employment"

LIMITATION ON SELECTION CRITERIA

Problem: In Section 202(b), the bill goes beyond the current Section 504 regulations by limiting an employer's use of qualification standards, tests, etc., that "identify" individuals with disabilities, such as employment physicals, even if the identification doesn't lead to an adverse employment decision, or doesn't have an adverse impact on persons with disabilities.

Solution: Use existing Section 504 language and permit the use of such selection criteria, but insure that the selection criteria don't discriminate against persons with disabilities solely on the basis of their disability, unless it has a direct relationship to that person's ability to perform the job in question.

Rationale: The regulations issued under Section 504 provide an established and understood approach to the issues addressed here. Indeed, no one has suggested either that the Section 504 approach is inadequate, or that there is any need to modify that approach. Thus, it would be most useful to build on the Section 504 experience by drawing directly on the Section 504 regulations for the language in this section.

Language: Delete Section 202 (b) (3), and insert in its place:

> (3) the use by a covered employer, employment agency, labor organization or joint labor-management committee of any employment test or other selection criteria that screens out or tends to screen out individuals with a disability unless:
>
> > (a) the test is demonstrably related to the safe and efficient performance of the job and shown to adequately measure the ability of an individual to perform the functions of the job, and
> >
> > (b) alternative job-related tests or criteria that do not screen out or tend to screen out as many individuals with a disability are not shown by the aggrieved individual or enforcement agency to be available.
>
> (D) The failure of a covered employer, employment agency, labor organization or joint labor-management committee to select and administer tests concerning employment so as best to ensure that, when

administered to an applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure).

PROVISION OF NOTICE

Problem: The bill requires notices to be "posted"; that is somewhat problematic, for example, for a vision impaired person.

Solution: Require that notices be "provided" in accessible formats.

Rationale: Greater flexibility to ensure adequate notice by the best means available.

Language: Replace the words "post notices" on p. 14, ln. 22, and insert "be provided notice".

PHASE IN

Problem: An entirely new set of requirements placed upon the business community, even with the best of intentions, will require a phase-in period.

Solution: Recognition of operational consideration by permitting a reasonable period of time for the necessary changes to be made to the physical and procedural barriers to the attainment of the objectives of the ADA.

Rationale: The same rationale as was recognized by the proponents of ADA in last year's bill (HR 4498/S 2345) at Section 7(b)(1) & (2)(page 16, lines 12-24), "Time for Alterations."

Language:

TIME FOR COMPLIANCE

(1) In General:

Substantial modifications to job restructuring, modification of equipment or devices, training materials, procedures, protocols, service, program activity, benefit jobs, or physical facilities are necessary in order to meet the requirements of this Act, unless required earlier by other law or regulation, shall be made in a reasonable period of time, not to exceed one year from the effective date of this Act, for public accommodations having fewer than one hundred employees, and not to exceed two years from such date for public accommodations having fewer than seventy-five employees and not to exceed three years from such date for public accommodations having fewer than fifty employees, and not to exceed four years from such date for public accommodations having fewer than twenty-five employees and not to exceed five years from such date for public accommodations having fewer than fifteen employees.

SECTION 401 DEFINITIONS

"COMMERCE"

Problem: The term "commerce" is overly broad. In fact, commerce is defined as "commerce".

Solution: Use existing statutory language wherever possible to avoid confusion which will lead to unnecessary litigation.

Rationale: There is a body of law which has developed over the past 25 years which should be used wherever possible to avoid needless confusion. The 1964 language has ensured the right for a member of a protected class to receive services whenever and wherever he/she desires. The advancement made under the 1964 Act has brought attitudinal changes which need to be harnessed to obtain the goals of the ADA.

Language: Section 401. Definitions as used in this Act: (-) Commerce - The operations of an establishment "affect commerce" if the establishment meets the criteria in section 201 (c) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(c)).

SECTION 401(1)(A)(II)

"PUBLIC ACCOMMODATION" = "that are potential places of employment"

Problem: Universal coverage places burdens upon classes of business which receive no federal monies, many of which are small enterprises which may not be able to withstand the additional mandated costs.

By defining "public accommodations" as "all potential places of employment," this would mandate accessibility to "private" as well as "public" areas. Areas such as stockrooms, boiler rooms, and cat-walks within a steel mill would be covered, the only exception cited by the drafters would be "duck blinds." This one phrase would require the installation of elevators in every 2 story building as well as total accessibility in every commercial/residential structure. Remember the standard here is structural impractability.

Solution: Scope of coverage under the 1964 Civil Rights Act with a small business phase-in, should be adopted and §401(1)(A)(II) deleted.

Rationale: Use of Civil Rights Act of 1964 scope is consistent with scope of ADA in 100th Congress [Sec. 4(2)(3)]. Phased-in approach would be consistent with expressions of Congressional intent expressed in the 1964 Civil Rights Act.

Language: Section 401. Definitions

As used in this Act: The term "places of public accommodation means, in general, those establishments listed in sections 201(b)(1)-(4) and excludes those listed in Section 201(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(b)(1)-(4) and (e). Provided that during the first year after the effective date, entities having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, entities having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, entities having fewer than fifty employees (and their agents) shall not be considered

employers, and during the fourth year after such date, entities having fewer than twenty-five employees (and their agents) shall not be considered employers, and, during the fifth year after such date, entities having fewer than fifteen employees (and their agents) shall not be considered employers.

GENERAL RULE

Problem: Section 402(2), General Rule, is overly broad and replete with undefined terms.

Solution: Use 504 standards.

Rationale: Minor drafting. Consistent with present law for other protected classes.

Language: Section 402(a). Prohibition of Discrimination by Public Accommodation.

(a) General Rule - No qualified individual shall be discriminated against solely on the basis of his or her disability in the enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

SECTION 402(4)(A) & (B)

"READILY ACHIEVABLE"

Problem: the term "readily achievable" is a newly created term not used in previous legislation which lacks definition.

Solution: Include a definition in the bill.

Rationale: A clearly defined standard will help to reduce litigation over the term and provide a standard which business can conform to - prior to the institution of litigation.

Language: Add the following as 401(4)(c)

Readily achievable: As used in subsection (b)(4)(A) and (B) of Section 402 the term "readily achievable" means when applied to architectural and communication barriers, removal that does not require more than a de minimis financial and/or administrative outlay, and when applied to alternative methods of making goods, service facilities, privileges, advantages and accommodations shall not require more than a de minimis financial and/or administrative outlay.

SECTION 402(b)(5)

RETROFIT OF EXISTING STRUCTURES

Problem: 1) retrofitting of existing structures is prohibitively expensive; 2) ADA does not have a clear threshold of when an existing structure must be retrofitted; 3) existing tax code only allows a max of $35,000/year deduction for such work; 4) one year is an unrealistic period of time; and 5) there appears to be joint and several liability for responsibility of the lessee and lessor for retrofitting. Structural impractability is the standard for alterations.

Solution: 1) Delete requirement for existing structures to be retrofitted; 2) place a clear threshold of 50% of building value as the point at which a renovation triggers a retrofit; 3) expand Section 190 of the IRC to include all expenditures (not just structural barrier removal) as well as remove the maximum of $35,000; 4) provide a realistic phase-in period ; and 5) place the burden for retrofit upon the building owner.

Rationale: It is unfair to require the retrofitting of existing structures which were built to code now that they are in service. The marketplace has responded in the past decade to the extent that the vast majority of commercial activity takes place within accessible buildings. 2) Businesses need to know what is expected of them, a safe harbor if you wish. Certainly, if there must be retrofitting, the threshold must be a high one, and 50% of building value is as justifiable a number as any. 3) The building owner is the proper place for this responsibility, as the renter does not have control of the building.

Language:

See solution above.

SECTION 402(b)(7)

Problem: The requirement to purchase every new vehicle, which carries in excess of 12 passengers, to be fully accessible is unrealistic. There are no provisions made for paratransit.

Solution: Paratransit on demand rather than every new vehicle being accessible is reasonable and would accommodate the legitimate needs of the disabled.

Rationale: There is nothing in the record to demonstrate the need for this requirement. We are not talking mainline bus systems here, but hotel to airport situations.

Language: Delete §402(b)(7)(B).

SECTION 403 PROHIBITION IN PUBLIC TRANSPORTATION

Problem: Undoubtedly the proposed requirement would doom the inter-city bus industry.

Solution: DOT study to determine need for public policy.

Rationale: Combined, this industry would make it equal to only the 10th largest aircarrier. There is NO hearing record on this issue before the Congress to support this policy change.

Language:

SECTION 403 - STUDY REGARDING PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES

(a) The Secretary of Transportation shall undertake a study of: (1) the needs of persons with disabilities with respect to bus transportation services provided by privately operated entities that are primarily engaged in the business of transporting of people; and (2) feasible means of meeting those needs.

(b) Construction - The study required by subsection (a) shall take into account anticipated demand for accessible service, cost of providing accessible service, availability of alternative transportation services, and other relevant factors.

(c) In conducting the study required by subsection (a), the Secretary shall conduct at least one public hearing.

(d) The study shall be completed no later than 18 months after the date of enactment.

SECTION 404(c)

STANDARDS

Problem: Requires the Architectural and Barriers Compliance Board (A&BCB) to establish minimum guidelines and requirements without direction.

Solution: 504 standards. Statutory language that the guidelines and standards shall be not greater than those contained in the American National Standard (ANSI A117.1). As consistent with 504 requirements [45 C.F.R. 84.23]

Rationale: Use of a higher standard (Uniform Federal Accessibility Standard)(UFAS) is intended for recipients of federal monies. To impose the same standard on private business as one does on public structures defies economic sense. Additionally, the A&BCB needs the guidance that what is contemplated by Congress is not the "gold plated" UFAS standards.

Language:

American National Standards Institute accessibility standards.

Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A.117.1-1961(R1971), which is incorporated by reference in this part, shall constitute compliance of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

SECTION 405 - ENFORCEMENT

Problem: (1) The balance of the title is generally from existing Civil Rights (503/504) statutes. However the enforcement scheme is from the Fair Housing Amendments of last year. Protections and remedies are thus significantly expanded for one class of protected individuals. The result is that you then grant more relief and protections to physically and mentally impaired citizens than you do for other protected classes. Relief is expanded from the traditional Civil Rights approach to injunctive relief and attorney fees to include jury trials, punitive and compensatory damages. Protracted, expensive jury proceedings are the only avenue contemplated. To make whole is to gain access.

Solution: Revert back to the Civil Rights Act of 1964 enforcement scheme.

Rationale: One need not give more relief to one class of protected individuals than any other. The Civil Rights Act of 1964 has brought about the desired societal changes for other classes of citizens that is contemplated for the physical and mentally impaired. The scheme worked, we have 25 years of case law, there is not need to go further.

Language:

SECTION 405 ENFORCEMENT

(1) Attorney General - The remedies and procedures of sections 204(a) and 206 of the Civil Rights Act of 1964, (42 USC 2000a-5 and 2000a-3(a)), shall be available to the Attorney General to enforce the provisions of this section.

(2) Aggrieved Individual - The remedies and procedures of section 204 of the Civil Rights Act of 1964, (42 USC 2000a-3), shall be available to an individual aggrieved under this section.

INCENTIVES

Problem: The Act contains no positive incentives to encourage employers to make expenditures to increase opportunities for individuals with disabilities. In many instances, these expenses may be burdensome, particularly for smaller businesses. Current law provides a tax deduction -- limited to $35,000 -- for removal of architectural barriers, but provides no similar deduction for the expenses incurred in providing the reasonable accommodations or auxiliary aids and services required by ADA. The cost of one elevator can easily exceed the current limitation.

Solution: Expand §190 of the Internal Revenue Code to allow for the deduction of expenses for all reasonable accommodations and auxiliary aids and services, and eliminate the current limitation regardless of nature and dollar amount.

Rationale: Increasing job opportunities for individuals with disabilities is the goal of the legislation. But it must also be recognized that the ADA will require employers to make substantial expenditures to accommodate individuals with disabilities. Thus it is reasonable to include an approach which will provide incentives to make these expenditures which will in fact provide jobs.

Language: Add a new section to Title VI which would provide for the following changes in Section 190 of the Internal Revenue Code:

1. In Section 190(a), immediately after the term "barrier removal expenses" add the following language:

> "and the costs of reasonable accommodations and auxiliary aids and services"

2. In Section 190(b), add new subparagraph (b)(4) defining reasonable accommodation using the same language as that in the definition section of the ADA. Also add a new subparagraph (b)(5) defining auxiliary aids and services using the same language as that used in the definition section of ADA.

3. Delete Section 190(c).

EFFECTIVE DATE

Problem: The bill becomes effective immediately upon enactment. This provides no time for affected employers and other entities subject to the Act to familiarize themselves with its provisions.

Solution: Delay the effective date to one year after enactment and provide for an education and technical assistance program.

Rationale: The ADA is much more likely to achieve its goals if affected parties are given a reasonable opportunity to learn and understand its requirements.

Language: Strike section 606 and add the following new section:

Educational and Technical Assistance Program

(a) This Act shall become effective one year after the date of enactment.

(b) The appropriate government agencies shall provide information to employers, employment agencies, labor organization, joint labor-management committees and the general public concerning the needs and abilities of individuals with disabilities, and their potentials for employment and contribution to the economy. In order to achieve the purposes of this Act, the appropriate government agencies shall carry on continuing programs of education and information which may include:

(1) publish and otherwise make available to employers, professional societies, the various media of communication and other interested persons materials to encourage the reduction of barriers to the employment of individuals with disabilities and the promotion of employment;

(2) foster through the public employment service system and through cooperative effort, the development of facilities of public and private agencies for expanding the opportunities and potential of individuals with disabilities;

(3) encourage State and community informational and educational programs.

INSURANCE UNDERWRITING

Problem: While S.B. 933 does not directly address insurance, considerable question or ambiguity may arise regarding its application to the insurance business, particularly as regards employee benefit plans. It is therefore important to clarify that the intent of the Congress with the passage of S.B. 933 is not to disrupt the current nature of insurance underwriting and pricing.

Solution: Section 601 of Title VI of the Act should be amended to add a new section which addresses the issue.

Rationale: The purpose of the amendment is to first clarify that S.1B. 933 was not intended and will not disrupt the current nature of insurance underwriting. Specifically, (1) of the Subsection would clarify that insurers could continue to sell to and underwrite individuals applying for life and health insurance on an individually underwritten basis. Further, (2) of the amendment would adapt language from the Age Discrimination in Employment Act recognizing the need for employers to establish and observe the terms of employee benefit plans so long as these plans are not a subterfuge to evade the purposes of S.B. 933.

Insurers often must engage in underwriting practices which take an individual's health status into account for the purpose of creating equity throughout the entire insured class. In other words, persons presenting significantly greater risks of loss due to their health status may be unable to obtain insurance or may be required to pay a higher premium so as not to create a subsidization from the remaining members of the group. Nonetheless, an individual's handicap would only affect his or her insurability or premium cost if that handicap creates a significantly greater risk of loss.

In life, health and small group insurance, it is common practice to obtain a medical history and even conduct a physical examination. In large case group insurance it is also common practice to insure all persons eligible by virtue of their employment or membership in a labor union or other organization, so long as the individual is at work and signs up for coverage when initially eligible. Part of the rationale is that the person became a member of the eligible group for reasons other than to obtain insurance, and in the case of employer groups, the individual is at least healthy enough to be at work. There are several instances when

insurability must be determined as a condition to coverage. In "small groups," it is quite common for insurers and other benefit providers to require each employee to submit evidence of good health as a condition to coverage for life and health insurance. In group life insurance it is also quite common to make available optional amounts of life insurance, in addition to a basic amount which is offered without evidence of insurability, subject to separate proof of good health. And finally, it is common practice to require individuals to produce evidence of good health when they wait to apply for some time after they were initially eligible for insurance -- the ":late entrant" requirements.

Insurance risk classification is subject to state regulation. Virtually all states prohibit unfair discrimination among persons of the same class and equal expectation of life. In addition, some 42 states have laws or regulations pertaining to the underwriting of blind persons and 24 states have statutes or regulations dealing with the insuring of disabled and handicapped individuals.

Language: Amend Section 601 of Title VI to add:

(c) Nothing in this Act shall be construed to prohibit or restrict --

(1) an insurer, hospital or medical service company, health maintenance organization, or similar organization from underwriting or classifying risks or providing services which do not contravene state law; or

(2) any person or organization covered by this Act from establishing, sponsoring, or observing the terms of a bona fide benefit plan which terms are based on underwriting or classifying risks or providing services which do not contravene state law and are not a subterfuge to evade the purposes of this Act.

Alec,
FYI
KML

HEADQUARTERS 891st ENGINEER BATTALION
KANSAS ARMY NATIONAL GUARD
1021 North State Street - Iola, Kansas 66749

891-E

10 JUL 95

MEMORANDUM FOR Commander, Det1, HQ STARC (Troop Command)
ATTN: MAJ Frederick, 620 North Edgemoor, Wichita, KS 67208

SUBJECT: Feasibility Study, The Timbers, Wichita, KS

1. Reference attached letter dtd 12 Jun 95, Subj: Addition and Alterations to the Timbers, Gossen Livingston Architecture, Wichita, KS

2. Coordination: On 12 Jun 95 I visited the Timbers, Wichita, KS for the Cerebral Palsy Research Foundation of Kansas, Inc. (CPR) to determine the feasibility of the assistance in additions and alterations to the Timbers estates. POC for the Timbers is as follows:

Mike Kandt
Gossen Livingston Architecture
420 South Emporia
Wichita, KS 67202
(316) 265-9367

3. Scope Of Project: Several components of the project were discussed and it was determined that the pond project and sidewalk project would be feasible for the 891st EN BN to assist in completing. The pond project would consist of digging for emplacement of bagwalls, emplacement of bagwalls, reinforcement and backfill. The sidewalk project would consist of forming, pouring and finishing new sidewalks to include some repair of existing structures. The CPRs budget is limited and does not allow for the assets to complete this project and have requested assistance from the 891st EN BN, KSARNG. Estimated man-hours are as follows:

MAN POWER	MAN HOURS
1 62E Construction Equipment Operator	20
1 12B Dump Truck Driver	8
8 12B Combat Engineers	160
2 51B Concrete Mason	20
1 21B OIC	40
Total	**248**

850

4. Material Information: All materials will be provided by the Timbers CPR Inc. to include meals, lodging and fuel as follows.

a. Meals required: Breakfast 2 lunch 4 dinner 2

b. Estimated fuel required is 50 gallons.

c. Lodging: 2 nights @ 13 individuals

5. Equipment Information: Equipment will consist of the following:

1 SEE
1 5-Ton Dump

6. Equipment Security: Equipment will be secured at the work site and at the Augusta Armory for any period of time over 2 working days (i.e. during the month).

7. Utilization of the Project for Training: The project will utilize the skills of equipment operators and concrete masons.

a. Travel distance will be 15 miles from Augusta Armory to work site.

b. Specific MOS training will consist of Construction Equipment Operator 62E, Combat Engineer 12B, and Concrete Mason 51B.

8. Public Relations Benefit: the Timbers estate is in great support of all work being requested and publicity will establish a solid peacetime working image for the Kansas Army National Guard.

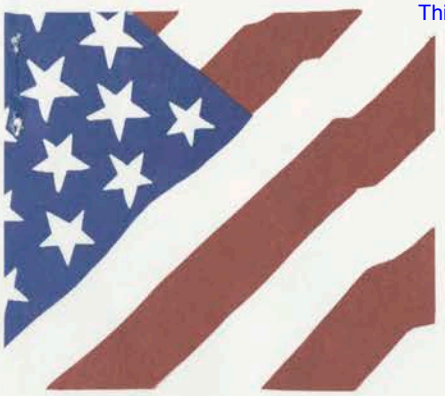
9. Recommend this project be approved and executed in an IDT status.

FOR THE COMMANDER:

BARRY W. MANLEY
CPT, EN, KSARNG
Assistant S-3

Atch

CF:
LTC Wheeler
MAJ Long
Mr. Mike Kandt



JUSTICE FOR ALL
TRUTH TEAM '95

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HARRIS POLL
BUSINESS SUPPORTS ADA

HARRIS POLL, JULY 2, 1995. EXECUTIVES OF SMALL, MEDIUM AND LARGE CORPORATIONS SAY:

ADA SHOULD NOT BE CHANGED, 70%; SHOULD BE STRENGTHENED, 8%; should be weakened, 9%; should be repealed, 3%.

ADA IS WORTH THE COST OF IMPLEMENTATION, 82%; is not, 5%.

THE COST OF ACCOMMODATING PEOPLE WITH DISABILITIES has increased "a little" or not at all since the passage of ADA, 80%; has increased "a lot," 7%.

LITIGATION HAS NOT INCREASED since the passage of ADA, 66%; has increased "a little," 14%.

ONLY 27% SAY that the average cost of employing a person with a disability is greater than employing a person without a disability.

IN 1986 51% OF CORPORATIONS reported having made accommodations for employees with disabilities. In 1995, 81%.

NOTE: Some folks say that "corporations" are rich, so they can afford to be generous about implementing ADA, but mom and pop businesses and communities can't. Not true. Corporations got rich by making smart investments - and by being tight, not generous.

To get official summaries or complete copies of the Harris Poll on ADA, contact: National Organization on Disability, 910 16th Street, NW, Suite 600, Washington, DC 20006, 202/293-5960, 293-5968 Voice/TDD, 293-7999 FAX.

BUSINESS SUPPORTS ADA

July 2, AP Top News At 1 p.m. EDT

WASHINGTON (AP) -- Corporate executives are among the strongest advocates of the Americans with Disabilities Act, according to a new survey by the National Organization on Disability. The findings also refute the belief that companies have incurred sizeable costs or have been swamped by lawsuits because of the legislation. Since 1986, companies have become more accommodating to people with disabilities and have instituted policies and programs to hire more of them, according to the survey. The 1990 law was enacted to do for the disabled what the Civil Rights Act of 1964 was intended to accomplish for blacks and other racial minorities.

Biz Supports Disabilities Act

WASHINGTON (AP) -- Contrary to popular opinion, corporate executives are among the strongest advocates of a federal law guaranteeing equal access to jobs, transportation and public places for Americans with disabilities.

A new survey conducted for the National Organization on Disability also refutes the belief that companies have incurred sizeable costs or have been swamped by lawsuits because of the Americans with Disabilities Act, or ADA.

And since 1986, companies have become more accommodating to people with disabilities and have instituted policies and programs to hire more of them, according to the survey by Louis Harris & Associates Inc.

The 1990 law was enacted to do for the disabled what the Civil Rights Act of 1964 was intended to accomplish for blacks and other racial minorities.

''The Americans with Disabilities Act, like other civil rights legislation, has had its detractors,'' said Alan Reich, president of the national disabilities organization, which represents 49 million Americans.

Nearly 15 million disabled Americans work, either full- or part-time.

''It is good to know that corporate America is with us,'' he said.

Although the percentage of companies hiring people with disabilities changed little since 1986, three-fourths of managers expect to make greater attempts to hire

them within the next three years, the survey found.

''That's one of the positive things about this survey,'' Reich said.

The survey was based on interviews between April 7 and May 1 with two groups of managers: 200 corporate executives with the title of senior vice president or higher and 204 equal opportunity managers -- from 404 different companies. Its margin of error was plus or minus 5 percentage points.

''This survey contains good news for Americans with disabilities,'' said Humphrey Taylor, chairman and chief executive officer of Louis Harris.

Among the survey's findings:

--More than 90 percent of executives support provisions of the ADA that prohibit discrimination in employment and public accommodations, and require mass transit systems to be accessible to people with disabilities.

--Nearly half of executives, or 48 percent, said the costs of accommodating people with disabilities increased ''a little,'' while 32 percent reported no change. Two-thirds, or 66 percent, said the amount of litigation involving their companies hadn't changed under the ADA, while 14 percent said the level increased ''a little.''

--Eighty-one percent of companies have modified their workplaces or practices to help employees with disabilities do their jobs, compared with 51 percent in 1986. Such changes include removing architectural barriers, switching furniture, adjusting work hours and restructuring jobs.

--A smaller percentage of executives, 57 percent, believe it doesn't cost extra to hire people with disabilities, compared with 79 percent in 1986.

--Fifty-six percent of companies have established policies or programs to hire people with disabilities, compared with 46 percent in 1986.

--Sixty-four percent have hired people with disabilities in the past three years, compared with 62 percent in 1986. A lack of qualified applicants was the top reason given for not hiring them during the period.

--Three-fourths, or 75 percent, of managers said they were ''very'' or ''somewhat'' likely to increase efforts to hire people with disabilities in the coming three years, compared to 60 percent who said the same in 1986.

"Today I call on the House of Representatives to get on with the job of passing a law -- as embodied in the Americans with Disabilites Act -- that prohibits discrimination against those with HIV and AIDS. We're in a fight against a disease -- not a fight against people. And we will not and we must not tolerate discrimination."

-- President George Bush,
March 29, 1990

"Any policy based on fears and misconceptions about HIV will only complicate and confuse disease control efforts without adding any protection to the public health. We need to defeat discrimination rather than to submit to it. The administration is strongly committed to ensuring that all Americans with disabilities, including HIV infection, are protected from discrimination, and believes that the Americans with Disabilities Act should furnish that protection."

-- Louis W. Sullivan, M.D.
Secretary, Department of Health and
Human Services
May 1, 1990

"The Americans with Disabilities Act is meant to provide people opportunties based on merit and not make decisions based on myths and stereotypes. The Chapman Amendment, which caters to fear and ignorance, does the opposite. It has no place in a bill designed to enhance, rather than inhibit, opportunites for the disabled."

-- C. Everett Koop, M.D.
Former Surgeon General of the
United States
June 27, 1990

"Inclusion of [the Chapman] amendment does a tragic disservice to the public by contributing to the misperception of AIDS as a disease that can be spread by casual contact. The Public Health Service and public health departments throughout the country have mounted extensive educational efforts to inform the American public about modes of transmission of HIV disease, and to combat inaccurate perceptions of risks posed by HIV positive persons. The appropriate response to public fear is ongoing education, not legitimizing further discrimination in statute. For these reasons, the Chapman Amendment is not only unnecessary, but counterproductive."

-- Association of State Territorial Health Officials
June 11, 1990

THE NATIONAL RESTAURANT ASSOCIATION
on
CIVIL RIGHTS

THEN . . .

"The National Restaurant Association has no desire to impede or restrain the rights of any citizen. It is the Association's firm belief that . . . [the Civil Rights Act] if enacted, can only result in the elimination of free enterprise and of the rights and freedoms of all citizens."

-- National Restaurant Association
Letter to Congress
November 5, 1963

27 YEARS LATER . . .

"While our industry has made, and continues to make, great efforts to assure the public that AIDS is not a foodborne disease, it remains a simple fact that the public is extremely concerned about the safety of the food they eat. Many consumers will refuse to patronize any establishment where it is known that a chef or a waiter has such an illness, putting the continued viability of the business and its employees in serious jeopardy."

-- National Restaurant Assocation
Letter to the Senate
May 23, 1990

NOW . . .

"A retail establishment with black clerks could stay in business, a restaurant with a chef with AIDS cannot."

-- Letter to Congressional Aides
July, 1990

cc: SB, UW, M. WCD

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 6, 1989
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 933 - Americans with Disabilities Act
Harkin (D) IA and 57 others

The Administration supports Senate passage of S. 933 as reported by the Committee on Labor and Human Resources.

* * * * * * * *

TALKING POINTS

AMENDMENT RE: INTERSTATE BUSES

Nature of Amendment

The proposed amendment would probably eliminate the requirement that accessibility standards for over-the-road buses be issued by the Department of Transportation within one year of the Act's effective date and that buses newly leased or purchased six years after the effective date (five years for small companies) be accessible. Proponents of the amendment would argue that it is unreasonable to require accessible buses in 5 or 6 years when the feasibility, cost, and other impacts are unknown, and when the costs (particularly for providing lifts and accessible bathrooms) are claimed to be so high as to have the potential to put bus companies out of business. They would also argue that it is unreasonable to issue rules two years before the required study is completed.

Talking Points Against the Amendment

1. The overall approach to over-the-road bus accessibility is the result of a long-negotiated compromise and is based on the overriding principle that individuals with disabilities are entitled to access to transportation even in rural areas, to the extent that access is technologically feasible and cost-effective.

2. The committee report accompanying the bill makes very clear that the rules to be issued by DOT are to be based on what is now feasible. The rules will not require costly and infeasible accessibility features.

3. It is clearly contemplated that DOT rules would be modified if the results of the study so dictate. The rules, although issued before completion of the study, would take effect two or three years after the study is completed and forwarded to Congress. This provides DOT and the Congress at least two years to consider whether the rules should be modified before they take effect and whether the legislation itself should be amended at that point.

4. The report specifically states that the Act does not necessarily require bathrooms to be accessible because feasible technology may not currently exist. It would require lifts, ramps, and fold-up seats to the extent these are feasible.

5. The claims that bus companies would suffer economically or go out of business are based largely on speculation and inadequate information. These claims in fact support the need for a study. Only through a study can we determine the true costs and other impact of possible accessibility

requirements, particularly with respect to rural service, and assess the feasibility of requirements that would become effective five years down the road.

6. We cannot say to persons with disabilities who need bus service: Just keep waiting until we figure out how to provide access. We can't continue to say that access costs too much, or at least we think it <u>might</u> cost too much. We can't say that we can't provide access for people because then we can't carry as many packages. We can't keep waiting until technology makes itself available and costs decrease. We must <u>make</u> accessibility happen by examining current technology, encouraging new technology, examining our options, and mandating what is now feasible.

TALKING POINTS

RELATIONSHIP OF S.933 TO SECTIONS 503 AND 504 OF THE REHABILITATION ACT OF 1973

1. The principles of existing civil rights law on disability, primarily sections 503[1] and 504[2] of the Rehabilitation Act of 1973, have been in effect since the mid 1970's. These nondiscrimination precepts have been followed successfully by a wide range of employers and providers of services. These concepts have proven to be an effective tool for prohibiting discrimination while, at the same time, not unduly burdening the businesses and enterprises that must comply with the law.

2. The concept of limiting the costs of making society accessible to disabled persons is reflected in the terms, phrases and requirements of sections 503 and 504 and Federal regulations implementing these laws. For example, employers are required to make reasonable accommodations and must only do so if these accommodations do not result in an undue hardship on the employer's business; recipients need not take actions that would result in a fundamental alteration of their programs nor take actions that would result in undue financial and administrative burdens.

3. S. 933 adopts the concepts of sections 503 and 504 and, in fact, uses the exact same language found in Federal regulations implementing sections 503 and 504 to describe the nature of the obligations of a covered employer or public accommodation.

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[1] Section 503 of the Rehabilitation Act requires that Federal contractors with contracts in excess of $2,500 take affirmative action in the employment of individuals with handicaps. Over 300,000 business entities, employing approximately 24% of all business employees, are covered by section 503.

[2] Section 504 of the Rehabilitation Act prohibits discrimination on the basis of handicap in programs and activities that receive Federal grants from a Federal agency and in programs and activities conducted by Federal Executive agencies. Section 504 covers all features of a federally assisted or federally conducted program, including the provision of services, buildings and facilities, and employment. Literally hundreds of thousands of entities are covered by section 504, including most State and local agencies, public transportation systems, elementary and secondary schools, colleges and universities, hospitals, nursing homes, public housing, and providers of social services.

4. Because S. 933 adopts the balanced, measured approach of existing Federal civil rights law in the disability area, S.933 relies on tried, tested concepts that have worked successfully over the years and will not overwhelm employers or public accommodations. S. 933 will provide an effective means of combating discrimination and yet give enough latitude to employers to allow them the flexibility to achieve compliance without unduly burdening their operations.

5. The terms and concepts of sections 503 and 504 have been tested in numerous cases in Federal courts. The courts have taken a balanced approach in interpreting these laws. The Supreme Court in the landmark case of Alexander v. Choate held that section 504 guarantees "meaningful access" and that "reasonable adjustments" must be made by those covered by section 504. S. 933 adopts this measured approach.

TALKING POINTS

EXEMPTION FROM PUBLIC ACCOMMODATIONS PROVISIONS FOR SMALL BUSINESSES

Nature of Amendment

S. 933 may be amended to exempt small businesses (perhaps defined as those with 15 or fewer employees) from public accommodations provisions of the bill. Proponents of the amendment might argue that the financial and administrative burden of compliance would be too onerous for small businesses and that such businesses should not be subjected to oversight by the Federal Government and to potential lawsuits.

Talking Points Against the Amendment

1. The amendment should be rejected because it completely destroys the compromise that was worked out with the Administration to balance the rights of individuals with disabilities with the legitimate concerns of small businesses. The compromise already takes cost into account; a special exemption is not needed.

2. The bill has been written to minimize the burden on small businesses:

   * Small businesses are not required to provide auxiliary aids to persons who are blind or deaf if these accommodations would result in an undue burden on the business;

   * Small businesses need only remove architectural barriers in existing facilities where such removal is readily achievable, which is defined in the bill as easily accomplishable and able to be carried out without much difficulty or expense;

   * The requirement that new facilities be constructed in an accessible manner is generally an extremely low cost item, adding only about 1% to construction costs; and

   * The bill includes a small provider exemption with respect to the only costly item, installation of an elevator.

3. The whole purpose of the ADA, which is to ensure access to the necessities of daily life, is defeated by this amendment because well over 90% of the public accommodations in this country would be exempt under the amendment. For certain categories of public accommodations, such as doctors' and dentists' offices, drug stores, gas stations, and laundry and cleaning services, close to 100% of the establishments would be exempt. This contrasts sharply with the small

business exemption in the employment section of the ADA (title II) which, consistent with title VII of the Civil Rights Act of 1964, results in exemption of only about 20% of employees.

4. Title II of the 1964 Civil Rights Act, which bars racial discrimination in public accommodations, has no small business exemption and neither should S. 933.

TALKING POINTS

EXCLUSION OF PEOPLE WITH HIV DISEASE FROM COVERAGE UNDER THE BILL

Nature of Amendment

The amendment may exclude HIV disease from the definition of "disability." Probable arguments in favor of the exclusion are because public health authorities are still learning about HIV, it is unwise to risk even the possibility that people with HIV may pose a threat to those around them; and 2) that inclusion of protection for people who may incorrectly be regarded as having HIV makes this legislation a "gay rights" bill.

Talking Points Against the Amendment

1. Although it is true that much is still being learned about the HIV disease, the consensus in the public health community is that the disease is difficult to contract, and that it is not spread through casual contact in schools, in public accommodations, or in the workplace. In general, coverage of individuals with HIV poses no danger to other people. If in a specific case, a person is found by a physician, using reasonable medical judgment, to constitute a direct threat to other people that cannot be mitigated by reasonable accommodation, that person will not be considered to be "qualified" under this bill.

2. This bill is not a "gay rights" bill. It provides protection to those people who have, or are believed to have, HIV disease. It provides no protection to people who experience discrimination solely on the basis of their sexual orientation.

3. Enactment of this bill will impose no hardship on covered entities. The only individuals to whom protection is provided by this bill are those who are fully qualified for employment or participation in the program at issue. The bill imposes no requirement to change the nature of the program or service offered.

4. Enactment of this bill will fulfill one of the principal recommendations of the President's Commission on the HIV Epidemic, which specifically urged the prohibition of discrimination against people with HIV in employment, housing, public accommodations, and participation in government programs.

5. Inclusion of people with HIV within the scope of this bill is consistent with existing disability rights law. In 1987, in School Board of Nassau County v. Arline, the Supreme Court held that people with contagious diseases were entitled to protection under section 504 of the

Rehabilitation Act of 1973, as amended. In 1988, the Congress rejected efforts to exclude people with HIV from coverage under section 504, and amended the definition of individual with handicaps to provide that only those individuals with contagious diseases that posed a direct threat to the health and safety of others would be excluded from coverage. In addition, Congress amended the Fair Housing Act to provide housing protection to people with disabilities, including HIV. It is now time to complete the task of providing protection to people with HIV in such fundamental areas as employment, receipt of government services and the use of public accommodations and public transportation facilities.

6. Failure to include people with HIV among the individuals protected by this bill will seriously hinder the nation's efforts to combat the disease. In 1988 the President's Commission on the HIV Epidemic found that there is widespread and significant discrimination against people with HIV. As long as such discrimination persists, people who are at risk, will be unwilling to seek testing and treatment for HIV because they fear the effects of discriminatory action against themselves and their families.

7. The effects of this bill on the government's ability to combat the spread of the HIV epidemic will be significant. It is now estimated that as many as 1.5 million people are infected by HIV, most of whom are asymptomatic and unaware of their illness.

8. President Bush has endorsed the enactment of statutory protection for people with HIV so that they will feel free to seek testing, counseling, and treatment necessary to stem the spread of the disease.

TALKING POINTS

REMEDIES FOR DISCRIMINATION IN PUBLIC ACCOMMODATIONS

Nature of Amendment

In litigation involving public accommodations, S. 933 authorizes injunctive relief in suits by individuals, and injunctive relief, damages, and civil penalties in suits by the Attorney General.

There may be an amendment to limit remedies to injunctive relief. The availability of damages and civil penalties in suits brought by the Attorney General would be eliminated.

Supporters of the amendment will argue that remedies available under the ADA should be identical to those provided under title II of the Civil Rights Act of 1964, which bars racial discrimination in public accommodations; that injunctive relief alone has proven adequate under the 1964 Act to successfully eradicate racial discrimination in public accommodations; and that money that would go for monetary damages or civil penalties would be better spent on barrier removal and auxiliary aids required by the ADA.

Talking Points Against the Amendment

1. The remedies provided in S. 933 are already more limited than those furnished under last year's Fair Housing Amendments Act, which provided for actual and punitive damages in actions by individuals and monetary and punitive damages in suits by the Attorney General.

2. S. 933 carefully restricts monetary damages and civil penalties to actions by the Attorney General in order to avoid encouraging an overly burdensome increase in private litigation.

3. The limited threat of damages and civil penalties in actions by the Attorney General provides a critical incentive for private entities to comply voluntarily with the ADA's requirements.

4. Although only injunctive relief is available under title II of the 1964 Act, plaintiffs in cases involving racial discrimination may sue for damages under 42 U.S.C. 1981. Disabled plaintiffs do not have this alternative. Therefore, the extremely modest step of providing additional remedies, and even then only in actions by the Attorney General, is appropriate.

TALKING POINTS

RELATIONSHIP OF S.933 TO SECTIONS 503 AND 504 OF THE REHABILITATION ACT OF 1973

1. The principles of existing civil rights law on disability, primarily sections 503[1] and 504[2] of the Rehabilitation Act of 1973, have been in effect since the mid 1970's. These nondiscrimination precepts have been followed successfully by a wide range of employers and providers of services. These concepts have proven to be an effective tool for prohibiting discrimination while, at the same time, not unduly burdening the businesses and enterprises that must comply with the law.

2. The concept of limiting the costs of making society accessible to disabled persons is reflected in the terms, phrases and requirements of sections 503 and 504 and Federal regulations implementing these laws. For example, employers are required to make <u>reasonable</u> accommodations and must only do so if these accommodations do not result in an <u>undue hardship</u> on the employer's business; recipients need not take actions that would result in a <u>fundamental alteration</u> of their programs nor take actions that would result in <u>undue financial and administrative burdens.</u>

3. S. 933 adopts the concepts of sections 503 and 504 and, in fact, uses the exact same language found in Federal regulations implementing sections 503 and 504 to describe the nature of the obligations of a covered employer or public accommodation.

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[1] Section 503 of the Rehabilitation Act requires that Federal contractors with contracts in excess of $2,500 take affirmative action in the employment of individuals with handicaps. Over 300,000 business entities, employing approximately 24% of all business employees, are covered by section 503.

[2] Section 504 of the Rehabilitation Act prohibits discrimination on the basis of handicap in programs and activities that receive Federal grants from a Federal agency and in programs and activities conducted by Federal Executive agencies. Section 504 covers all features of a federally assisted or federally conducted program, including the provision of services, buildings and facilities, and employment. Literally hundreds of thousands of entities are covered by section 504, including most State and local agencies, public transportation systems, elementary and secondary schools, colleges and universities, hospitals, nursing homes, public housing, and providers of social services.

4. Because S. 933 adopts the balanced, measured approach of existing Federal civil rights law in the disability area, S.933 relies on tried, tested concepts that have worked successfully over the years and will not overwhelm employers or public accommodations. S. 933 will provide an effective means of combating discrimination and yet give enough latitude to employers to allow them the flexibility to achieve compliance without unduly burdening their operations.

5. The terms and concepts of sections 503 and 504 have been tested in numerous cases in Federal courts. The courts have taken a balanced approach in interpreting these laws. The Supreme Court in the landmark case of Alexander v. Choate held that section 504 guarantees "meaningful access" and that "reasonable adjustments" must be made by those covered by section 504. S. 933 adopts this measured approach.

TALKING POINTS

RESPONSE TO NEW YORK TIMES EDITORIAL
OF SEPTEMBER 6, 1989

1. Contrary to the Times assertion that the bill has received "surprisingly narrow public scrutiny," the ADA, in fact, has been the subject of extensive legislative hearings including House-sponsored task force forums in every State. Concerned interest groups, including those representing small businesses and bus operators, have had ample opportunity to review the proposed legislation and to make their views known both to members of Congress and the White House.

2. The Times is incorrect in stating that elevators are required in "all new buildings of more than two stories." In fact, the bill contains an exemption for facilities of 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 facilities should not be exempt.

3. The Times misunderstands the requirements for private, intercity bus companies. The Senate Committee Report states that the ADA does not require accessible restrooms in buses if they would result in the significant loss of current seating capacity. The Report only expects the Department of Transportation to develop requirements for accessible bathrooms when they are technologically feasible. The Times also incorrectly implies that the cost-effectiveness study required by the ADA, to be completed within three years, will be useless, because it will only be completed after the bill is passed. In fact, the bus requirements will only go into effect five or six years after enactment, which allows Congress and the Department of Transportation ample time to make appropriate statutory or regulatory modifications.

4. The Times incorrectly asserts that States have provided more useful guidance than the Senate with respect to barrier removal in existing facilities. In fact, the States have provided no guidance concerning accessibility in existing buildings, except in the limited circumstance when buildings are altered. The ADA, on the other hand, attempts for the first time to reach the vast majority of existing buildings even in the absence of renovations or alterations that would trigger the requirement. In other respects, the ADA requirements are strikingly similar to those in California.

   * The "readily achievable" limitation, which the Times attacks as vague, is intended to be flexible because of its novelty and the wide variety of situations in which it must be applied. This flexibility will allow for further regulatory definition and refinement.

5. The ADA is not a "blank check" as the Times asserts. Rather, it takes legitimate cost concerns into account in a variety of ways. The bill clearly states that barriers only need be removed in unaltered, existing facilities if such removal can be accomplished easily and without much expense; and auxiliary aids are not required if they would result in an undue burden. The most rigorous requirements are limited to new construction, and they add at most about one percent to construction costs.

Kansas: A Chronology and Documentary Handbook.
Vexler, Robert I, Oceana Publications, 1978. P.1.

CHRONOLOGY

1541 Francisco Coronado led a group of Spaniards from New Mexico into the region of Kansas. They were searching for the wealth of "Quivira," which had been located by several authorities at the Great Bend of the Arkansas River in Kansas. These Spaniards were the first Europeans to travel in and visit Kansas.

1682 The Kansas region was claimed for France.

1719 Charles Claude du Tisné traveled through various parts of Kansas visiting the Indians.

1724 June 25. Étienne Veniard de Bourgmont sent an advanced expedition up the Missouri River to the site of present-day Kansas City. Bourgmont followed with the remainder of his men a few days later. He became ill and left a few days later, returning on October 18, 1724. He crossed the Kansas River near what is now Topeka.

1763 As part of the peace settlement at the end of the Seven Years War in Europe and the French and Indian War in America, Louis XIV of France ceded the Louisiana Territory, including Kansas, to Spain.

1803 Lieutenant Zebulon Pike explored Kansas.

December. The French turned over Kansas as part of the Louisiana Territory to the United States.

1804 March 16. Congress created the Territory of Orleans which included Kansas.

June 26. Meriwether Lewis and William Clark, leading their expedition, reached the junction of the Kansas and the Missouri Rivers.

July 2. The Lewis and Clark expedition reached Kickapoo Island.

1806 September. Zebulon Pike and his men travelled northward through Kansas.

1812 June 4. The Territory of Missouri was established including Kansas.

1818 The first military post in Kansas was established at Cantonment Martin.

numbered all others. Germans [illegible] had large settlements in Kansas City, Leavenworth, Seneca, Alma, and Topeka. Southeast McPherson and adjoining Marion, Harvey, and Reno counties became the home of German-Russian Mennonites and other German-speaking people. Ellis County had a large number of German-Russian Catholics, and German Lutherans congregated in Marshall and Washington counties.

The third largest foreign-born group in nineteenth-century Kansas came from Sweden. Their primary colony was located at Lindsborg, with other areas of Swedish influence in Republic, Osage, and the Blue River parts of Riley and Pottawatomie counties. A few settlers also came from other Scandinavian countries.

Foreign-born Kansans who spoke French were either Canadian or Belgian in background or had departed France after the ill-fated 1848 revolution. Cloud County had the largest French settlements. Many Italians, also, entered Kansas after about 1900 and settled in the southeastern mining district. Another distinc- [illegible] group in Kansas was the Bohemians or Czechs. Their largest settlements were at Wilson in Ellsworth County and in eastern Republic County, with smaller concentrations elsewhere.

Native-born American Negroes increased in Kansas like all other elements of the population. Their proportion of the population remained remarkably constant for a hundred years at 3½ to 4 per cent. Kansas population tripled between 1870 and 1880, and this was the period of the "Exodus" of blacks from the deep South to the promised land of Kansas, when their numbers in the state increased from 17,108 to 43,107. Many blacks arrived in Kansas impoverished, and they settled in the larger towns, where they could find employment. Their primary rural settlement was Nicodemus, the first community in Graham County.

The last ethnic group to enter Kansas in large numbers were Spanish-speaking Mexicans, brought to the state as laborers for various railroad companies. Numbering only 71 in 1900, their totals reached 13,570 in 1920 and 19,042 in 1930. Their primary population concentrations were in railroad centers.

Socol of SKy., Homer, Historical Atlas of Kansas, 1988. P. 43

43. KANSAS CONGRESSIONAL DISTRICTS THROUGH 1940

As a consequence of the Wyandotte Constitution, in 1859 Kansans elected their first congressman to the House of Representatives, and he took office soon after statehood. There was a single congressional district for the state until the results of the 1870 census raised the Kansas share of the House of Representatives to three, who ran as at-large candidates in the election of 1872, and thereafter ran from specified districts. The 1880 census showed that Kansas had grown so rapidly that the 1 per cent share of the nation's population in 1870 had almost doubled to 2 per cent, and seven seats were assigned to the state. Four seats were filled in 1882 by at-large candidates, and the seven districts were determined by the legislature in time for the 1884 election. For the next twenty years the Kansas population increased at a slower pace than that of the nation, but the size of the House of Representatives was enlarged after 1890. Kansas received an eighth congressional seat which was served by an at-large candidate until 1906, when eight congressional districts were assigned by the legislature. These districts existed through the census of 1930, when it was determined that Kansas had 1.53 per cent of the national population. One seat in Congress was lost, necessitating redistricting. These congressional districts lasted through the election of 1940.

March 17, 1995

TO: KARF Board of Directors
FROM: KARF Staff
REGARDING: Report from KARF Legislative Committee
Sub. House Bill 2458
Unresolved issues to be addressed in the Senate.

On Wednesday, March 15, the KARF Legislative Committee met from 9:00 - 3:30 to review the provisions of Sub. House 2458, the DD Reform Act.

The following unresolved issues were identified, and KARF staff was directed to prepare to seek amendments on the Senate side, pending comments and reaction from KARF members in attendance at the March 21st Board Meeting.

The first three issues are considered to be the highest priority issues for KARF members as they consider continued support for Sub. HB 2458.

I. Issue -- CDDO Board Authority

Policy: Amend HB 2458 to clarify that the authority to implement the responsibilities of a CDDO must rest solely with the CDDO's board of directors, and that the work of the community council is purely advisory in nature.

Explanation: The bill establishes Community Developmental Disability Organizations (CDDO's) to replace the current statutory term Community Facilities for the Mentally Retarded (CFMR), a term discarded in favor of the current term Community Mental Retardation Center (CMRC).

Broad powers and duties are assigned to the CDDO, subject to the availability of appropriations. Included in a CDDO's duties is the requirement that a CDDO will establish a community council to (1) address system issues, and (2) to develop and implement a complaint/dispute resolution process.

The KARF Legislative Committee wants it clarified that the language which says councils will "address system issues" is a purely advisory power of the council.

The Committee was more emphatic that the second part, i.e. to develop and implement a complaint/dispute resolution process, needed to be rewritten to eliminate the conflict between the legal authority of the CDDO Board of Directors and the statutory power to implement a resolution procedure.

II. Issue -- Consumer confidentiality, affiliate access to application information.

Policy: Information regarding applications for service or for current consumers should not be released to affiliates unless that is the expressed choice of the consumer.

Explanation: Affiliates want to be assured that consumers will be guaranteed to be informed of all available services as well as the services offered by the CDDO's.

Despite the requirement that information about affiliates would be provided to all consumers, affiliates wanted further assurance that, by allowing affiliates to contact applicants or consumers, then all applicants would hear about available services from that affiliate rather than from the CDDO staff.

Some family members expressed concern that they may not want all potential affiliates contacting them, and that they may prefer to contact only some of the affiliates, those whose services they choose to review.

III. Issue -- State authority to enforce unilateral changes in contracts with service providers.

Policy: No rule, regulation, standard, policy, procedure, Secretary's letter, etc. may be binding, or enforceable on a community service provider unless it has been made a part of the provider's current contract.

Explanation: HB 2458 has included a very specific enforcement process, including language which gives the Secretary broad authority to initiate an enforcement action for any violation of any departmental directive, whether or not such directive was in force at the time the contract was signed. The committee felt that such broad authority was unnecessary and undercut the principles of equitable and fair contracting relationships.

The following issues are also considered important:

I. "Networking cooperation" -- New Sec.6 (b)

This term was considered vague. The committee recommended "community coordination" as substitute language.

II. Planning -- The bill is silent on the assignment of responsibility for local planning authority. It is likely that all CDDO's will automatically assume the planning role. Nevertheless, it should be made clear in the law that planning is a reimbursable activity, in Section 4(e) and in Section 6(a)(3)(E).

III. Under current SRS policy, CMRC's are assigned gatekeeping responsibilities for the state institutions, and SRS has contemplated assigning the same role to CMRC's to review ICF/MR admissions. We had thought the bill's gatekeeping language covered institutional gatekeeping. We discovered it did not, and we will suggest that as an amendment, as follows:

In Section 5(a)(1), we will suggest that the single point of application apply to "community and institutional" services.

DEVELOPMENTAL DISABILITIES REFORM ACT
Substitute for HB 2458
1995 LEGISLATIVE SESSION
March 17, 1995

The Developmental Disabilities Reform Act creates a system of services, financing and policy to meet the needs of persons with a developmental disability.

SECTION 1

The act is titled **DEVELOPMENTAL DISABILITIES REFORM ACT**

SECTION 2

POLICY STATEMENT ON THE PURPOSE OF THE ACT

* Services and Supports Which Allow Opportunities of Choice To Increase Individual Independence, Integration and Inclusion
* Provision of Access to Appropriate Services and Supports
* Equality of Opportunity

SECTION 3

DEFINITIONS

This section focuses on describing the types of persons served, the entities designed to deliver services, and the scope of services

Persons Served

*Persons are defined as having a **Developmental Disability** if they:

Have mental retardation,
Are five years or older with a mental or physical impairment that creates substantial limitations in three or more areas of major life activity and such impairment occurred before age 22 and is likely to continue indefinitely
Have a dual diagnosis of mental retardation/mental illness

This definition seeks to incorporate a wide range of disabilities that more completely represents those persons in need of the benefits of this Act.

Entities to Deliver Services

These definitions create a system of service delivery that places primary responsibility for ensuring service access and availability on Community Developmental Disability Organizations. Direct service delivery is achieved through such organizations and/or their affiliates. Affiliate status is achieved by being a contractor of service.

* **Community Developmental Disability Organization**
  Entity Organized pursuant to K.S.A. 19-4001 (original CMRC enacting statute)
* **Community Services Provider**
  Community Developmental Disability Organization or Affiliate
* **Affiliate**
  Entity or Person who contracts to deliver services

Services

* Individualized supports and services needed to work and live in the community

Institutions

* State Mental Retardation Hospitals and ICF/MR of 9 or more beds

SECTION 4

This section sets out the services and supports needed to assist a person with a developmental disability to live in the community and the responsibilities of the Secretary of SRS to support a system that will deliver those needed services and supports.

* Services and supports needed to assist and support living in the community of choice include:

  Food, Shelter, Health care
  Protection from abuse/exploitation
  Transportation
  Habilitation, Education, Employment
  Information about services
  Coordination of services

If I understood the voting correctly, in the committee meeting this was to be changed to 16 beds or more.

The responsibilities of the Secretary of SRS to implement and administer the Act include:

* Proposing and implementing plans of financing that will support an organized network of services in community settings and reduce reliance on separate, segregated settings

* Reporting number of persons and families eligible to receive services

* Reporting on the progress of achieving a full service community services system

* Developing and proposing budgets that allocate funds between services delivered in institutions and community services in percentages that approximate the percentages of persons served in those respective settings. Example: If 2/3 of the people served are in the community, 2/3 of the funding should go to support the community. If the proposed budget deviates from this apportionment, a report must be submitted by SRS that explains the deviation and what is to be done to eliminate it in the future.

* Coordinating through the Community Developmental Disability Organization the funding necessary to support delivery of services

* Establishing processes to evaluate outcomes of the goals of this Act

SECTION 5

Outlines that the Community Developmental Disability Organization (CDDO) has the **power and duty, subject to appropriations** to directly or by subcontract:

Serve as point of application for services
Ensure access and receipt to an array of services through appropriate referral or direct delivery of service
Establish delivery of services in local communities by existing community services providers when appropriate
Organize a community council to address systems issues including planning, implementation of services and consumer complaint processes
Ensure affiliates access to referrals and waiting list information for the purpose of affiliate contact with potential consumers

SECTION 6

This section creates three major components of a full service community services system - Reimbursement, Accountability, and Contracting.

REIMBURSEMENT

The Act establishes a cost reimbursement system based on adequacy and reason that:

* Provides that funding in the amount that is necessary to meet the person's essential lifestyle plan follows the person into the community when they leave institutional settings. Such funding to include reimbursement for expenses of relocation and initiation of services

* Consolidates federal and state funding adequate to support the following elements:
  - Employee salary and benefits competitive with local conditions
  - Training and technical support for staff
  - Consumer responsive quality assurance process
  - Risk management and insurance costs
  - Program management and coordination responsibilities

* Creates an independent professional review of the rate structure for the purpose of providing a recommendation to the legislature on rate adjustments

ACCOUNTABILITY

Participation as a community services provider is conditional upon meeting the requirements of a system of accountability that has standards that are set out in regulation. Such standards are to insure:

* Effective service delivery
* Fiscal accountability
* Cooperation

Allows community services provides to present attainment of national accreditation or compliance with state or federal laws or rules and regulations to indicate compliance with such standards

CONTRACTING

The primary method for delivering services under the Act is through contracting. Such system of contracting:

* Authorizes open and equitable negotiation

* Authorizes independent mediation in contract disputes

* Requires achievement and compliance with performance standards

* Supports compensation for delivering services which meet the individualized needs of persons for community services

* Supports consumer choice of provider by requiring Community Developmental Disability Organizations to contract with a qualified affiliate chosen by the consumer

SECTION 7

This section establishes a process for the Secretary of SRS to review and implement corrective action over the operations of a Community Developmental Disability Organization.

The process of enforcement includes:

* Initial mediation over disputes regarding compliance with requirements, standards or rules and regulations established pursuant to the act or other provision of law or identified deficiencies

* A written plan of correction upon continued failure by provider to meet requirements.

* Upon failure to carry out the plan of correction within 30 days of submission of the plan, after notice and opportunity for hearing, assessment of a civil penalty in an amount not to exceed $125.00 per day for each day there has been a failure to carry out the plan of correction.

* Providers in violation may be required to maintain consumers in place until alternative community services can be secured with reasonable compensation to providers for actual costs

* Providers in violation may have their designation as a community service provider removed

* Creation of an emergency enforcement procedure in situations where there is danger to the health, safety, or welfare of a person.

SECTION 8

Establishes that the primary authority over expenditures in a Developmental Disability Organization lies in the Board of Directors of such organization unless there is a contract or agreement otherwise re-directing such authority.

SECTION 9

No entitlement to services is created by the Act.

SECTION 10

The provisions of the Act may be carried out by the adoption of rules and regulations.

SECTION 11

The effective date of the Act is January 1, 1996.

JUL 13 (LEG. DAY JUL 10) 1990
(Date)

Roll Call Vote

Legislative

NO. 152

SUBJECT Conference Report on S. 933

YEAS		NAYS
	Adams	
	Akaka	
	Armstrong	
	Baucus	
	Bentsen	
	Biden	
	Bingaman	
	Bond	
	Boren	
	Boschwitz	
	Bradley	
	Breaux	
	Bryan	
	Bumpers	
2	Burdick	
	Burns	
	Byrd	
	Chafee	
	Coats	
	Cochran	
	Cohen	
	Conrad	
3	Cranston	
	D'Amato	
	Danforth	
	Daschle	
	DeConcini	
	Dixon	
	Dodd	
	Dole	
	Domenici	
	Durenberger	
	Exon	
	Ford	
	Fowler	
	Garn	
	Glenn	
	Gore	
	Gorton	
	Graham, Florida	
	Gramm, Texas	
	Grassley	
4	Harkin	
5	Hatch	
	Hatfield	
	Heflin	
	Heinz	

	Heflin
	Heinz
	Helms
	Hollings
	Humphrey
	Inouye
6	Jeffords
	Johnston
	Kassebaum
	Kasten
	Kennedy
7	Kerrey, Nebraska
	Kerry, Massachusetts
	Kohl
	Lautenberg
	Leahy
	Levin
	Lieberman
	Lott
	Lugar
	Mack
	McCain
	McClure
	McConnell
	Metzenbaum
	Mikulski
	Mitchell
	Moynihan
	Murkowski
	Nickles
	Nunn
	Packwood
	Pell
	Pressler
	Pryor
	Reid
	Riegle
	Robb
	Rockefeller
	Roth
	Rudman
	Sanford
	Sarbanes
	Sasser
	Shelby
	Simon
	Simpson
	Specter
	Stevens
	Symms
8	Thurmond
	Wallop
	Warner
	Wilson
	Wirth

GPO: 1990 29-411 (m)

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