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101ST CONGRESS
1ST SESSION

S. 933

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

IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, JANUARY 3), 1989

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. CRANSTON, Mr. MCCAIN, Mr. MITCHELL, Mr. CHAFEE, Mr. LEAHY, Mr. STEVENS, Mr. INOUE, Mr. COHEN, Mr. GORE, Mr. PACKWOOD, Mr. RIEGLE, Mr. GRAHAM, Mr. PELL, Mr. DODD, Mr. ADAMS, Ms. MIKULSKI, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. WIRTH, Mr. BINGAMAN, Mr. CONRAD, Mr. BURDICK, Mr. LEVIN, Mr. LIEBERMAN, Mr. MOYNIHAN, Mr. KERRY, Mr. SARBANES, Mr. BOSCHWITZ, and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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- Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

- Sec. 201. Definitions.
Sec. 202. Discrimination.
Sec. 203. Posting notices.
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Sec. 205. Enforcement.

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- Sec. 301. Definition of qualified individual with a disability.
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- Sec. 401. Definitions.
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- Sec. 501. Definitions.
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TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Construction.
Sec. 602. Prohibition against retaliation.
Sec. 603. State immunity.
Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 605. Attorney's fees.
Sec. 606. Effective date.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

3

- 1 (1) some 43,000,000 Americans have one or more
2 physical or mental disabilities, and this number is in-
3 creasing as the population as a whole is growing older;
4 (2) historically, society has tended to isolate and
5 segregate individuals with disabilities, and, despite
6 some improvements, such forms of discrimination
7 against individuals with disabilities continue to be a se-
8 rious and pervasive social problem;
9 (3) discrimination against individuals with disabili-
10 ties persists in such critical areas as employment,
11 housing, public accommodations, education, transporta-
12 tion, communication, recreation, institutionalization,
13 health services, voting, and access to public services;
14 (4) unlike individuals who have experienced dis-
15 crimination on the basis of race, sex, national origin,
16 religion, or age, individuals who have experienced dis-
17 crimination on the basis of disability have often had no
18 legal recourse to redress such discrimination;
19 (5) individuals with disabilities continually encoun-
20 ter various forms of discrimination, including outright
21 intentional exclusion, the discriminatory effects of
22 architectural, transportation, and communication bar-
23 riers, overprotective rules and policies, failure to make
24 modifications to existing facilities and practices, exclu-
25 sionary qualification standards and criteria, segrega-

1 tion, and relegation to lesser services, programs, activi-
2 ties, benefits, jobs, or other opportunities;

3 (6) census data, national polls, and other studies
4 have documented that people with disabilities, as a
5 group, occupy an inferior status in our society, and are
6 severely disadvantaged socially, vocationally, economi-
7 cally, and educationally;

8 (7) individuals with disabilities are a discrete and
9 insular minority who have been faced with restrictions
10 and limitations, subjected to a history of purposeful un-
11 equal treatment, and relegated to a position of political
12 powerlessness in our society, based on characteristics
13 that are beyond the control of such individuals and re-
14 sulting from stereotypic assumptions not truly indica-
15 tive of the individual ability of such individuals to par-
16 ticipate in, and contribute to, society;

17 (8) the Nation's proper goals regarding individuals
18 with disabilities are to assure equality of opportunity,
19 full participation, independent living, and economic
20 self-sufficiency for such individuals; and

21 (9) the continuing existence of unfair and unneces-
22 sary discrimination and prejudice denies people with
23 disabilities the opportunity to compete on an equal
24 basis and to pursue those opportunities for which our
25 free society is justifiably famous, and costs the United

1 State billions of dollars in unnecessary expenses result-
2 ing from dependency and nonproductivity.

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

4 (1) to provide a clear and comprehensive national
5 mandate for the elimination of discrimination against
6 individuals with disabilities;

7 (2) to provide clear, strong, consistent, enforceable
8 standards addressing discrimination against individuals
9 with disabilities;

10 (3) to ensure that the Federal Government plays a
11 central role in enforcing the standards established in
12 this Act on behalf of individuals with disabilities; and

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

18 SEC. 3. DEFINITIONS.

19 As used in this Act:

20 (1) AUXILIARY AIDS AND SERVICES.—The term
21 “auxiliary aids and services” shall include—

22 (A) qualified interpreters or other effective
23 methods of making aurally delivered materials
24 available to individuals with hearing impairments;

*being community
work
classification
reparation*

1 (B) qualified readers, taped texts, or other ef-
2 fective methods of making visually delivered ma-
3 terials available to individuals with visual impair-
4 ments;

5 (C) acquisition or modification of equipment
6 or devices; and

7 (D) other similar services and actions.

8 (2) DISABILITY.—The term “disability” means,
9 with respect to an individual—

10 (A) a physical or mental impairment that
11 substantially limits one or more of the major life
12 activities of such individual;

13 (B) a record of such an impairment; or

14 (C) being regarded as having such an impair-
15 ment.

16 (3) REASONABLE ACCOMMODATION.—The term
17 “reasonable accommodation” shall include—

18 (A) making existing facilities used by em-
19 ployees readily accessible to and usable by indi-
20 viduals with disabilities; and

21 (B) job restructuring, part-time or modified
22 work schedules, reassignment, acquisition or
23 modification of equipment or devices, appropriate
24 adjustment or modifications of examinations and
25 training materials, adoption or modification of pro-

1 cedures or protocols, the provision of qualified
2 readers or interpreters, and other similar accom-
3 modations.

4 (4) STATE.—The term “State” means each of the
5 several States, the District of Columbia, the Common-
6 wealth of Puerto Rico, Guam, American Samoa, the
7 Virgin Islands, the Canal Zone, the Trust Territory of
8 the Pacific Islands, and the Commonwealth of the
9 Northern Mariana Islands.

10 TITLE I—GENERAL PROHIBITION 11 AGAINST DISCRIMINATION

12 SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

13 (a) IN GENERAL.—

14 (1) SERVICES, PROGRAMS, ACTIVITIES, BENE-
15 FITS, JOBS, OR OTHER OPPORTUNITIES.—Subject to
16 the standards and procedures established in titles II
17 through V, it shall be discriminatory to subject an indi-
18 vidual or class of individuals, directly or through con-
19 tractual, licensing, or other arrangements, on the basis
20 of disability, to any of the following:

21 (A) Denying the opportunity to participate in
22 or benefit from a service, program, activity, bene-
23 fit, job, or other opportunity.

24 (B) Affording an opportunity to participate in
25 or benefit from a service, program, activity, bene-

*This is the original
copy of the
HHS
* drug abuse
also see also
AIDS*

1 fit, job, or other opportunity that is not equal to
2 that afforded others.

3 (C) Providing a service, program, activity,
4 benefit, job, or other opportunity that is less effec-
5 tive than that provided to others.

6 (D) Providing a service, program, activity,
7 benefit, job, or other opportunity that is different
8 or separate, unless such action is necessary to
9 provide the individual or class of individuals with
10 a service, program, activity, benefit, job, or other
11 opportunity that is as effective as that provided to
12 others.

13 (E) Aiding or perpetuating discrimination by
14 providing significant assistance to an agency, or-
15 ganization, or individual that discriminates.

16 (F) Denying the opportunity to participate as
17 a member of boards or commissions.

18 (G) Otherwise limiting the enjoyment of any
19 right, privilege, advantage, or opportunity enjoyed
20 by others.

21 (2) EQUAL OPPORTUNITY.—For purposes of this
22 Act, aids, benefits, and services to be equally effective,
23 must afford an individual with a disability an equal op-
24 portunity to obtain the same result, to gain the same
25 benefit, or to reach the same level of achievement, in

1 the most integrated setting appropriate to the individ-
2 ual's needs.

3 (3) OPPORTUNITY TO PARTICIPATE.—Notwith-
4 standing the existence of separate or different programs
5 or activities provided in accordance with this section,
6 an individual with a disability shall not be denied the
7 opportunity to participate in such programs or activi-
8 ties that are not separate or different.

9 (4) ADMINISTRATIVE METHODS.—An individual
10 or entity shall not, directly or through contractual or
11 other arrangements, utilize standards or criteria or
12 methods of administration—

13 (A) that have the effect of discrimination on
14 the basis of disability;

15 (B) that have the purpose or effect of defeat-
16 ing or substantially impairing the accomplishment
17 of the objectives of the services, programs, activi-
18 ties, benefits, jobs, or other opportunities provided
19 with respect to an individual with a disability; or

20 (C) that perpetuate the discrimination of
21 others who are subject to common administrative
22 control or are agencies of the same State.

23 (5) RELATIONSHIPS OR ASSOCIATIONS.—It shall
24 be discriminatory to exclude or otherwise deny equal
25 services, programs, activities, benefits, jobs, or other

opportunities to an individual or entity because of the relationship to, or association of, that individual or entity with another individual with a disability.

(b) DEFENSES.—

(1) IN GENERAL.—It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(2) QUALIFICATION STANDARDS.—The term “qualification standards” may include—

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE II—EMPLOYMENT

SEC. 201. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term “Commission” means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) EMPLOYEE.—

(A) IN GENERAL.—The term “employee” means an individual employed by an employer.

(B) EXCEPTION.—The term “employee” shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) LIMITATION ON EXCEPTION.—The exception contained in subparagraph (B) shall not

1 include employees subject to the civil service laws
2 of a State government, governmental agency, or
3 political subdivision.

4 (3) EMPLOYER.—

5 (A) IN GENERAL.—The term “employer”
6 means a person engaged in an industry affecting
7 commerce who has 15 or more employees for
8 each working day in each of 20 or more calendar
9 weeks in the current or preceding calendar year,
10 and any agent of such a person.

11 (B) EXCEPTIONS.—The term “employer”
12 does not include—

13 (i) the United States, a corporation
14 wholly owned by the government of the
15 United States, or an Indian tribe; or

16 (ii) a bona fide private membership club
17 (other than a labor organization) that is
18 exempt from taxation under section 501(c) of
19 the Internal Revenue Code of 1986.

20 (4) PERSON, ETC.—The terms “person”, “labor
21 organization”, “employment agency”, “commerce”,
22 and “industry affecting commerce”, shall have the
23 same meaning given such terms in section 701 of the
24 Civil Rights Act of 1964 (42 U.S.C. 2000e).

1 (5) QUALIFIED INDIVIDUAL WITH A DISABIL-
2 ITY.—The term “qualified individual with a disability”
3 means an individual with a disability who, with or
4 without reasonable accommodation, can perform the
5 essential functions of the employment position that
6 such individual holds or desires.

7 SEC. 202. DISCRIMINATION.

8 (a) GENERAL RULE.—No employer, employment
9 agency, labor organization, or joint labor-management com-
10 mittee shall discriminate against any qualified individual with
11 a disability because of such individual’s disability in regard to
12 job application procedures, the hiring or discharge of employ-
13 ees, employee compensation, advancement, job training, and
14 other terms, conditions, and privileges of employment.

15 (b) CONSTRUCTION.—As used in subsection (a), the
16 term “discrimination” includes—

17 (1) the failure by an employer, employment
18 agency, labor organization, or joint labor-management
19 committee to make reasonable accommodations to the
20 known physical or mental limitations of a qualified in-
21 dividual with a disability who is an applicant or em-
22 ployee unless such entity can demonstrate that the ac-
23 commodation would impose an undue hardship on the
24 operation of its business;

1 (2) the denial of employment opportunities by a
2 covered employer, employment agency, labor organiza-
3 tion, or joint labor-management committee to an appli-
4 cant or employee who is a qualified individual with a
5 disability if the basis for such denial is because of the
6 need of the individual for reasonable accommodation;
7 and

8 (3) the imposition or application by a covered em-
9 ployer, employment agency, labor organization or joint
10 labor-management committee of qualification standards,
11 tests, selection criteria or eligibility criteria that iden-
12 tify or limit, or tend to identify or limit, a qualified in-
13 dividual with a disability, or any class of qualified indi-
14 viduals with disabilities, unless such standards, tests or
15 criteria can be shown by such entity to be necessary
16 and substantially related to the ability of an individual
17 to perform the essential functions of the particular em-
18 ployment position.

19 **SEC. 203. POSTING NOTICES.**

20 Every employer, employment agency, labor organiza-
21 tion, or joint labor-management committee covered under
22 this title shall post notices in an accessible format to appli-
23 cants, employees, and members describing the applicable pro-
24 visions of this Act, in the manner prescribed by section 711
25 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

1 **SEC. 204. REGULATIONS.**

2 Not later than 180 days after the date of enactment of
3 this Act, the Commission shall issue regulations in an acces-
4 sible format to carry out this title in accordance with sub-
5 chapter II of chapter 5 of title 5, United States Code.

6 **SEC. 205. ENFORCEMENT.**

7 The remedies and procedures set forth in sections 706,
8 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C.
9 2000e-5, 2000e-8, and 2000e-9), and the remedies and pro-
10 cedures available under section 1981 of the Revised Statutes
11 (42 U.S.C. 1981) shall be available, with respect to any indi-
12 vidual who believes that he or she is being or about to be
13 subjected to discrimination on the basis of disability in viola-
14 tion of any provisions of this Act, or regulations promulgated
15 under section 204, concerning employment.

16 **TITLE III—PUBLIC SERVICES**

17 **SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A**
18 **DISABILITY.**

19 As used in this title, the term “qualified individual with
20 a disability” means an individual with a disability who, with
21 or without reasonable modifications to rules, policies and
22 practices, the removal of architectural, communication, and
23 transportation barriers, or the provision of auxiliary aids and
24 services, meets the essential eligibility requirements for the
25 receipt of services or the participation in programs or activi-
26 ties provided by a State or agency or political subdivision of a

1 State or board, commission or other instrumentality of a
2 State and political subdivision.

3 **SEC. 302. DISCRIMINATION.**

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

10 **SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION**

11 **CONSIDERED DISCRIMINATORY.**

12 (a) **DEFINITION.**—As used in this title, the term “public
13 transportation” means transportation by bus or rail, or by
14 any other conveyance (other than air travel) that provides the
15 general public with general or special service (including char-
16 ter service) on a regular and continuing basis.

17 (b) **VEHICLES.**—

18 (1) **NEW BUSES, RAIL VEHICLES, AND OTHER**
19 **FIXED ROUTE VEHICLES.**—It shall be considered dis-
20 crimination for purposes of this Act and section 504 of
21 the Rehabilitation Act of 1973 (29 U.S.C. 794) for an
22 individual or entity to purchase or lease a new fixed
23 route bus of any size, a new intercity rail vehicle, a
24 new commuter rail vehicle, a new rapid rail vehicle, a
25 new light rail vehicle to be used for public transporta-

1 tion, or any other new fixed route vehicle to be used
2 for public transportation and for which a solicitation by
3 such individual or entity is made later than 30 days
4 after the date of enactment of this Act, if such bus,
5 rail, or other vehicle is not readily accessible to and
6 usable by individuals with disabilities, including individ-
7 uals who use wheelchairs.

8 (2) **USED VEHICLES.**—If an individual or entity
9 purchases or leases a used vehicle after the date of en-
10 actment of this Act, such individual or entity shall
11 make demonstrated good faith efforts to purchase or
12 lease a used vehicle that is readily accessible to and
13 usable by individuals with disabilities, including individ-
14 uals who use wheelchairs.

15 (3) **REMANUFACTURED VEHICLES.**—If an individ-
16 ual or entity remanufactures a vehicle, or purchases or
17 leases a remanufactured vehicle, so as to extend its
18 usable life for 5 years or more, the vehicle shall, to the
19 maximum extent feasible, be readily accessible to and
20 usable by individuals with disabilities, including individ-
21 uals who use wheelchairs.

22 (c) **PARATRANSIT AS A SUPPLEMENT TO FIXED**
23 **ROUTE PUBLIC TRANSPORTATION SYSTEM.**—If an individ-
24 ual or entity operates a fixed route public transportation
25 system to provide public transportation, it shall be considered

1 discrimination, for purposes of this Act and section 504 of the
2 Rehabilitation Act of 1973 (29 U.S.C. 794), for such individ-
3 ual or entity to fail to provide paratransit or other special
4 transportation services sufficient to provide a comparable
5 level of services as is provided to individuals using fixed route
6 public transportation to individuals with disabilities, including
7 individuals who use wheelchairs, who cannot otherwise use
8 fixed route public transportation and to other individuals as-
9 sociated with such individuals with disabilities in accordance
10 with service criteria established under regulations promulgat-
11 ed by the Secretary of Transportation.

12 (d) COMMUNITY OPERATING DEMAND RESPONSIVE
13 SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or
14 entity operates a demand responsive system that is used to
15 provide public transportation for the general public, it shall
16 be considered discrimination, for purposes of this Act and
17 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
18 794), for such individual or entity to purchase or lease a new
19 vehicle, for which a solicitation is made later than 30 days
20 after the date of enactment of this Act, that is not readily
21 accessible to and usable by individuals with disabilities, in-
22 cluding individuals who use wheelchairs unless the entity can
23 demonstrate that such system, when viewed in its entirety,
24 provides a level of service to individuals with disabilities
25 equivalent to that provided to the general public.

1 (e) NEW FACILITIES.—For purposes of this Act and
2 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
3 794), it shall be considered discrimination for an individual or
4 entity to build a new facility that will be used to provide
5 public transportation services, including bus service, intercity
6 rail service, rapid rail service, commuter rail service, light
7 rail service, and other service used for public transportation
8 that is not readily accessible to and usable by individuals with
9 disabilities, including individuals who use wheelchairs.

10 (f) ALTERATIONS OF EXISTING FACILITIES.—With re-
11 spect to a facility or any part thereof that is used for public
12 transportation and that is altered by, on behalf of, or for the
13 use of an individual or entity later than 1 year after the date
14 of enactment of this Act, in a manner that affects or could
15 affect the usability of the facility or part thereof, it shall be
16 considered discrimination, for purposes of this Act and sec-
17 tion 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),
18 for such individual or entity to fail to make the alterations in
19 such a manner that, to the maximum extent feasible, the al-
20 tered portion of the facility, the path of travel to the altered
21 area, and the bathrooms, telephones, and drinking fountains
22 serving the remodeled area are readily accessible to and
23 usable by individuals with disabilities, including individuals
24 who use wheelchairs.

1 (g) EXISTING FACILITIES, INTERCITY RAIL, RAPID
2 RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND
3 KEY STATIONS.—

4 (1) EXISTING FACILITIES.—Except as provided
5 in paragraph (3), with respect to existing facilities used
6 for public transportation, it shall be considered discrim-
7 ination, for purposes of this Act and section 504 of the
8 Rehabilitation Act of 1973 (29 U.S.C. 794), for an in-
9 dividual or entity to fail to operate such public trans-
10 portation program or activity conducted in such facili-
11 ties so that, when viewed in the entirety, it is readily
12 accessible to and usable by individuals with disabilities,
13 including individuals who use wheelchairs.

14 (2) INTERCITY, RAPID, LIGHT, AND COMMUTER
15 RAIL SYSTEMS.—With respect to vehicles operated by
16 intercity, light, rapid and commuter rail systems, for
17 purposes of this Act and section 504 of the Rehabilita-
18 tion Act of 1973 (29 U.S.C. 794), it shall be consid-
19 ered discrimination for an individual or entity to fail to
20 have at least one car per train that is accessible to in-
21 dividuals with disabilities, including individuals who use
22 wheelchairs, as soon as practicable but in any event in
23 no less than 5 years.

24 (3) KEY STATIONS.—For purposes of this Act
25 and section 504 of the Rehabilitation Act of 1973 (29

1 U.S.C. 794), it shall be considered discrimination for
2 an individual or entity to fail to make stations in inter-
3 city rail systems and key stations in rapid rail, com-
4 muter rail and light rail systems readily accessible to
5 and usable by individuals with disabilities, including in-
6 dividuals who use wheelchairs, as soon as practicable
7 but in no event later than 3 years after the date of en-
8 actment of this Act, except that the time limit may be
9 extended by the Secretary of Transportation up to 20
10 years for extraordinarily expensive structural changes
11 to, or replacement of, existing facilities necessary to
12 achieve accessibility.

13 SEC. 304. REGULATIONS.

14 (a) ATTORNEY GENERAL.—Not later than 180 days
15 after the date of enactment of this Act, the Attorney General
16 shall promulgate regulations in an accessible format that im-
17 plement this title (other than section 303), and such regula-
18 tions shall be consistent with this title and with the coordina-
19 tion regulations under part 41 of title 28, Code of Federal
20 Regulations (as in existence on January 13, 1978), applicable
21 to recipients of Federal financial assistance under section 504
22 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

23 (b) SECRETARY OF TRANSPORTATION.—

24 (1) IN GENERAL.—Not later than 240 days after
25 the date of enactment of this Act, the Secretary of

1 Transportation shall promulgate regulations in an ac-
2 cessible format that include standards applicable to fa-
3 cilities and vehicles covered under section 303.

4 (2) CONFORMANCE OF STANDARDS.—Such stand-
5 ards shall be consistent with the minimum guidelines
6 and requirements issued by the Architectural and
7 Transportation Barriers Compliance Board in accord-
8 ance with section 604(b).

9 SEC. 305. ENFORCEMENT.

10 The remedies, procedures, and rights set forth in section
11 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall
12 be available with respect to any individual who believes that
13 he or she is being or about to be subjected to discrimination
14 on the basis of disability in violation of any provisions of this
15 Act, or regulations promulgated under section 304, concern-
16 ing public services.

17 **TITLE IV—PUBLIC ACCOMMODA-**
18 **TIONS AND SERVICES OPER-**
19 **ATED BY PRIVATE ENTITIES**

20 SEC. 401. DEFINITIONS.

21 As used in this title:

22 (1) COMMERCE.—The term “commerce” means
23 travel, trade, traffic, commerce, transportation, or com-
24 munication among the several States, or between the
25 District of Columbia and any State or between any for-

1 eign country or any territory or possession and any
2 State or the District of Columbia or between points in
3 the same State but through another State or the Dis-
4 trict of Columbia or foreign country.

5 (2) PUBLIC ACCOMMODATION.—

6 (A) IN GENERAL.—The term “public accom-
7 modation” means privately operated establish-
8 ments—

9 (i)(I) that are used by the general public
10 as customers, clients, or visitors; or

11 (II) that are potential places of employ-
12 ment; and

13 (ii) whose operations affect commerce.

14 (B) INCLUSIONS.—Public accommodations
15 referred to in clause (i)(I) include auditoriums,
16 convention centers, stadiums, theaters, restau-
17 rants, shopping centers, inns, hotels, and motels
18 (other than inns, hotels, and motels exempt under
19 section 201(b)(1) of the Civil Rights Act of 1964
20 (42 U.S.C. 2000a(b)(1))), terminals used for public
21 transportation, passenger vehicle service stations,
22 professional offices of health care providers, office
23 buildings, sales establishments, personal and
24 public service businesses, parks, private schools,
25 and recreation facilities.

1 (3) PUBLIC TRANSPORTATION.—The term
2 “public transportation” means transportation by bus or
3 rail, or by any other conveyance (other than by air
4 travel) that provides the general public with general or
5 special service (including charter service) on a regular
6 and continuing basis.

7 SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC
8 ACCOMMODATIONS.

9 (a) GENERAL RULE.—No individual shall be discrimi-
10 nated against in the full and equal enjoyment of the goods,
11 services, facilities, privileges, advantages, and accommoda-
12 tions of any place of public accommodation, on the basis of
13 disability.

14 (b) CONSTRUCTION.—As used in subsection (a), the
15 term “discriminated against” includes—

16 (1) the imposition or application of eligibility crite-
17 ria that identify or limit, or tend to identify or limit, an
18 individual with a disability or any class of individuals
19 with disabilities from fully and equally enjoying any
20 goods, services, facilities, privileges, advantages, and
21 accommodations;

22 (2) a failure to make reasonable modifications in
23 rules, policies, practices, procedures, protocols, or serv-
24 ices when such modifications may be necessary to
25 afford such privileges, advantages, and accommodations

1 unless the entity can demonstrate that making such
2 modifications would fundamentally alter the nature of
3 such privileges, advantages, and accommodations;

4 (3) a failure to take such steps as may be neces-
5 sary to ensure that no individual with a disability is ex-
6 cluded, denied services, segregated or otherwise treat-
7 ed differently than other individuals because of the ab-
8 sence of auxiliary aids and services, unless the entity
9 can demonstrate that taking such steps would result in
10 undue burden;

11 (4)(A) a failure to remove architectural and com-
12 munication barriers that are structural in nature in ex-
13 isting facilities, and transportation barriers in existing
14 vehicles used by an establishment for transporting indi-
15 viduals (not including barriers that can only be re-
16 moved through the retrofitting of vehicles by the instal-
17 lation of a hydraulic or other lift), where such removal
18 is readily achievable; and

19 (B) where an entity can demonstrate that removal
20 of a barrier under subparagraph (A) is not readily
21 achievable, a failure to make such goods, services, fa-
22 cilities, privileges, advantages, and accommodations
23 available through alternative methods if such methods
24 are readily achievable;

1 (5) with respect to a facility or part thereof that is
2 altered by, on behalf of, or for the use of an establish-
3 ment later than one year after the date of enactment of
4 this Act in a manner that affects or could affect the
5 usability of the facility or part thereof, a failure to
6 make the alterations in such a manner that, to the
7 maximum extent feasible, the altered portion of the fa-
8 cility, the path of travel to the altered area, and the
9 bathrooms, telephones, and drinking fountains serving
10 the remodeled area, are readily accessible to and
11 usable by individuals with disabilities;

12 (6) a failure to make facilities constructed for first
13 occupancy later than 30 months after the date of en-
14 actment of this Act readily accessible to and usable by
15 individuals with disabilities, except where an entity can
16 demonstrate that it is structurally impracticable to do
17 so, in accordance with standards set forth or incorpo-
18 rated by reference in regulations issued under this title;
19 and

20 (7) in the case of an entity that uses a vehicle to
21 transport individuals not covered under section 303 or
22 403—

23 (A) a failure to provide a level of transporta-
24 tion services to individuals with disabilities, in-

1 cluding individuals who use wheelchairs, equiva-
2 lent to that provided for the general public; and

3 (B) purchasing or leasing a new bus, or vehi-
4 cle that can carry in excess of 12 passengers, for
5 which solicitations are made later than 30 days
6 after the date of enactment of this Act, that is not
7 readily accessible to and usable by individuals
8 with disabilities, including individuals who use
9 wheelchairs.

10 **SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC**
11 **TRANSPORTATION SERVICES PROVIDED BY**
12 **PRIVATE ENTITIES.**

13 (a) **GENERAL RULE.**—No individual shall be discrimi-
14 nated against on the basis of disability in the full and equal
15 enjoyment of public transportation services provided by a pri-
16 vately operated entity that is primarily engaged in the busi-
17 ness of transporting people, but is not in the principal busi-
18 ness of providing air transportation, and whose operations
19 affect commerce.

20 (b) **CONSTRUCTION.**—As used in subsection (a), the
21 term “discrimination against” includes—

22 (1) the imposition or application by an entity of
23 eligibility criteria that identify or limit, or tend to iden-
24 tify or limit, an individual with a disability or any class

1 of individuals with disabilities from fully enjoying the
2 public transportation services provided by the entity;

3 (2) the failure of an entity to—

4 (A) make reasonable modifications consistent
5 with those required under section 402(b)(2);

6 (B) provide auxiliary aids and services con-
7 sistent with the requirements of section 402(b)(3);
8 and

9 (C) remove barriers consistent with the re-
10 quirements of section 402(b)(4); and

11 (3) the purchase or lease of a new vehicle (other
12 than an automobile) that is to be used to provide public
13 transportation services, and for which a solicitation is
14 made later than 30 days after the date of enactment of
15 this Act, that is not readily accessible to and usable by
16 individuals with disabilities, including individuals who
17 use wheelchairs.

18 **SEC. 404. REGULATIONS.**

19 (a) **ACCESSIBILITY STANDARDS.**—Not later than 240
20 days after the date of enactment of this Act, the Secretary of
21 Transportation shall issue regulations in an accessible format
22 that shall include standards applicable to facilities and vehi-
23 cles covered under section 403.

24 (b) **OTHER PROVISIONS.**—Not later than 240 days after
25 the date of enactment of this Act, the Attorney General shall

1 issue regulations in an accessible format to carry out the re-
2 maining provisions of this title not referred to in subsection
3 (a) that include standards applicable to facilities and vehicles
4 covered under section 402.

5 (c) **STANDARDS.**—Standards included in regulations
6 issued under subsections (a) and (b) shall be consistent with
7 the minimum guidelines and requirements issued by the Ar-
8 chitectural and Transportation Barriers Compliance Board in
9 accordance with section 604(b).

10 **SEC. 405. ENFORCEMENT.**

11 Sections 802(i), 813, and 814 (a) and (d) of the Fair
12 Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d))
13 shall be available with respect to any aggrieved individual,
14 except that—

15 (1) any reference to a discriminatory housing
16 practice or breach of a conciliation agreement shall be
17 considered to be a reference to a practice that is dis-
18 criminatory under this title concerning a public accom-
19 modation or public transportation service operated by a
20 private entity; and

21 (2) subparagraph (B) of paragraph (1) and para-
22 graphs (2) and (3) of subsection (a) of section 813 shall
23 not apply.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

SEC. 501. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term “Commission” means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES.—

The term “telecommunications relay services” means services that enable simultaneous communication to take place between individuals who use TDDs or other nonvoice terminal devices and individuals who do not use such devices.

(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 the nationwide telecommunications system.

SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of this Act for any common carrier, as defined in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)), that offers telephone services to the general public, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide indi-

viduals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services, except that it shall not be considered discrimination for such a common carrier to fail to provide such services in any State to which subsection (b) applies if such services are provided under subsection (b).

(b) STATE DISCRIMINATION.—It shall be considered discrimination by a State, that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations issued by the Commission, for purposes of this Act, for such State, through the designated entity, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

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

1 SEC. 503. REGULATIONS.

2 Not later than 180 days after the date of enactment of
3 this Act, the Commission shall issue regulations to carry out
4 this title, and such regulations shall establish minimum stand-
5 ards and guidelines for telecommunications relay services.

6 SEC. 504. ENFORCEMENT.

7 (a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a)
8 and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613,
9 and 3614 (a) and (d)) shall be available with respect to any
10 aggrieved individual, except that—

11 (1) any reference to a discriminatory housing
12 practice or breach of a conciliation agreement shall be
13 considered to be a reference to a practice that is dis-
14 criminatory under this title concerning the provision of
15 an appropriate interstate or intrastate telecommunica-
16 tion relay service; and

17 (2) subparagraph (B) of paragraph (1) and para-
18 graphs (2) and (3) of subsection (a) and subsection (d)
19 of section 813 shall not apply.

20 (b) ADMINISTRATIVE ENFORCEMENT.—

21 (1) IN GENERAL.—The Commission shall enforce
22 the provisions of this title.

23 (2) APPLICABLE ENFORCEMENT PROVISIONS.—

24 The remedies, procedures, and rights set forth in sec-
25 tions 206, 207, 208, and 209 of the Communications
26 Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and

1 in title IV of the Communications Act of 1934 (47
2 U.S.C. 401 et seq.) shall apply with respect to the en-
3 forcement of this title, except that nothing in this sub-
4 section shall be construed to limit or restrict in any
5 manner the remedies, procedures, or rights set forth in
6 subsection (a).

7 (3) CEASE AND DESIST ORDERS.—Whenever,
8 after full opportunity for hearing, on a complaint or
9 under an order for investigation and hearing made by
10 the Commission on the initiative of the Commission,
11 the Commission shall be of the opinion that any car-
12 rier, or any State as described in section 502(b), is or
13 will be in violation of this title or of any regulation
14 issued under this title, the Commission shall—

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

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

21 (4) PENALTIES.—

22 (A) IN GENERAL.—Any carrier or State to
23 which section 502(b) applies that knowingly fails
24 or neglects to comply with this title or of any reg-
25 ulation or order made by the Commission in car-

1 rying out this title shall forfeit to the United
2 States the sum of \$10,000 for each such offense.

3 (B) SEPARATE OFFENSES.—Each distinct
4 violation of the provisions of this title shall be a
5 separate offense under subparagraph (A). In case
6 of a continuing violation, each day shall be con-
7 sidered a separate offense.

8 (C) RECOVERING FORFEITURES.—Such for-
9 feitures shall be payable and recoverable in the
10 same manner as prescribed in section 504 of the
11 Communications Act of 1934 (47 U.S.C. 504).

12 **TITLE VI—MISCELLANEOUS** 13 **PROVISIONS**

14 **SEC. 601. CONSTRUCTION.**

15 (a) REHABILITATION ACT OF 1973.—Nothing in this
16 Act shall be construed to reduce the scope of coverage or
17 apply a lesser standard than the coverage required or the
18 standards applied under title V of the Rehabilitation Act of
19 1973 (29 U.S.C. 790 et seq.) or the regulations issued by
20 Federal agencies pursuant to such title.

21 (b) OTHER LAWS.—Nothing in this Act shall be con-
22 strued to invalidate or limit any other Federal law or law of
23 any State or political subdivision of any State or jurisdiction
24 that provides greater protection for the rights of individuals
25 with disabilities than are afforded by this Act.

1 (c) RELATIONSHIP AMONG TITLES.—The require-
2 ments contained in titles I through V shall be construed in a
3 manner that is consistent with the other provisions of this
4 Act, and any apparent conflict between provisions of this Act
5 shall be resolved by reference to the title that specifically
6 covers the type of action in question.

7 **SEC. 602. PROHIBITION AGAINST RETALIATION.**

8 No individual shall discriminate against any other indi-
9 vidual because such other individual has opposed any act or
10 practice made unlawful by this Act or because such other
11 individual made a charge, testified, assisted, or participated
12 in any manner in an investigation, proceeding, or hearing
13 under this Act.

14 **SEC. 603. STATE IMMUNITY.**

15 A State shall not be immune under the eleventh amend-
16 ment to the Constitution of the United States from an action
17 in Federal court for a violation of this Act. In any action
18 against a State for a violation of the requirements of this Act,
19 remedies (including remedies both at law and in equity) are
20 available for such a violation to the same extent as such rem-
21 edies are available for such a violation in an action against
22 any public or private entity other than a State.

1 SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANS-
2 PORTATION BARRIERS COMPLIANCE BOARD.

3 (a) ISSUANCE OF GUIDELINES.—Not later than 6
4 months after the date of enactment of this Act, the Architec-
5 tural and Transportation Barriers Compliance Board shall
6 issue minimum guidelines that shall supplement the existing
7 Minimum Guidelines and Requirements for Accessible Design
8 for purposes of sections 304 and 404.

9 (b) CONTENTS OF GUIDELINES.—The guidelines issued
10 under subsection (a) shall establish additional requirements,
11 consistent with this Act, to ensure that buildings, facilities,
12 and vehicles are accessible, in terms of architecture and
13 design, transportation, and communication, to individuals
14 with disabilities.

15 SEC. 605. ATTORNEY'S FEES.

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

22 SEC. 606. EFFECTIVE DATE.

23 This Act shall become effective on the date of
24 enactment.

○

231011.253

S.L.C.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a plan to provide entities with technical assistance.

IN THE SENATE OF THE UNITED STATES—101st Cong., 1st Sess.

S. 933

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

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DOLE

Viz:

- 1 On page 95, strike lines 4 through 14 and insert the
- 2 following new subsections:
- 3 (a) PLAN FOR ASSISTANCE.—Not later than 180 days
- 4 after the date of enactment of this Act, the Attorney Gener-
- 5 al, in consultation with the Chairman of the Equal Employ-
- 6 ment Opportunity Commission, the Secretary of Transpor-
- 7 tation, the Chairperson of the Architectural and Transpor-
- 8 tation Barriers Compliance Board, and the Chairman of
- 9 Federal Communications Commission, shall develop a
- 10 plan to assist entities covered under this Act to understand
- 11 the responsibility of such entities under this Act.

231011.201

S.L.C.

final
8/3/89

Calendar No. _____

101ST CONGRESS
1ST SESSION

S. 933

[Report No. 101-____]

IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, JANUARY 3), 1989

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. CRANSTON, Mr. MCCAIN, Mr. MITCHELL, Mr. CHAFEE, Mr. LEAHY, Mr. STEVENS, Mr. INOUE, Mr. COHEN, Mr. GORE, Mr. PACKWOOD, Mr. RIEGLE, Mr. GRAHAM, Mr. PELL, Mr. DODD, Mr. ADAMS, Ms. MIKULSKI, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. WIRTH, Mr. BINGAMAN, Mr. CONRAD, Mr. BURDICK, Mr. LEVIN, Mr. LIEBERMAN, Mr. MOYNIHAN, Mr. KERRY, Mr. SARBANES, Mr. BOSCHWITZ, Mr. HEINZ, Mr. GLENN, Mr. SHELBY, Mr. PRESSLER, Mr. HOLLINGS, Mr. SANFORD, Mr. WILSON, Mr. SASSER, Mr. DIXON, Mr. KERREY, Mr. ROBB, Mr. FOWLER, Mr. ROCKEFELLER, Mr. BIDEN, Mr. BENTSEN, Mr. SPECTER, Mr. DECONCINI, Mr. KOHL, Mr. LAUTENBERG, Mr. D'AMATO, Mr. DOLE, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

AUGUST ____ (legislative day, _____), 1989

Reported by Mr. KENNEDY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

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

Calendar No. 216

101ST CONGRESS }
1st Session }

SENATE

{ REPORT
101-116

THE AMERICANS WITH DISABILITIES ACT OF 1989

AUGUST 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day,
January 3), 1989

Mr. KENNEDY, from the Committee on Labor and Human
Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 933]

The Committee on Labor and Human Resources, to which was referred the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. INTRODUCTION

On August 2, 1989, the Committee on Labor and Human Resources, by a vote of 16-0, ordered favorably reported S. 933, the

21-174

Memorandum

To: Bobby Silverstein, Carolyn Osolinik, David Sloane
From: Mark R. Disler *MRD*
Date: 6/14/89
Re: ADA

The attached document is offered to Senators Harkin and Kennedy and the Administration for discussion purposes. Its purpose is also to try to facilitate a compromise on a comprehensive civil rights bill for persons with disabilities which can be joined by the three Senators and the Administration. For these reasons, we have taken S.933 as a starting point, even though we feel the draft Senator Hatch circulated earlier is a preferable vehicle.

cc: Carolyn Boos
Craig Metz (SH 725)
Jim Hinish
Jana Patterson (SR 302)
Jim Douglass (SH 530)
Lee Sanders (SH 625)

221011.290

S.L.C.

Final
5/1/89

edited
6/14/89

101ST CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. HARKIN introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

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

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

4 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Americans with Disabilities Act of 1989”.

7 (b) TABLE OF CONTENTS.—The table of contents is as
8 follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

- Sec. 201. Definitions.
- Sec. 202. Discrimination.
- Sec. 203. Posting notices.
- Sec. 204. Regulations.
- Sec. 205. Enforcement.

TITLE III—PUBLIC SERVICES

- Sec. 301. Definition of qualified individual with a disability.
- Sec. 302. Discrimination.
- Sec. 303. Actions applicable to public transportation considered discriminatory.
- Sec. 304. Regulations.
- Sec. 305. Enforcement.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED
BY PRIVATE ENTITIES

- Sec. 401. Definitions.
- Sec. 402. Prohibition of discrimination by public accommodations.
- Sec. 403. Prohibition of discrimination in public transportation services provided
by private entities.
- Sec. 404. Regulations.
- Sec. 405. Enforcement.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

- Sec. 501. Definitions.
- Sec. 502. Telecommunications relay services.
- Sec. 503. Regulations.
- Sec. 504. Enforcement.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Construction.
- Sec. 602. Prohibition against retaliation.
- Sec. 603. State immunity.
- Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
- Sec. 605. Attorney's fees.
- Sec. 606. Effective date.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

- 3 (1) some 43,000,000 Americans have one or
- 4 more physical or mental disabilities, and this number
- 5 is increasing as the population as a whole is growing
- 6 older;

Re: (2)(6),(7)
to ~~language interdel~~ provide
a basis for overturning
Cleburne is
unnecessary.
lets write a
sound statute rather
than seek to
reconstruct the
Constitution.

we have coverage
now for housing,
education, CRPA,
voting. Plus, some
of this exceeds
scope of Title
II of 1964 Act,
which, as you
know, is
a major concern
of ours.

redundant,
no. 2 covers
this

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, ~~housing~~, public accommodations, ~~education~~, transportation, communication, ~~recreation~~, ~~institutionalization~~, ~~health services~~, ~~voting~~, and access to public services;

(3) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse ^{under federal law} to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services,

1 programs, activities, benefits, jobs, or other opportu-
2 nities;

3 (6) census data, national polls, and other studies
4 have documented that people with disabilities, as a
5 group, occupy an inferior status in our society, and
6 are severely disadvantaged socially, vocationally,
7 economically, and educationally;

8 (7) individuals with disabilities are a discrete
9 and insular minority who have been faced with re-
10 strictions and limitations, subjected to a history of
11 purposeful unequal treatment, and relegated to a po-
12 sition of political powerlessness in our society, based
13 on characteristics that are beyond the control of such
14 individuals and resulting from stereotypic assump-
15 tions not truly indicative of the individual ability of
16 such individuals to participate in, and contribute to,
17 society;

18 (8) the Nation's proper goals regarding individ-
19 uals with disabilities are to assure equality of oppor-
20 tunity, full participation, independent living, and eco-
21 nomic self-sufficiency for such individuals; and

22 (9) the continuing existence of unfair and un-
23 necessary discrimination and prejudice denies people
24 with disabilities ^{an equal} the opportunity to compete ~~on an~~
25 ~~equal basis~~ and to pursue those opportunities for

1 which our free society is justifiably famous, and
2 ^{imposes significant} costs—the United State ^{billions of dollars} in unneces-
3 sary expenses resulting from dependency and non-
4 productivity.

If we have
support for this
figure, fine,
no change is
needed.

The "purpose"
edits are based on the
need for precision and
to avoid any
generalized gloss on
the specific sections of
the bill that can be
read to make the bill
broader than
actually intended

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

(1) to provide a clear and ^{federal prohibition} comprehensive Na-
tional mandate for the elimination of discrimination
against individuals with disabilities; ^{in employment, public}
^{accommodations, transportation,}
^{communication, and access}
(2) to provide clear, strong, consistent, ^{enforceable} and ^{to public}
^{federal} standards addressing discrimination against indi-
viduals with disabilities;

not needed in
light of (1) & (2).
Plus, if States
wonder to adopt
tougher standards,
you would filter
them to have
the central role
right? These are
excess words.

(3) to ensure that the Federal government plays
a central role in enforcing the standards established
in this Act on behalf of individuals with disabilities;
and

(4) to invoke the sweep of congressional author-
ity, including its power to enforce the fourteenth
amendment and to regulate commerce in order to ~~ad-~~
^{prohibit} ~~dress the major areas of~~ discrimination faced day-to-
day by people with disabilities. ^{which is made illegal by this} Act.

as edited,
and with edits
to the findings,
this OK to
us, but
not otherwise

21 SEC. 3. DEFINITIONS.

22 As used in this Act:

23 (1) AUXILIARY AIDS ~~AND SERVICES~~.—The term

24 "auxiliary aids and ~~services~~" ^{may} shall include—

means services or devices that enable persons with impaired sensory,
manual, or speaking skills to have an equal opportunity to
participate in a program or activity. Auxiliary aids and
services useful for persons with impaired hearing;

1

(A) qualified interpreters, ~~for other effective~~

2

methods of making aurally delivered materials

3

available to individuals with hearing impair-

4

ments;

5

(B) qualified readers, ^{useful for persons with impaired vision may include—} taped texts, ^{brailled materials,} or other

6

~~effective methods~~ of making visually delivered

7

materials available to individuals with visual

8

impairments;

9

~~(C) acquisition or modification of equip-~~

10

ment or devices; and ~~redundant~~

11

~~(D) other similar services and actions.~~

12

(2) DISABILITY.—The term "disability" means, ^{This is fine as far as it goes, but the structure here departs from time-tested structures including the use of "qualified person with disability," which is used in Title II, but not uniformly in the bill,}

13

with respect to an individual—

14

(A) a physical or mental impairment that

15

substantially limits one or more of the major

16

life activities of such individual;

17

(B) a record of such an impairment; or

18

(C) being regarded as having such an im-

19

pairment. ^{See insert (A)}

20

(3) REASONABLE ACCOMMODATION.—The term

21

"reasonable accommodation" ^{may} ~~shall~~ include—

22

(A) making existing facilities used by em-

23

ployees readily accessible to and usable by indi-

24

viduals with disabilities; and ^{otherwise qualified}

telephone handset amplifiers,
telephones compatible
with hearing aids,
telecommunications devices
for deaf persons (TDDs),
notetakers, written materials,
and other similar services
and devices capable

(C) Auxiliary aids
do not include
individually prescribed
devices, readers for
personal use or study,
or other devices of
a personal
nature

otherwise qualified

1 (B) job restructuring, part-time or modified
2 work schedules, ~~reassignment~~, acquisition or
3 modification of equipment or devices, ~~appropri-~~
4 ~~ate adjustment or modifications of examinations~~
5 ~~and training materials, adoption or modification~~

6 ~~of procedures or protocols, the provision of~~
7 qualified readers or interpreters, and other simi-
8 lar accommodations; undertaking, a provided that reasonable accommodation

9 does not require a fundamental alteration or undue burden (Section 504)
10 (4) STATE.—The term "State" means each of

11 the several States, the District of Columbia, the
12 Commonwealth of Puerto Rico, Guam, American
13 Samoa, the Virgin Islands, the Canal Zone, the Trust
14 Territory of the Pacific Islands, and the Common-
15 wealth of the Northern Mariana Islands.

15 TITLE I—GENERAL PROHIBITION 16 AGAINST DISCRIMINATION

17 SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

18 (a) IN GENERAL.—

19 (1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS,
20 JOBS, OR OTHER OPPORTUNITIES. ~~Subject to the~~

21 ~~standards and procedures established in titles III~~
22 ~~through V, it shall be discriminatory to subject an in-~~

23 ~~dividual or class of individuals, directly or through~~
24 contractual, licensing, or other arrangements, on the
25 basis of disability; ~~to any of the following:~~

See 29 CFR 163.704 (b) (EEOC)

28 CFR 42.511(b), 1980 DOJ F/A reg.

This is not in current reg; could impact collective bargaining agreements, including seniority and layoff rules

See, e.g., 45 CFR 84, Appendix A, Subpart B, # 16 (HHS FIA reg. from 1977, I think)

Report must note that larger entities covered by the bill may need to do a few things, like hiring

that smaller entities need not do. Id. Also, Report must note that no employer need create a new position for a person with a d/a as an accommodation, even though some may have to hire readers/interpreters for otherwise qualified employees/applicants for existing positions.

of this Act may not

221011.290
This entire Title I should be deleted
will adopt regs to cover this properly
as they have under Sec 504 -
+ they can tailor the regs
to the activities covered
by the Act. 3

Nevertheless, while we
feel this should be
dropped, what is
of those edits? 4
Basic source - 5
1980 DOT FIA reg. 6

Note that (A) & (B) 7
are redundant in the original.
Plus, even as I edited this,
we probably don't need
all three of 8
(A), (B) & (C). 9

This is still 10
too inartful -
repeating "benefit" and
"opportunity" in the 11
same sentence. 12
"Job" deleted 13
to meet concern 14
over overlap 15
with Title II - 16
nothing is lost 17
by doing so, 18
or deleting 19
the entire title. 20

an otherwise 21
qualified individual 22
with a disability 23
what is 24
left to 25
be covered
here?

8 ^{an otherwise} ~~qualified individual with disabilities~~
(A) Denying the opportunity to participate
accorded others
in or benefit from a service, program, activity,
benefit, job, or other opportunity.

(B) Affording ^{an otherwise} ~~an~~ opportunity to participate
achieve the same
in or benefit from a service, program, activity,
benefit, job, or other opportunity, that is not
equal to that afforded others.

(C) Providing ^{an otherwise} ~~a~~ service, program, activity,
benefit, job, or other opportunity that is less ef-
fective than that provided to others.

(D) Providing ^{an otherwise} ~~a~~ service, program, activity,
benefit, job, or other opportunity that is differ-
ent or separate, unless such action is necessary
to provide the individual or class of individuals
with a service, program, activity, benefit, job, or
other opportunity that is as effective as that pro-
vided to others.

(E) Aiding or perpetuating discrimination
by providing significant assistance to an agency,
organization, or individual that discriminates. ^{In this bill}
^{how would it}
^{work? Including}
^{it in this bill.}
^{miscellaneous}
^{role in the}
^{FIA reg.}

(F) Denying the opportunity to participate
as a member of boards or commissions. ^{If a college or}
^{business covered}
^{by Title III}
^{contributes to a}
^{college or cultural}
^{group which discriminates}
^{the employer is business}
^{is liable under}

(G) Otherwise limiting the enjoyment of
any right, privilege, advantage, or opportunity
enjoyed by others. ^{this language.}

1 (2) EQUAL OPPORTUNITY.—For purposes of this
2 Act, aids, benefits, and services to be equally effec-
3 tive, ^{are not required to produce the identical result or} must afford an individual with a disability an ^{level of}
4 equal opportunity to obtain the same result, to gain ^{achievement} for individuals
5 the same benefit, or to reach the same level of ^{with or without} a d/a, but
6 achievement, in the most integrated setting appropri-
7 ate to the individual's needs.

Why is this
needed in
view of 101
(a)(1)(D)?
By "definition,"
they are only
provided
when
"necessary,"
right?

8 (3) OPPORTUNITY TO PARTICIPATE.—Notwith-
9 standing the existence of separate or different pro-
10 grams or activities provided in accordance with this
11 section, an individual with a disability shall not be
12 denied the opportunity to participate in such pro-
13 grams or activities that are not separate or different.

Delite as
redundant
&
confusing

14 (4) ADMINISTRATIVE METHODS.—Any individual
15 ^{covered by Titles III through V of this Act} ~~or~~ entity shall not, directly or through contractual or
16 other arrangements, utilize standards or criteria or
17 methods of administration—

subjecting otherwise qualified
individuals with d/a to

18 (A) that have the effect of discrimination
19 solely on the basis of disability;

20 (B) that have the purpose or effect of de-
21 feating or substantially impairing the accom-
22 plishment of the objectives of the services, pro-
23 grams, activities, benefits, jobs, or other oppor-
24 tunities provided with respect to an individual
25 with a disability; or

otherwise qualified

if an objective of the
program or activity

I provided that, with respect to any showing of an "effect of
discrimination" or "effect of defeating or substantially impairing"
under subparagraphs (A) and (B), criteria ~~or methods~~ standards, or
methods of administration are reasonably related to the accomplishment
which

If we go
with "effects" in
the special context
of d/a discrimination,
see the marginal
note or insert (B)
re disproportionate
screening. We
would want
to put language
here, too

1

(C) that perpetuate the discrimination,

2

others who are subject to common administra-

3

tive control or are agencies of the same State.

4

(5) RELATIONSHIPS OR ASSOCIATIONS.—It shall be

5

discriminatory to exclude or otherwise deny equal

6

services, programs, activities, benefits, jobs, or other

7

opportunities to an individual or entity because of

8

the relationship to, or association of, that individual

9

or entity with another individual with a disability.

10

(b) DEFENSES.—

11

(1) IN GENERAL.—It shall be a defense to a

12

charge of discrimination under this Act that an al-

13

leged application of qualification standards, selection

14

criteria, performance standards or eligibility criteria

15

that exclude or deny services, programs, activities,

16

benefits, jobs, or other opportunities to an individual

17

with a disability has been demonstrated by the cov-

18

ered entity to be both necessary and substantially re-

19

lated to the ability of an individual to perform or

20

participate, or take advantage of the essential compo-

21

nents of such particular program, activity, job, or

22

other opportunity and such performance, participa-

23

tion, or taking advantage of such essential compo-

24

nents cannot be accomplished by applicable reasona-

what is
contemplated here?
How will it work?
Why is "entity"
protected? Do you
really mean
"otherwise qualified"
or live?

exceeds 504
standards. It
is an extraordinary
burden to prove
anything is
"necessary";
plus the burden
is also mis-
placed, see,
e.g., 45 CFR
84.13 (HHS 504
FA), 29 CFR
1613.705
(EEOC)

1 ble accommodations, modifications, or the provision
2 of auxiliary aids or services.

3 (2) QUALIFICATION STANDARDS.—The term
“qualification standards” may include—

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE II—EMPLOYMENT

14 SEC. 201. DEFINITIONS.

15 As used in this title:

16 (1) COMMISSION.—The term “Commission”
17 means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights
18 Act of 1964 (42 U.S.C. 2000e-4).

20 (2) EMPLOYEE.—

21 (A) IN GENERAL.—The term “employee”
22 means an individual employed by an employer.

23 (B) EXCEPTION.—The term “employee”
24 shall not include any individual elected to
25 public office in any State or political subdivi-

See insert (A).
The Rehab Act 5
outright excludes 6
these categories. Under this
bill, as written, they are 7
within the definition 8
of persons with 9
d/a, unless 10
the covered entity can 11
demonstrate this 12
standard is “necessary 13
and substantially related,”
they can't
be turned
away.

1 sion of any State by the qualified voters thereof,
2 or any individual chosen by such officer to be
3 on such officer's personal staff, or an appointee
4 on the policy making level or an immediate ad-
5 viser with respect to the exercise of the consti-
6 tutional or legal powers of the office.

7 (C) LIMITATION ON EXCEPTION.—The excep-
8 tion contained in subparagraph (B) shall not in-
9 clude employees subject to the civil service
10 laws of a State government, governmental
11 agency or political subdivision.

12 (3) EMPLOYER.—

13 (A) IN GENERAL.—The term “employer”
14 means a person engaged in an industry affecting
15 commerce who has ²⁵~~15~~ or more employees for
16 each working day in each of 20 or more calen-
17 dar weeks in the current or preceding calendar
18 year, and any agent of such a person.

19 (B) EXCEPTIONS.—The term “employer”
20 does not include—

21 (i) the United States, a corporation
22 wholly owned by the government of the
23 United States, or an Indian tribe; or

24 (ii) a bona fide private membership
25 club (other than a labor organization) that

1 is exempt from taxation under section
2 501(c) of the Internal Revenue Code of
3 1986.

4 (4) PERSON, ETC.—The terms “person”, “labor
5 organization”, “employment agency”, “com-
6 merce”, and “industry affecting commerce”, shall
7 have the same meaning given such terms in section
8 701 of the Civil Rights Act of 1964 (42 U.S.C.
9 2000e).

10 (5) QUALIFIED INDIVIDUAL WITH A DISABILITY.—
11 The term “qualified individual with a disability”
12 means an individual with a disability who, with or
13 without reasonable accommodation, can perform the
14 essential functions of the employment position that
15 such individual holds or desires.

see insert
(A)

16 SEC. 202. DISCRIMINATION.

17 (a) GENERAL RULE.—No employer, employment
18 agency, labor organization, or joint labor-management
19 committee shall discriminate against any ^{otherwise} qualified individ-
20 ual with a disability ^{solely} because of such individual's disability
21 ^{with respect} ~~in regard~~ to job application procedures, the hiring or dis-
22 charge of employees, employee compensation, advance-
23 ment, job training, and other terms, conditions, and privi-
24 leges of employment.

from Section
504. I
assume
you mean
this

1 (b) CONSTRUCTION.—As used in subsection (a), the
2 term “discrimination” includes—

3 (1) the ^{refusal} failure by an employer, employment
4 agency, labor organization, or joint labor-manage-
5 ment committee to make reasonable accommodations
6 to the known physical or mental ^{impairments} limitations of a
7 qualified individual with a disability who is an appli-
8 cant or employee unless ^{it is} ~~such entity can~~ demonstrated
9 that the accommodation would impose an undue
10 hardship on the operation of its business;

11 (2) the denial of employment opportunities by a
12 covered employer, employment agency, labor organi-
13 zation, or joint labor-management committee to an
14 applicant or employee who is a qualified individual
15 with a disability if the basis for such denial is be-

16 cause of the need of the individual for reasonable ac-
17 commodation; and ~~that the accommodation~~ ^{unless it is demonstrated} ~~that the accommodation~~
~~operation of its business~~ ^{and would impose an undue hardship on the}

18 (3) the ~~imposition or application~~ ^{use} by a covered
19 employer, employment agency, labor organization or
20 joint labor-management committee of ^{insert (B)} ~~qualification~~
21 ~~standards, tests, selection criteria or eligibility crite-~~
22 ~~ria that identify or limit, or tend to identify or limit,~~
23 ~~a qualified individual with a disability, or any class~~
24 ~~of qualified individuals with disabilities, unless such~~
25 ~~standards, tests or criteria can be shown by such~~

1 entity to be necessary and substantially related to the
2 ability of an individual to perform the essential func-
3 tions of the particular employment position.

4 SEC. 203. POSTING NOTICES.

5 Every employer, employment agency, labor organiza-
6 tion, or joint labor-management committee covered under
7 this title shall post notices in an accessible format to appli-
8 cants, employees, and members describing the applicable
9 provisions of this Act, in the manner prescribed by section
10 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

11 SEC. 204. REGULATIONS.

12 Not later than ³⁰⁰~~180~~ days after the date of enactment of
13 this Act, the Commission shall issue regulations in an ac-
14 cessible format to carry out this title in accordance with
15 subchapter II of chapter 5 of title 5, United States Code.

16 SEC. 205. ENFORCEMENT.

See rewrite

(a) Aggrieved individual— The remedies and procedures set forth in sections
The remedies and procedures set forth in Sections 706, 709, and 710 of the
C.R. Act of 1964 (42 U.S.C. 2000e-5, 2000e-8, and 2000e-9), and the remedies
and 710 of the C.R. Act of 1964 (42 U.S.C. 2000e-5, 2000e-8, and 2000e-9)
shall be available to any individual aggrieved for any violation of this Act.
17 The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42
18 U.S.C. 2000e-5, 2000e-8, and 2000e-9), and the remedies
19 and procedures available under section 1981 of the Re-
20 vised Statutes (42 U.S.C. 1981) shall be available, with
21 respect to any individual who believes that he or she is
22 being or about to be subjected to discrimination on the
23 basis of disability in violation of any provisions of this
24

does not appear in Title VII

(b) The remedies and procedures of ~~section 706 of the C.R. Act of 1964 (42 U.S.C. 2000e-5)~~ shall be available to the Attorney General or to the Commission as prescribed by law to enforce the provisions of this title.

1 Act, or regulations promulgated under section 204, con-
2 cerning employment.

TITLE III—PUBLIC SERVICES

4 SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABIL-
5 ITY.

6 As used in this title, the term "qualified individual
7 with a disability" means an individual with a disability
8 who, with or without reasonable modifications to rules,
9 policies and practices, the removal of architectural, com-
10 munication, and transportation barriers, or the provision of
11 auxiliary aids and services, meets the essential eligibility
12 requirements for the receipt of services or the participation
13 in programs or activities provided by a State or agency or
14 political subdivision of a State or board, commission or
15 other instrumentality of a State and political subdivision.

16 SEC. 302. DISCRIMINATION.

17 No ^{otherwise} qualified individual with a disability shall, by
18 reason of his or her disability, be excluded from the par-
19 ticipation in, be denied the benefits of, or be subjected to
20 discrimination by a State, or agency or political subdivi-
21 sion of a State or board, commission, or other instrumen-

22 tality of a State and political subdivision; provided that no entity
covered by this section need undertake a fundamental alteration in any
of its activities nor undertake a financial and administrative burden;
and provided further that: preschool, elementary, secondary, and
vocational education services and voting and registration rules and
processes are not ~~sub~~ covered by this title.

Also, legislative
history must state
nothing in this Act
overturns Alexander
v. Choate.

with 504 + EHA, what is the point of a third
federal layer on education? Moreover, there is a federal
law on voting. There probably should be other
carve outs.

1 SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION

2 CONSIDERED DISCRIMINATORY.

3 (a) DEFINITION.—As used in this title, the term *I am not yet ready*
4 “public transportation” means transportation by bus or *to respond in detail. I*
5 rail, or by any other conveyance (other than air travel) that *not, however,*
6 provides the general public with general or special service *that the requirements*
7 (including charter service) on a regular and continuing *here are very*
8 basis. *disproportionate*
to the problem.
Indeed while
portions of this
Section are
less than *and exceeds*

9 (b) VEHICLES.—

10 (1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED

11 ROUTE VEHICLES.—It shall be considered discrimina-
12 tion for purposes of this Act and section 504 of the
13 Rehabilitation Act of 1973 (29 U.S.C. 794) for an
14 individual or entity to purchase or lease a new fixed
15 route bus of any size, a new intercity rail vehicle, a
16 new commuter rail vehicle, a new rapid rail vehicle,
17 a new light rail vehicle to be used for public trans-
18 portation, or any other new fixed route vehicle to be
19 used for public transportation and for which a solici-
20 tation by such individual or entity is made later than
21 30 days after the date of enactment of this Act, if
22 such bus, rail, or other vehicle is not readily accessi-
23 ble to and usable by individuals with disabilities, in-
24 cluding individuals who use wheelchairs.

25 (2) USED VEHICLES.—If an individual or entity
26 purchases or leases a used vehicle after the date of

than the 1979 DOT regs thrown out by
Judge Mikva in APTA v. Lewis, other
portions are the
same or
even more
onerous
than the
invalidated
1979 regs.

1 enactment of this Act. such individual or entity shall
2 make demonstrated good faith efforts to purchase or
3 lease a used vehicle that is readily accessible to and
4 usable by individuals with disabilities, including in-
5 dividuals who use wheelchairs.

6 (3) REMANUFACTURED VEHICLES.—If an individ-
7 ual or entity remanufactures a vehicle, or purchases
8 or leases a remanufactured vehicle, so as to extend
9 its usable life for 5 years or more, the vehicle shall,
10 to the maximum extent feasible, be readily accessible
11 to and usable by individuals with disabilities, includ-
12 ing individuals who use wheelchairs.

13 (c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE
14 PUBLIC TRANSPORTATION SYSTEM.—If an individual or
15 entity operates a fixed route public transportation system
16 to provide public transportation, it shall be considered dis-
17 crimination, for purposes of this Act and section 504 of the
18 Rehabilitation Act of 1973 (29 U.S.C. 794), for such indi-
19 vidual or entity to fail to provide paratransit or other spe-
20 cial transportation services sufficient to provide a compa-
21 rable level of services as is provided to individuals using
22 fixed route public transportation to individuals with dis-
23 abilities, including individuals who use wheelchairs, who
24 cannot otherwise use fixed route public transportation and
25 to other individuals associated with such individuals with

1 disabilities in accordance with service criteria established
2 under regulations promulgated by the Secretary of Trans-
3 portation.

4 (d) COMMUNITY OPERATING DEMAND RESPONSIVE SYS-
5 TEMS FOR THE GENERAL PUBLIC.—If an individual or entity
6 operates a demand responsive system that is used to pro-
7 vide public transportation for the general public, it shall be
8 considered discrimination, for purposes of this Act and
9 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
10 794), for such individual or entity to purchase or lease a
11 new vehicle, for which a solicitation is made later than 30
12 days after the date of enactment of this Act, that is not
13 readily accessible to and usable by individuals with dis-
14 abilities, including individuals who use wheelchairs unless
15 the entity can demonstrate that such system, when viewed
16 in its entirety, provides a level of service to individuals
17 with disabilities equivalent to that provided to the general
18 public.

19 (e) NEW FACILITIES.—For purposes of this Act and
20 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
21 794), it shall be considered discrimination for an individual
22 or entity to build a new facility that will be used to provide
23 public transportation services, including bus service, inter-
24 city rail service, rapid rail service, commuter rail service,
25 light rail service, and other service used for public trans-

1 portation that is not readily accessible to and usable by
2 individuals with disabilities, including individuals who use
3 wheelchairs.

4 (f) ALTERATIONS OF EXISTING FACILITIES.—With re-
5 spect to a facility or any part thereof that is used for public
6 transportation and that is altered by, on behalf of, or for
7 the use of an individual or entity later than 1 year after the
8 date of enactment of this Act, in a manner that affects or
9 could affect the usability of the facility or part thereof, it
10 shall be considered discrimination, for purposes of this Act
11 and section 504 of the Rehabilitation Act of 1973 (29
12 U.S.C. 794), for such individual or entity to fail to make
13 the alterations in such a manner that, to the maximum
14 extent feasible, the altered portion of the facility, the path
15 of travel to the altered area, and the bathrooms, telephones,
16 and drinking fountains serving the remodeled area are
17 readily accessible to and usable by individuals with dis-
18 abilities, including individuals who use wheelchairs.

19 (g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL,
20 LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STA-
21 TIONS.—

22 (1) EXISTING FACILITIES.—Except as provided in
23 paragraph (3), with respect to existing facilities used
24 for public transportation, it shall be considered dis-
25 crimination, for purposes of this Act and section 504

1 of the Rehabilitation Act of 1973 (29 U.S.C. 794),
2 for an individual or entity to fail to operate such
3 public transportation program or activity conducted
4 in such facilities so that, when viewed in the entire-
5 ty, it is readily accessible to and usable by individ-
6 uals with disabilities, including individuals who use
7 wheelchairs.

8 (2) INTERCITY, RAPID, LIGHT, AND COMMUTER
9 RAIL SYSTEMS.—With respect to vehicles operated by
10 intercity, light, rapid and commuter rail systems, for
11 purposes of this Act and section 504 of the Rehabili-
12 tation Act of 1973 (29 U.S.C. 794), it shall be con-
13 sidered discrimination for an individual or entity to
14 fail to have at least one car per train that is accessi-
15 ble to individuals with disabilities, including individ-
16 uals who use wheelchairs, as soon as practicable but
17 in any event in no less than 5 years.

18 (3) KEY STATIONS.—For purposes of this Act
19 and section 504 of the Rehabilitation Act of 1973
20 (29 U.S.C. 794), it shall be considered discrimination
21 for an individual or entity to fail to make stations in
22 intercity rail systems and key stations in rapid rail,
23 commuter rail and light rail systems readily accessi-
24 ble to and usable by individuals with disabilities, in-
25 cluding individuals who use wheelchairs, as soon as

1 practicable but in no event later than 3 years after
2 the date of enactment of this Act, except that the
3 time limit may be extended by the Secretary of
4 Transportation up to 20 years for extraordinarily ex-
5 pensive structural changes to, or replacement of, ex-
6 isting facilities necessary to achieve accessibility.

7 SEC. 304. REGULATIONS.

8 (a) ATTORNEY GENERAL.—Not later than 180 days
9 after the date of enactment of this Act, the Attorney Gener-
10 al shall promulgate regulations in an accessible format that
11 implement this title (other than section 303), and such reg-
12 ulations shall be consistent with this title and with the co-
13 ordination regulations under part 41 of title 28, Code of
14 Federal Regulations (as in existence on January 13, 1978),
15 applicable to recipients of Federal financial assistance
16 under section 504 of the Rehabilitation Act of 1973 (29
17 U.S.C. 794).

18 (b) SECRETARY OF TRANSPORTATION.—

19 (1) IN GENERAL.—Not later than 240 days after
20 the date of enactment of this Act, the Secretary of
21 Transportation shall promulgate regulations in an ac-
22 cessible format that include standards applicable to
23 facilities and vehicles covered under section 303.

24 (2) CONFORMANCE OF STANDARDS.—Such stand-
25 ards shall be consistent with the minimum guidelines

1 and requirements issued by the Architectural and
2 Transportation Barriers Compliance Board in accord-
3 ance with section 604(b).

4 SEC. 305. ENFORCEMENT.

5 The remedies, procedures, and rights set forth in sec-
6 tion 505 of the Rehabilitation Act of 1973 (29 U.S.C.
7 794a) shall be available with respect to any individual who
8 believes that he or she is being or about to be subjected to
9 discrimination on the basis of disability in violation of any
10 provisions of this Act, or regulations promulgated under
11 section 304, concerning public services.

see insert (c) for relief
This bill covers
entities who
are not federal
and recipients or
federal contractors.
Injunctions +
attorney fees
are fully fair
adequate
relief.

Incidentally,
did you
really
mean to
superimpose
505 on top
of the
relief
available
throughout
the act or just
here?

12 TITLE IV—PUBLIC ACCOMMODA-
13 TIONS AND SERVICES OPERATED
14 BY PRIVATE ENTITIES

15 SEC. 401. DEFINITIONS.

16 As used in this title:

17 (1) ^{AFFECT} ~~COMMERCE.~~—The ~~term~~ "commerce" ^{if} means
18 ~~travel, trade, traffic, commerce, transportation, or~~
19 ~~communication among the several States, or between~~

operations of an establishment
"affect"

20 ~~the District of Columbia and any State or between~~
21 ~~any foreign country or any territory or possession~~
22 ~~and any State or the District of Columbia or between~~
23 ~~points in the same State but through another State or~~
24 ~~the District of Columbia or foreign country.~~

25 (2) ^{PLACE OF} PUBLIC ACCOMMODATION.—The term "place of public
accommodation" means those establishments listed in
Sections 201(b)(1)–(4) and excludes those listed in section
201(e) of the C.R. Act of 1964 (42 U.S.C. 2000a(b)(1)–(4) and
(e)).

This compares
with the scope
of your ADA
bill in 1988,
S. 2345.

1 (A) IN GENERAL.—The term “public ac-
2 commodation” means privately operated estab-
3 lishments—

4 (i)(I) that are used by the general
5 public as customers, clients, or visitors; or

6 (II) that are potential places of em-
7 ployment; and

8 (ii) whose operations affect commerce.

9 (B) INCLUSIONS.—Public accommodations
10 referred to in clause (i)(I) include auditoriums,
11 convention centers, stadiums, theaters, restau-
12 rants, shopping centers, inns, hotels, and motels
13 (other than inns, hotels, and motels exempt
14 under section 201(b)(1) of the Civil Rights Act
15 of 1964 (42 U.S.C. 2000a(b)(1))), terminals
16 used for public transportation, passenger vehicle
17 service stations, professional offices of health
18 care providers, office buildings, sales establish-
19 ments, personal and public service businesses,
20 parks, private schools, and recreation facilities.

21 (3) PUBLIC TRANSPORTATION.—The term “public
22 transportation” means transportation by bus or rail,
23 or by any other conveyance (other than by air travel)
24 that provides the general public with general or spe-

*we are still
reviewing.*

1 cial service (including charter service) on a regular
2 and continuing basis.

3 SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOM-
4 MODATIONS. *otherwise qualified* *with disabilities*

5 (a) GENERAL RULE.—No individual shall be discrimi-
6 nated against *solely on the basis of his or her d/a* in the full and equal enjoyment of the goods,
7 services, facilities, privileges, advantages, and accommo-
8 dations of any place of public accommodation, *on the basis*
9 ~~of disability.~~

10 (b) CONSTRUCTION.—As used in subsection (a), the
11 term "discriminated against" includes—

12 (1) the *refusal of a covered entity to* imposition or application of eligibility
13 *provide auxiliary aids in order to respond to the known physical* criteria that identify or limit, or tend to identify or
14 *or mental impairments of an otherwise qualified individual* limit, an individual with a disability or any class of
15 *with a disability seeking to enjoy any of the entity's goods, services,* individuals with disabilities from fully and equally
16 *facilities, privileges, advantages, and accommodations, unless it is* enjoying any goods, services, facilities, privileges,
17 *demonstrated that the accommodation would cause a fundamental* advantages, and accommodations;
18 *alteration or undue financial and administrative burden*

19 (2) a *refusal* failure to make reasonable modifications
20 in rules, policies, practices, procedures, protocols, or
21 services when such modifications may be necessary
22 to afford *an equal opportunity to enjoy* such privileges, advantages, and accommo-
23 dations unless *it is* the entity can demonstrate that
24 making such modifications would fundamentally
25 alter the nature of such privileges, advantages, and accommodations.

or cause an undue financial and administrative burden

Nondiscrimination here may not always yield "full and equal" enjoyment. what is meant here? If there are 2 men's rooms on a floor, must both be accessible? if there are 3 entrances, must all have ramps etc.? That is not my understanding of 504.

in light of the known physical or mental impairments of an otherwise qualified individual with a disability.

1. Many citizens will "identify" a person with a d/a. Indeed how is an accommodation possible if you don't know the person has a d/a? It is the stereotypical reaction and/or refusal to act nondiscriminately we must combat. 2. "tend to identify" as broad as to be meaningless? 3. The 504 limits are missing.

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

*redundant
in light
of edit*

8 (4)(A) a failure to remove architectural and
9 communication barriers that are structural in nature
10 in existing facilities, and transportation barriers in
11 existing vehicles used by an establishment for trans-
12 porting individuals (not including barriers that can
13 only be removed through the retrofitting of vehicles
14 by the installation of a hydraulic or other lift), where
15 such removal is readily achievable; and

16 (B) where an entity can demonstrate that re-
17 moval of a barrier under subparagraph (A) is not
18 readily achievable, a failure to make such goods,
19 services, facilities, privileges, advantages, and ac-
20 commodation available through alternative methods
21 if such methods are readily achievable;

22 (5) with respect to a facility or part thereof that
23 is altered by, on behalf of, or for the use of an estab-
24 lishment later than ^{two} one year after the date of enact-
25 ment of this Act in a manner that affects or could

*Bobby, we are
still weighing
this. If you
mean as you
mentioned to
me, less than
504, maybe we
can address this
in legis. history.
My concern is,
it can be
read to mean
almost anything.
Could you give
me report
language on
this for me
to look at?*

*There are
federal
and
requests on
contractors*

1 affect the usability of the facility or part thereof, a
2 failure to make the alterations in such a manner that,
3 to the maximum extent feasible, the altered portion
4 of the facility, the path of travel ~~to~~ ^{within} the altered area,
5 and the bathrooms, telephones, and drinking foun-
6 tains ^{within} ~~serving~~ the remodeled area, are readily accessi-
7 ble to and usable by individuals with disabilities;

if the area to
the altered
area is not
being altered,
this makes no
sense here, does it?
it's a retrofit
type
requirement

8 (6) a failure to make facilities constructed for
9 first occupancy later than 30 months after the date of
10 enactment of this Act readily accessible to and
11 usable by individuals with disabilities, except where
12 an entity can demonstrate that it is structurally im-
13 practicable to do so, in accordance with standards set
14 forth or incorporated by reference in regulations
15 issued under this title; ~~and~~ ^{and}

16 (7) in the case of an entity that uses a vehicle to
17 transport individuals not covered under section 303
18 or 403—

19 (A) a failure to provide a level of transpor-
20 tation services to individuals with disabilities,
21 including individuals who use wheelchairs, ^{which are not}
22 equivalent to that provided for the general ^{primarily in}
23 public; and ^{the business}
^{of providing}
^{transportation}
^{should be}
^{able to rely}
^{on paratransit}

24 (B) purchasing or leasing a new bus, or ve-
25 hicle that can carry in excess of 12 passengers,

airport
hotels
outside

1 for which solicitations are made later than 30
2 days after the date of enactment of this Act, that
3 is not readily accessible to and usable by indi-
4 viduals with disabilities, including individuals
5 who use wheelchairs.

6 SEC. 403. ^{STUDY REGARDING} PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPOR-
7 TATION SERVICES PROVIDED BY PRIVATE ENTI-
8 TIES.

9 The Secretary of Transportation shall undertake a
10 study of (1) the needs of persons with disabilities
11 with respect to bus transportation services provided
12 by the privately operated entities that are primarily
13 engaged in the business of transporting people and (2)
14 business of providing air transportation, and whose oper-
15 ations affect commerce.

16 (a) GENERAL RULE.—No individual shall be discrimi-
17 nated against on the basis of disability in the full and equal
18 enjoyment of public transportation services provided by a
19 privately operated entity that is primarily engaged in the
20 business of transporting people, but is not in the principal
21 business of providing air transportation, and whose oper-
22 ations affect commerce.

23 (b) CONSTRUCTION.—As used in subsection (a), the
24 term "discrimination against" includes—
25 (1) the imposition or application by an entity of
26 alternative transportation ~~services~~ services, and other
27 eligibility criteria that identify or limit, or tend to
28 identify or limit, an individual with a disability or
29 any class of individuals with disabilities from fully
30 enjoying the public transportation services provided
31 by the entity;
32 (c) In conducting the study required by
33 subsection (a), the Secretary shall conduct one public hearing.
34 (d) The study shall be completed no later than
35 18 months after the date of enactment.

Bobby—This
section is excessive
in the extreme.
Even lowballing
all costs and
then cutting
that figure
in half, you
will bankrupt
this industry.
It is an
industry having
a tough time
now, competing
with Amtrak,
air lines,
and the
auto. The
record before
the committee is
simply
inadequate
to impose
requirements.
I suggest a
study. I've
provided some
language, al-
though I'm
sure it
could be
improved.

1 (A) make reasonable modifications consist-
2 ent with those required under section 402(b)(2);

3 (B) provide auxiliary aids and services
4 consistent with the requirements of section
5 402(b)(3); and

6 (C) remove barriers consistent with the re-
7 quirements of section 402(b)(4); and

8 (3) the purchase or lease of a new vehicle (other
9 than an automobile) that is to be used to provide
10 public transportation services, and for which a solici-
11 tation is made later than 30 days after the date of en-
12 actment of this Act, that is not readily accessible to
13 and usable by individuals with disabilities, including
14 individuals who use wheelchairs.

15 SEC. 404. REGULATIONS.

16 (a) ACCESSIBILITY STANDARDS.—Not later than 240
17 days after the date of enactment of this Act, the Secretary
18 of Transportation shall issue regulations in an accessible
19 format that shall include standards applicable to facilities
20 and vehicles covered under section 403.

21 (b) OTHER PROVISIONS.—Not later than 240 days after
22 the date of enactment of this Act, the Attorney General
23 shall issue regulations in an accessible format to carry out
24 the remaining provisions of this title not referred to in sub-

still reviewing

1 section (a) that include standards applicable to facilities
2 and vehicles covered under section 402.

3 (c) STANDARDS.—Standards included in regulations
4 issued under subsections (a) and (b) shall be consistent
5 with the minimum guidelines and requirements issued by
6 the Architectural and Transportation Barriers Compliance
7 Board in accordance with section 604(b).

Still reviewing

8 SEC. 405. ENFORCEMENT.

Insert (D)

9 Sections 802(i), 813, and 814 (a) and (d) of the Fair
10 Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and
11 (d)) shall be available with respect to any aggrieved indi-
12 vidual, except that—

13 (1) any reference to a discriminatory housing
14 practice or breach of a conciliation agreement shall
15 be considered to be a reference to a practice that is
16 discriminatory under this title concerning a public
17 accommodation or public transportation service oper-
18 ated by a private entity; and

19 (2) subparagraph (B) of paragraph (1) and para-
20 graphs (2) and (3) of subsection (a) of section 813
21 shall not apply.

22 TITLE V—TELECOMMUNICATIONS 23 RELAY SERVICES

24 SEC. 501. DEFINITIONS.

25 As used in this title:

*We are still reviewing, but
Some of the
Comments I received
in response to Sen. Hatch's
written AS suggest that
this title needs further
consideration. Also, the
relief is excessive*

1 (1) COMMISSION.—The term “Commission”
2 means the Federal Communications Commission.

3 (2) TELECOMMUNICATIONS RELAY SERVICES.—The
4 term “telecommunications relay services” means
5 services that enable simultaneous communication to
6 take place between individuals who use TDDs or
7 other nonvoice terminal devices and individuals who
8 do not use such devices.

9 (3) TDD.—The term “TDD” means a Tele-
10 communication Device for the Deaf, a machine that
11 employs graphic communications in the transmission
12 of coded signals through the nationwide telecom-
13 munications system.

14 SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

15 (a) GENERAL RULE.—It shall be considered discrimi-
16 nation for purposes of this Act for any common carrier, as
17 defined in section 3(h) of the Communications Act of 1934
18 (47 U.S.C. 153(h)), that offers telephone services to the
19 general public, to fail to provide, not later than 1 year after
20 the date of enactment of this Act, interstate or intrastate
21 telecommunication relay services so that such services pro-
22 vide individuals who use nonvoice terminal devices be-
23 cause of disabilities with opportunities for communications
24 that are equal to those provided to their customers who are
25 able to use voice telephone services, except that it shall not

1 be considered discrimination for such a common carrier to
2 fail to provide such services in any State to which subsec-
3 tion (b) applies if such services are provided under subsec-
4 tion (b).

5 (b) STATE DISCRIMINATION.—It shall be considered
6 discrimination by a State, that designates an entity to pro-
7 vide interstate or intrastate telecommunication relay serv-
8 ices to individuals throughout the entire State in a manner
9 consistent with regulations issued by the Commission, for
10 purposes of this Act, for such State, through the designated
11 entity, to fail to provide, not later than 1 year after the date
12 of enactment of this Act, interstate or intrastate telecom-
13 munication relay services so that such services provide in-
14 dividuals who use nonvoice terminal devices because of
15 disabilities with opportunities for communications that are
16 equal to those provided to their customers who are able to
17 use voice telephone services.

18 (c) CONSTRUCTION.—Nothing in this title shall be con-
19 strued to discourage or impair the development of im-
20 proved or future technology designed to improve access to
21 telecommunications services for individuals with disabil-
22 ities.

23 SEC. 503. REGULATIONS.

24 Not later than 180 days after the date of enactment of
25 this Act, the Commission shall issue regulations to carry

1 out this title, and such regulations shall establish minimum
2 standards and guidelines for telecommunications relay
3 services.

4 SEC. 504. ENFORCEMENT.

5 (a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a)
6 and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613,
7 and 3614 (a) and (d)) shall be available with respect to any
8 aggrieved individual, except that—

9 (1) any reference to a discriminatory housing
10 practice or breach of a conciliation agreement shall
11 be considered to be a reference to a practice that is
12 discriminatory under this title concerning the provi-
13 sion of an appropriate interstate or intrastate tele-
14 communication relay service; and

15 (2) subparagraph (B) of paragraph (1) and para-
16 graphs (2) and (3) of subsection (a) and subsection
17 (d) of section 813 shall not apply.

18 (b) ADMINISTRATIVE ENFORCEMENT.—

19 (1) IN GENERAL.—The Commission shall enforce
20 the provisions of this title.

21 (2) APPLICABLE ENFORCEMENT PROVISIONS.—The
22 remedies, procedures, and rights set forth in sections
23 206, 207, 208, and 209 of the Communications Act
24 of 1934 (47 U.S.C. 206, 207, 208, and 209) and in
25 title IV of the Communications Act of 1934 (47

1 U.S.C. 401 et seq.) shall apply with respect to the
2 enforcement of this title, except that nothing in this
3 subsection shall be construed to limit or restrict in
4 any manner the remedies, procedures, or rights set
5 forth in subsection (a).

6 (3) CEASE AND DESIST ORDERS.—Whenever, after
7 full opportunity for hearing, on a complaint or under
8 an order for investigation and hearing made by the
9 Commission on the initiative of the Commission, the
10 Commission shall be of the opinion that any carrier,
11 or any State as described in section 502(b), is or will
12 be in violation of this title or of any regulation
13 issued under this title, the Commission shall—

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

18 (B) take other actions as it finds appropri-
19 ate and necessary.

20 (4) PENALTIES.—

21 (A) IN GENERAL.—Any carrier or State to
22 which section 502(b) applies that knowingly
23 fails or neglects to comply with this title or of
24 any regulation or order made by the Commis-
25 sion in carrying out this title shall forfeit to the

1 United States the sum of \$10,000 for each such
2 offense.

3 (B) SEPARATE OFFENSES.—Each distinct
4 violation of the provisions of this title shall be a
5 separate offense under subparagraph (A). In
6 case of a continuing violation, each day shall be
7 considered a separate offense.

8 (C) RECOVERING FORFEITURES.—Such for-
9 feitures shall be payable and recoverable in the
10 same manner as prescribed in section 504 of the
11 Communications Act of 1934 (47 U.S.C. 504).

12 **TITLE VI—MISCELLANEOUS**
13 **PROVISIONS**

14 SEC. 601. CONSTRUCTION.

15 (a) REHABILITATION ACT OF 1973.—Nothing in this
16 Act shall be construed to reduce the scope of coverage or
17 apply a lesser standard than the coverage required or the
18 standards applied under title V of the Rehabilitation Act of
19 1973 (29 U.S.C. 790 et seq.) or the regulations issued by
20 Federal agencies pursuant to such title.

21 (b) OTHER LAWS.—Nothing in this Act shall be con-
22 strued to invalidate or limit any other Federal law or law
23 of any State or political subdivision of any State or juris-
24 diction that provides greater protection for the rights of
25 individuals with disabilities than are afforded by this Act.

see insert
(A)

1 (c) ~~RELATIONSHIP AMONG TITLES.~~—The requirements
2 contained in titles I through V shall be construed in a
3 manner that is consistent with the other provisions of this
4 Act, and any apparent conflict between provisions of this
5 Act shall be resolved by reference to the title that specifi-
6 cally covers the type of action in question.

*we should
try to
eliminate
apparent
conflicts
ourselves*

7 SEC. 602. PROHIBITION AGAINST RETALIATION.

8 ~~No individual~~ ^{entity covered by this Act} shall discriminate against any other in-
9 dividual because such other individual has opposed any act
10 or practice made unlawful by this Act or because such
11 other individual made a charge, testified, assisted, or par-
12 ticipated in any manner in an investigation, proceeding, or
13 hearing under this Act.

14 SEC. 603. STATE IMMUNITY.

15 A State shall not be immune under the Eleventh
16 Amendment to the Constitution of the United States from
17 an action in Federal court for a violation of this Act. In any
18 action against a State for a violation of the requirements of
19 this Act, remedies (including remedies both at law and in
20 equity) are available for such a violation to the same extent
21 as such remedies are available for such a violation in an
22 action against any public or private entity other than a
23 State.

*This deletion
follows from our
view that only
injunctive
relief and
attorney fees
should be
available
(Title 7 remedies
for employment are
deemed
equitable).
Thus this
should not
be necessary.*

1 SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANS-
2 PORTATION BARRIERS COMPLIANCE BOARD.

3 (a) ISSUANCE OF GUIDELINES.—Not later than 6
4 months after the date of enactment of this Act, the Archi-
5 tectural and Transportation Barriers Compliance Board
6 shall issue minimum guidelines that shall supplement the
7 existing Minimum Guidelines and Requirements for Ac-
8 cessible Design for purposes of sections 304 and 404.

still reviewing

9 (b) CONTENTS OF GUIDELINES.—The guidelines issued
10 under subsection (a) shall establish additional require-
11 ments, consistent with this Act, to ensure that buildings,
12 facilities, and vehicles are accessible, in terms of architec-
13 ture and design, transportation, and communication, to in-
14 dividuals with disabilities.

15 SEC. 605. ATTORNEY'S FEES.

16 In any action or administrative proceeding com-
17 menced pursuant to this Act, the court, or agency, in its
18 discretion, may allow the prevailing party, other than the
19 United States, a reasonable attorney's fee, including litiga-
20 tion expenses, and costs, and the United States shall be
21 liable for the foregoing the same as a private individual.

*redundant in
light of
earlier
edits*

22 SEC. 606. EFFECTIVE DATE.

23 *Unless otherwise specifically provided, all provisions of*
(This Act shall become effective ~~on~~ the date of enact-
24 ment,
one year after

(INSERT A)

As used in this Act. -

(2) "Individual with ^{disabilities} ~~handicaps~~." -

(A) In General. - The term "individual with ^{disabilities} ~~handicaps~~" includes any individual who -

(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(ii) has a record of such an impairment;

or

(iii) is regarded as having such an impairment.

(B) The term "individual with ^{disabilities} ~~handicaps~~" does not include-

(i) an individual who currently, illegally uses or is addicted to a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. Section 802.

(ii) an individual who is an alcoholic or who is addicted to or dependent upon lawfully prescribed drugs if such individual's current use of alcohol or drugs prevents such individual from performing the duties of the job in question or

performing the requirements of the program or activity in question, or whose employment or participation in the program or activity , by reason of such current alcohol or drug use, would reasonably be regarded as constituting a threat to the property or safety of others.

(iii) an individual who has a currently contagious disease or infection, and who, by reason of such disease or infection, would reasonably be regarded as constituting a threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job or perform the requirements of the program or activity; or

(iv) an individual who uses tobacco, by reason of such use,
(2) "Qualified individual with disabilities." - The

term "qualified individual with disabilities" means -

(A) with respect to employment, individuals with disabilities who, with or without reasonable accommodation, can perform the essential functions of the particular job in question; and

(B) with respect to any other program or activity, an individual with disabilities who, with or without reasonable accommodation, meets the essential eligibility

We need to add report language which says the "essential functions" language is used to assure that a person with a d/a is not denied an opportunity merely because that person may have difficulty performing tasks that bear only a marginal relationship to the particular job.

✓ Preferably in the bill but at least in report language, it should be noted that in health and food industries, employers have special concerns meeting significant difference to their judgments

requirements for participation in, or receipt of benefits from, that program or activity.

Section 4. Construction

(a) Nondiscrimination Provisions. - Nothing in this Act shall be construed to affect or change the nondiscrimination provisions contained in title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.), and any right, remedy, obligation, or responsibility under such Act, or to affect or change regulations issued by Federal agencies pursuant to title V of such Act.

(b) Controlled Substances. - Nothing in this Act prohibits any conduct against an individual because -

(1) such individual has been convicted by any court of competent jurisdiction for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); or

(2) of the sexual orientation of such individual.

*seeks to
avert
unfounded
attacks on
bill*

(c) Rehabilitation Act or Air Carriers. - Nothing in this Act shall be construed to apply to -

(1) any program or activity that is subject to sections 503 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 793 and 794); or

(2) to any air carrier that is subject to the Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)).

*we should
avoid duplication
wherever
possible, its
wasteful and
confusing. I
assume this
is your
intention*

(d) Government Limitation. - Nothing in this Act shall be construed to apply to any entity solely because it is licensed

or regulated by, or receives assistance from, any agency or department of any State or subdivision of any State.

(e) Coexistence With Other Laws. - Nothing in this Act shall be construed to invalidate or limit any other Federal Law or any law of a State or political subdivision of a State or jurisdiction that provides greater protection of rights for individuals with handicaps.

Section 5. Exclusion From Coverage

The provisions of this Act shall not apply to any public or private entity otherwise covered by this Act that does not employ 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

(INSERT B)

*Report language must say:
Job relatedness need not be
shown merely because some persons
with d/a are screened out; it need be
shown only when there is
a disproportionate screening*

any employment test or other selection criteria that screens out or tends to screen out individuals with a disability or any class of individuals with a disability unless: (1) The test score or other selection criterion, as used by the entity, is shown to be job-related for the position in question, and (2) 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 or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(Source: 45 CFR 84.13 (HHS 504 F/A reg) 29 CFR 1613.705 (EEOC))

In determining pursuant to paragraph (b)(1)(A) of this section whether an accommodation would impose an undue hardship on the operation of an entity, factors to be considered include--

(A) the overall size of the facility with respect to number of employees, capacity of the facility to be made readily accessible;

(B) the type of the facility's operation, including the impact on employer productivity and competitiveness;

(C) the nature and cost of the accommodation needed;

(D) availability of suitable alternative accommodation;

(E) impact on collective bargaining agreements.

(INSERT C)

Regulations and Enforcement. -

(1) Designation of Agencies. - Consistent with this Act, the President shall designate Federal agencies, that have a regulation issued under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), to issue regulations applicable to State and local government agencies or departments to effectuate this section, including procedures for the receipt of complaints of violations of this section, and section ⁶⁰² ~~B~~ as it applies to entities covered by this section, the conciliation of such complaints, and the referral of these complaints in which conciliation fails to the Attorney General.

(2) Issuance Date. - The final regulations described in paragraph (1) shall be issued no later than 10 months after the date of enactment of this Act.

(3) Equitable Relief. - The Attorney General may, on referral of a complaint from a Federal agency, initiate a civil action for injunctive and other appropriate equitable relief.

(4) Enforcement Provisions. - The remedies and procedures of section 204(a) and (b) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a) and (b)), shall be available to -

(A) a individual aggrieved under this section;

and,

(B) to the Attorney General with respect to intervention in a civil action initiated under this subsection.

(5) Jurisdiction. - The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section, and shall exercise such jurisdiction without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(INSERT D)

Enforcement. -

(1) Attorney General. - The remedies and procedures of sections 206 and 204(a) of the Civil Rights Act of 1964, (42 U.S.C. 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 U.S.C. 2000a-3), shall be available to a individual aggrieved under this section.

(3) District Courts. - The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.*

Regulations. -

(1) Issuance of Regulations. - The Attorney General shall issue such regulations as the Attorney General considers necessary to effectuate this section, and section 6 as it applies to entities covered by this section.

(2) Issuance Date. - Final regulations described in paragraph (1) shall be issued no later than 10 months after the date of enactment of this Act.