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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 handicap.

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

4 SECTION 1. SHORT TITLE.

5 This Act may be cited as the “Americans with Dis-
6 abilities Act of 1989”.

7 SEC. 2. FINDINGS AND PURPOSES.

8 (a) FINDINGS.—Congress finds that—

9 (1) some 43,000,000 Americans have one or
10 more physical or mental disabilities, and this number

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

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

8 (3) discrimination against individuals with dis-
9 abilities persists in such critical areas as employ-
10 ment, housing, public accommodations, education,
11 transportation, communication, recreation, institution-
12 alization, health services, voting, and access to
13 public services;

14 (4) people with disabilities continually encoun-
15 ter various forms of discrimination, including out-
16 right intentional exclusion, the discriminatory effects
17 of architectural, transportation, and communication
18 barriers, overprotective rules and policies, refusal to
19 make modifications to existing facilities and prac-
20 tices, exclusionary qualification standards and crite-
21 ria, segregation, and relegation to lesser services,
22 programs, activities, benefits, jobs, or other opportu-
23 nities;

24 (5) census data, national polls, and other studies
25 have documented that people with disabilities, as a

1 group, occupy an inferior status in our society, and
2 are severely disadvantaged socially, vocationally,
3 economically, and educationally;

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

14 (7) the Nation's proper goals regarding individ-
15 uals with disabilities are to assure equality of oppor-
16 tunity, full participation, independent living, and eco-
17 nomic self-sufficiency for such citizens; and

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

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

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

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

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

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

17 SEC. 3. DEFINITIONS.

18 As used in this Act—

19 (1) HANDICAP.—The term “handicap” means,
20 with respect to an individual—

21 (A) a physical or mental impairment that
22 substantially limits one or more of the major
23 life activities of such individual;

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

1 (C) being regarded as having such an im-
2 pairment.

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

9 **TITLE I—GENERAL PROHIBITION**
10 **AGAINST DISCRIMINATION**

11 **SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.**

12 (a) IN GENERAL.—

13 (1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS,
14 JOBS, OR OTHER OPPORTUNITIES.—Subject to the
15 standards and procedures established in titles II
16 through V, it shall be discriminatory to subject an in-
17 dividual, directly or through contractual, licensing, or
18 other arrangements, on the basis of handicap, to any
19 of the following:

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

23 (B) Affording an individual an opportunity
24 to participate in or benefit from a service, pro-

1 gram, activity, benefit, job, or other opportunity
2 that is not equal to that afforded others.

3 (C) Providing an individual with a service,
4 program, activity, benefit, job, or other opportu-
5 nity that is less effective than that provided to
6 others.

7 (D) Providing an individual with a service,
8 program, activity, benefit, job, or other opportu-
9 nity that is different or separate, unless such
10 action is necessary to provide the individual
11 with a service, program, activity, benefit, job, or
12 other opportunity that is as effective as that pro-
13 vided to others.

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

17 (F) Denying an individual the opportunity
18 to participate as a member of planning or advi-
19 sory boards.

20 (G) Otherwise limiting an individual in the
21 enjoyment of any right, privilege, advantage, or
22 opportunity enjoyed by others.

23 (2) EQUAL OPPORTUNITY.—For purposes of this
24 Act, aids, benefits, and services to be equally effec-
25 tive, must afford an individual with a handicap an

1 equal opportunity to obtain the same result, to gain
2 the same benefit, or to reach the same level of
3 achievement, in the most integrated setting appropri-
4 ate to the individual's needs.

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

11 (4) ADMINISTRATIVE METHODS.—An individual,
12 company, or agency shall not, directly or through
13 contractual or other arrangements, utilize criteria or
14 methods of administration—

15 (A) that have the effect of discrimination
16 on the basis of handicap;

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

23 (C) that perpetuate the discrimination of
24 others who are subject to common administra-
25 tive control or are agencies of the same State.

1 (5) RELATIONSHIPS OR ASSOCIATIONS.—It shall be
2 discriminatory to exclude or otherwise deny equal
3 services, programs, activities, benefits, jobs, or other
4 opportunities to an individual because of the rela-
5 tionship to, or association of, that individual with an-
6 other individual with a handicap.

7 (b) DEFENSES.—

8 (1) REASONS OTHER THAN HANDICAP.—It shall
9 not be discrimination on the basis of handicap to ex-
10 clude or otherwise deny equal services, programs,
11 activities, benefits, jobs, or other opportunities to an
12 individual with a handicap for reasons entirely unre-
13 lated to handicap.

14 (2) STANDARDS AND CRITERIA.—

15 (A) IN GENERAL.—It shall not be discrimi-
16 nation on the basis of handicap to exclude or
17 otherwise deny services, programs, activities,
18 benefits, jobs, or other opportunities to an indi-
19 vidual with a handicap based on the application
20 of qualification standards, selection criteria, per-
21 formance standards, or eligibility criteria that
22 are shown by a covered entity to be both neces-
23 sary and substantially related to the ability of
24 the individual to perform or participate, or take
25 advantage of the essential components of such

1 particular program, activity, job, or other oppor-
2 tunity and such performance, participation, or
3 advantage cannot be accomplished by applicable
4 reasonable accommodations, modifications, or
5 the provision of auxiliary aids or services.

6 (B) QUALIFICATION STANDARDS.—Qualifica-
7 tion standards may include—

8 (i) requiring that the current use of al-
9 cohol or drugs by an alcoholic or drug
10 abuser not pose a direct threat to property
11 or the safety of others in the workplace or
12 program; and

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

18 **TITLE II—EMPLOYMENT**

19 **SEC. 201. DEFINITIONS.**

20 As used in this title:

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

25 (2) EMPLOYEE.—

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

3 (B) EXCEPTION.—The term “employee”
4 shall not include any individual elected to
5 public office in any State or political subdivi-
6 sion of any State by the qualified voters thereof,
7 or any individual chosen by such officer to be
8 on such officer’s personal staff, or an appointee
9 on the policy making level or an immediate ad-
10 viser with respect to the exercise of the consti-
11 tutional or legal powers of the office.

12 (C) LIMITATION ON EXCEPTION.—The excep-
13 tion contained in subparagraph (B) shall not in-
14 clude employees subject to the civil service
15 laws of a State government, governmental
16 agency or political subdivision.

17 (3) EMPLOYER.—

18 (A) IN GENERAL.—The term “employer”
19 means an individual engaged in an industry af-
20 fecting commerce who has 15 or more employ-
21 ees for each working day in each of 20 or more
22 calendar weeks in the current or preceding cal-
23 endar year, and any agent of such an individual.

24 (B) EXCEPTIONS.—The term “employer”
25 does not include—

1 (i) the United States, a corporation
2 wholly owned by the government of the
3 United States, or an Indian tribe; or

4 (ii) a bona fide private membership
5 club (other than a labor organization) that
6 is exempt from taxation under section
7 501(c) of the Internal Revenue Code of
8 1986.

9 (4) LABOR ORGANIZATION, ETC.—The terms
10 “labor organization”, “employment agency”, “joint
11 labor-management committee”, “commerce”, “in-
12 dustry affecting commerce”, and “State” shall have
13 the same meaning given such terms in sections 701
14 and 706 of the Civil Rights Act of 1964 (42 U.S.C.
15 2000e and 2000e-5).

16 (5) QUALIFIED INDIVIDUAL WITH A HANDICAP.—
17 The term “qualified individual with a handicap”
18 means an individual with a handicap who, with or
19 without reasonable accommodation, can perform the
20 essential functions of the employment position that
21 such individual holds or desires.

22 SEC. 202. DISCRIMINATION.

23 (a) GENERAL RULE.—No employer, employment
24 agency, labor organization, or joint labor-management
25 committee shall discriminate against any qualified individ-

1 ual with a handicap because of such individual's handicap
2 in regard to job application procedures, the hiring or dis-
3 charge of employees, employee compensation, advance-
4 ment, job training, and other terms, conditions, and privi-
5 leges of employment.

6 (b) CONSTRUCTION.—

7 (1) IN GENERAL.—As used in subsection (a), the
8 term “discrimination” includes—

9 (A) the failure by an employer, employ-
10 ment agency, labor organization, or joint labor-
11 management committee to make reasonable ac-
12 commodations to the known physical or mental
13 limitations of a qualified individual with a
14 handicap who is an applicant or employee
15 unless such entity can demonstrate that the ac-
16 commodation would impose an undue hardship
17 on the operation of its business;

18 (B) the denial of employment opportunities
19 by a covered employer, employment agency,
20 labor organization, or joint labor-management
21 committee to an applicant or employee who is a
22 qualified individual with a handicap if the basis
23 for such denial is because of the need of the in-
24 dividual for reasonable accommodation; and

1 (C) the imposition or application by a cov-
2 ered employer, employment agency, labor orga-
3 nization or joint labor-management committee
4 of qualification standards, tests, selection crite-
5 ria or eligibility criteria that identify or limit, or
6 tend to identify or limit, a qualified individual
7 with a handicap, or any class of qualified indi-
8 viduals with handicaps, unless such standards,
9 tests or criteria can be shown by such entity to
10 be necessary and substantially related to the
11 ability of the individual to perform the essential
12 components of the particular employment posi-
13 tion.

14 (2) REASONABLE ACCOMMODATION.—As used in
15 paragraph (1), the term “reasonable accommoda-
16 tion” shall include—

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

20 (B) job restructuring, part-time or modified
21 work schedules, reassignment, acquisition or
22 modification of equipment or devices, appropri-
23 ate adjustment or modifications of examinations
24 and training materials, adoption or modification
25 of procedures or protocols, the provision of

1 qualified readers or interpreters, and other simi-
2 lar accommodations.

3 SEC. 203. POSTING NOTICES.

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

10 SEC. 204. REGULATIONS.

11 Not later than 180 days after the date of enactment of
12 this Act, the Commission shall issue regulations to carry
13 out this title consistent with the authority under section
14 713 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-12).

15 SEC. 205. ENFORCEMENT.

16 The remedies and procedures set forth in section 706
17 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), and
18 section 707, and the remedies and procedures available
19 under section 1981 of the Civil Rights Act of 1870 (42
20 U.S.C. 1981) shall be available, with respect to any indi-
21 vidual who believes that he or she is being or about to be
22 subjected to discrimination on the basis of handicap in vio-
23 lation of any provisions of this Act, or regulations promul-
24 gated under section 204, concerning employment.

1 SEC. 206. EFFECTIVE DATE.

2 This title shall become effective on the date of enact-
3 ment of this Act.

4 **TITLE III—PUBLIC SERVICES**

5 SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A HANDI-
6 CAP.

7 As used in this title, the term “qualified individual
8 with a handicap” means an individual with a handicap
9 who, with or without reasonable modifications to rules,
10 policies and practices, or the provision of auxiliary aids
11 and services, meets the essential eligibility requirements
12 for the receipt of services or the participation in programs
13 or activities provided by a State or agency or political sub-
14 division of a State or board, commission or other instru-
15 mentality of a State and political subdivision.

16 SEC. 302. DISCRIMINATION.

17 No qualified individual with a handicap shall, by
18 reason of his or her handicap, be excluded from the partici-
19 pation in, be denied the benefits of, or be subjected to dis-
20 crimination by a State, or agency or political subdivision
21 of a State or board, commission or other instrumentality of
22 a State and political subdivision.

23 SEC. 303. ACTIONS APPLICABLE TO MASS TRANSPORTATION CON-
24 sidered Discriminatory.

25 (a) DEFINITION.—As used in this title the term “mass
26 transportation” means transportation by bus or rail, or by

1 any other conveyance (other than airtravel) that provides
2 the general public with general or special service on a reg-
3 ular and continuing basis.

4 (b) VEHICLES.—

5 (1) GENERAL RULE.—It shall be considered dis-
6 crimination for purposes of this Act and section 504
7 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
8 for an individual or entity to purchase or lease a new
9 fixed route bus of any size, a new intercity rail vehi-
10 cle, a new commuter rail vehicle, a new rapid rail
11 vehicle, a new light rail vehicle to be used for mass
12 transportation, or any other new rail vehicle to be
13 used for mass transportation and for which a sollicita-
14 tion by such individual or entity is made later than
15 30 days after the date of enactment of this Act, if
16 such bus or rail vehicle is not readily accessible to
17 and usable by individuals with handicaps, including
18 individuals who use wheelchairs.

19 (2) USED VEHICLES.—If an individual or entity
20 purchases or leases a used vehicle after the date of
21 enactment of this Act, such individual or entity shall
22 make good faith efforts to purchase or lease a used
23 vehicle that is readily accessible to and usable by in-
24 dividuals with handicaps, including individuals who
25 use wheelchairs.

1 (c) COMMUNITY WITHOUT FIXED ROUTE BUSES BUT
2 WITH A DEMAND RESPONSIVE SYSTEM.—If an individual or
3 entity exclusively operates a demand responsive system
4 that is used to provide mass transportation for the general
5 public and operates no fixed route bus system for the gen-
6 eral public, it shall be considered discrimination, for pur-
7 poses of this Act and section 504 of the Rehabilitation Act
8 of 1973 (29 U.S.C. 794), for such individual or entity to
9 purchase or lease a new vehicle, for which a solicitation is
10 made later than 30 days after the date of enactment of this
11 Act, that is not readily accessible to and usable by individ-
12 uals with handicaps, including individuals who use wheel-
13 chairs unless such system is and will remain, when viewed
14 in its entirety, readily accessible to and usable by such in-
15 dividuals.

16 (d) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE
17 BUS SYSTEM.—If an individual or entity operates a fixed
18 route bus system to provide mass transportation, it shall be
19 considered discrimination, for purposes of this Act and
20 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
21 794), for such individual or entity to refuse to provide
22 paratransit or other special transportation services that are
23 comparable to services provided to individuals using fixed
24 route buses to individuals with handicaps, including indi-
25 viduals who use wheelchairs, who cannot otherwise use

1 accessible fixed route buses and to other individuals asso-
2 ciated with such individuals with handicaps in accordance
3 with service criteria established under regulations promul-
4 gated by the Secretary of Transportation.

5 (e) NEW FACILITIES.—For purposes of this Act and
6 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
7 794), it shall be considered discrimination for an individual
8 or entity to build a new facility that will be used to provide
9 mass transportation services, including bus service, inter-
10 city rail service, rapid rail service, commuter rail service,
11 light rail service, and other rail service used for mass trans-
12 portation that is not readily accessible to and usable by
13 individuals with handicaps, including individuals who use
14 wheelchairs.

15 (f) RENOVATIONS OF EXISTING FACILITIES.—With re-
16 spect to a facility or any part thereof that is used for mass
17 transportation and that is altered by, on behalf of, or for
18 the use of an individual or entity later than one year after
19 the date of enactment of this Act, in a manner that affects
20 or could affect the usability of the facility or part thereof, it
21 shall be considered discrimination, for purposes of this Act
22 and section 504 of the Rehabilitation Act of 1973 (29
23 U.S.C. 794), for such individual or entity to refuse to make
24 the alterations in such a manner that, to the maximum
25 extent feasible, the altered portion of the facility, the path

1 of travel to the altered area, and the bathrooms, telephones,
2 and drinking fountains serving the remodeled area are
3 readily accessible to and usable by individuals with handi-
4 caps, including individuals who use wheelchairs.

5 (g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL,
6 LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STA-
7 TIONS.—

8 (1) EXISTING FACILITIES.—Except as provided in
9 paragraph (3), with respect to existing facilities used
10 for mass transportation, it shall be considered dis-
11 crimination, for purposes of this Act and section 504
12 of the Rehabilitation Act of 1973 (29 U.S.C. 794),
13 for an individual or entity to fail to operate such
14 mass transportation program or activity conducted in
15 such facilities so that, when viewed in the entirety, it
16 is readily accessible to and usable by individuals
17 with handicaps, including individuals who use
18 wheelchairs.

19 (2) INTERCITY RAPID RAIL, AND COMMUTER SYS-
20 TEMS.—

21 (A) IN GENERAL.—With respect to vehicles
22 and rolling stock operated by intercity, light,
23 rapid and commuter rail systems, for purposes
24 of this Act and section 504 of the Rehabilitation
25 Act of 1973 (29 U.S.C. 794), it shall be consid-

1 ered discrimination for an individual or entity to
2 fail to have one car per train that is accessible
3 to individuals who use wheelchairs in accord-
4 ance with the time limits identified under sub-
5 paragraph (B).

6 (B) TIME LIMITS.—

7 (i) INTERCITY, RAPID, AND LIGHT
8 RAIL.—Not later than 10 years after the
9 date of enactment of this Act, individuals
10 or entities identified under subparagraph
11 (A) shall make all structural changes to or
12 replacement of existing rail vehicles and
13 rolling stock necessary to make all its
14 intercity, rapid and light rail vehicles and
15 rolling stock comply with such subpara-
16 graph.

17 (ii) COMMUTER RAIL.—Not later than 5
18 years after the date of enactment of this
19 Act, individuals or entities identifies under
20 subparagraph (A) shall make all structural
21 changes to or replacement of existing rail
22 vehicles and rolling stock necessary to
23 make all of its commuter rail vehicles and
24 rolling stock comply with such subpara-
25 graph.

1 (3) KEY STATIONS.—For purposes of this Act
2 and section 504 of the Rehabilitation Act of 1973
3 (29 U.S.C. 794), it shall be considered discrimination
4 for an individual or entity to fail to make key sta-
5 tions in rapid rail, commuter rail and light rail sys-
6 tems readily accessible to and usable by individuals
7 with handicaps, including individual who use wheel-
8 chairs, as soon as practicable but in no event later
9 than 3 years after the date of enactment of this Act,
10 except that the time limit may be extended by the
11 Secretary of Transportation up to 20 years for ex-
12 traordinarily expensive structural changes to, or re-
13 placement of, existing facilities necessary to achieve
14 program accessibility.

15 SEC. 304. REGULATIONS.

16 (a) ATTORNEY GENERAL.—Not later than 180 days
17 after the date of enactment of this Act, the Attorney Gener-
18 al shall promulgate regulations that implement this title
19 (other than section 303), and such regulations shall be con-
20 sistent with the coordination regulations under part 41 of
21 title 28, Code of Federal Regulations, applicable to recipi-
22 ents of Federal financial assistance under section 504 of
23 the Rehabilitation Act of 1973 (29 U.S.C. 794).

24 (b) SECRETARY OF TRANSPORTATION.—Not later than
25 180 days after the date of enactment of this Act, the Secre-

1 tary of Transportation shall promulgate regulations to carry
2 out section 303 related to discrimination in mass transpor-
3 tation.

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
8 who believes that he or she is being or about to be subject-
9 ed to discrimination on the basis of handicap in violation
10 of any provisions of this Act, or regulations promulgated
11 under section 303, concerning public service.

12 SEC. 306. EFFECTIVE DATE.

13 The provisions of this title shall become effective on
14 the date of enactment of this Act.

15 **TITLE IV—PUBLIC ACCOMMODA-**
16 **TIONS AND SERVICES OPERATED**
17 **BY PRIVATE ENTITIES**

18 SEC. 401. DEFINITIONS.

19 As used in this title:

20 (1) COMMERCE.—The term “commerce” means
21 travel, trade, traffic, commerce, transportation, or
22 communication among the several States, or between
23 the District of Columbia and any State or between
24 any foreign country or any territory or possession
25 and any State or the District of Columbia or between

1 points in the same State but through another State or
2 the District of Columbia or foreign country.

3 (2) MASS TRANSPORTATION.—The term “mass
4 transportation” means transportation by bus or rail,
5 or by any other conveyance (other than by airtravel)
6 that provides the general public with services on a
7 regular and continuing basis, or that provides special
8 services on a regular and continuing basis.

9 (3) PUBLIC ACCOMMODATION.—

10 (A) IN GENERAL.—The term “public ac-
11 commodation” means privately operated estab-
12 lishments—

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

15 (II) that are potential places of em-
16 ployment; and

17 (ii) whose operations affect commerce.

18 (B) INCLUSIONS.—Public accommodations
19 referred to in clause (i)(I) that are used by the
20 public include: auditoriums; convention centers;
21 stadiums; theaters; restaurants; shopping centers;
22 inns, hotels and motels (other than those exempt
23 under section 201(b)(1) of the Civil Rights Act
24 of 1964 (42 U.S.C. 2000a)); terminals used for
25 mass transportation; passenger vehicle service

1 stations; professional offices of health care pro-
2 viders; office buildings; sales establishments;
3 personal and public service businesses; parks;
4 private schools; and recreation facilities.

5 SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOM-
6 MODATIONS.

7 (a) GENERAL RULE.—No individual shall be discrimi-
8 nated against in the full and equal enjoyment of the goods,
9 services, facilities, privileges, advantages, and accommo-
10 dations of any place of public accommodation, on the basis
11 of handicap.

add transportation

12 (b) CONSTRUCTION.—

13 (1) IN GENERAL.—As used in subsection (a), the
14 term “discriminated against” includes—

15 (A) the imposition or application of eligi-
16 bility criteria that identify or limit, or tend to
17 identify or limit, an individual with a handicap
18 or any class of individuals with handicaps from
19 fully and equally enjoying any goods, services,
20 facilities, privileges, advantages, and accommo-
21 dations;

22 (B) a refusal to make reasonable modifica-
23 tions in rules, policies, practices, procedures,
24 protocols, or services when such modifications
25 may be necessary to afford such privileges, ad-

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

5 (C) a refusal to take such steps as may be
6 necessary to ensure that no individual with a
7 handicap is excluded, denied services, segregat-
8 ed or otherwise treated differently than other in-
9 dividuals because of the absence of auxiliary
10 aids and services, unless the entity can demon-
11 strate that taking such steps would result in
12 undue burden;

13 (D)(i) a refusal to remove architectural and
14 communication barriers that are structural in ex-
15 isting facilities, and transportation barriers in
16 existing vehicles used by an establishment for
17 transporting individuals (not including barriers
18 that can only be removed through the retrofit-
19 ting of vehicles by the installation of a hydrau-
20 lic or other lift), where such removal is readily
21 achievable; and

22 (ii) where an entity can demonstrate that
23 removal of a barrier under clause (i) is not read-
24 ily achievable, a refusal to provide alternative
25 methods of making such goods, services, facili-

1 ties, privileges, advantages, and accommoda-
2 tions available;

3 (E) with respect to a facility or part thereof
4 that is altered by, on behalf of, or for the use of
5 an establishment later than one year after the
6 date of enactment of this Act in a manner that
7 affects or could affect the usability of the facili-
8 ty or part thereof, a refusal to make the alter-
9 ations in such a manner that, to the maximum
10 extent feasible, the altered portion of the facili-
11 ty, the path of travel to the altered area, and the
12 bathrooms, telephones, and drinking fountains
13 serving the remodeled area, are readily accessi-
14 ble to and usable by individuals with a handi-
15 cap;

16 (F) a refusal to make facilities designed
17 and constructed later than 30 months after the
18 date of enactment of this Act readily accessible
19 to and usable by individuals with handicaps,
20 except where an entity can demonstrate that it is
21 structurally impracticable to do so, in accord-
22 ance with standards set forth or incorporated by
23 reference in regulations issued under this title;
24 and

1 (G) a refusal to make vehicles (those vehi-
2 cles that can carry in excess of 12 passengers)
3 used by entities for transporting individuals not
4 covered under sections 303 and 403, for which
5 solicitations are made later than 2 years after
6 the date of enactment of this Act, readily acces-
7 sible to and usable by individuals with a handi-
8 cap, including individuals who use wheelchairs.

9 (2) AUXILIARY AIDS AND SERVICES.—As used in
10 paragraph (1), the term “auxiliary aids and services”
11 shall include qualified interpreters or other effective
12 methods of making orally delivered materials avail-
13 able to individuals with hearing impairments, quali-
14 fied readers, taped texts, or other effective methods
15 of making visually delivered materials available to
16 individuals with visual impairments, acquisition or
17 modification of equipment or devices, and other
18 similar services and actions.

19 **SEC. 403. PROHIBITION ON DISCRIMINATION IN MASS TRANSPOR-**
20 **TATION SERVICES PROVIDED BY PRIVATE ENTI-**
21 **TIES.**

22 (a) GENERAL RULE.—No individual shall be discrimi-
23 nated against in the full and equal enjoyment of mass
24 transportation services provided by a privately operated
25 entity that is primarily engaged in the business of trans-

1 porting people, but is not in the principal business of pro-
2 viding air transportation, and whose operations affect com-
3 merce, on the basis of handicap.

4 (b) CONSTRUCTION.—As used in subsection (a), the
5 term “discrimination against” includes—

6 (1) the imposition or application by an entity of
7 eligibility criteria that identify or limit, or tend to
8 identify or limit, an individual with a handicap or
9 any class of individuals with handicaps from fully
10 enjoying the mass transportation services provided
11 by the entity;

12 (2) the refusal of an entity to—

13 (A) make reasonable modifications consist-
14 ent with those required under section
15 402(b)(1)(B);

16 (B) provide auxiliary aids and services
17 consistent with the requirements of section
18 402(b)(1)(C); and

19 (C) remove barriers consistent with the re-
20 quirements of section 402(b)(1)(D); and

21 (3) the purchase or lease of a new vehicle (other
22 than an automobile) that is to be used to provide
23 mass transportation services, and for which a solici-
24 tation is made later than 30 days after the date of en-
25 actment of this Act, that is not readily accessible to

1 and usable by individuals with handicaps, including
2 individuals who use wheelchairs.

3 **SEC. 404. REGULATIONS.**

4 Not later than 180 days after the date of enactment of
5 this Act, the Secretary of Transportation shall issue regula-
6 tions to carry out the provision of this title related to dis-
7 crimination in mass transportation, and the Attorney Gen-
8 eral shall issue regulations to carry out the remaining pro-
9 visions of this title.

10 **SEC. 405. ENFORCEMENT.**

11 Section 802(i), 813, and 814(a) of the Fair Housing
12 Act (42 U.S.C. 3601(i), 3613, and 3614(a)) shall apply
13 with respect to any aggrieved individual, except that—

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

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

23 **SEC. 406. EFFECTIVE DATE.**

24 This title shall become effective on the date of enact-
25 ment of this Act.

1 **TITLE V—TELECOMMUNICATIONS**
2 **RELAY SERVICES**

3 **SEC. 501. DEFINITIONS.**

4 As used in this title:

5 (1) TELECOMMUNICATIONS RELAY SERVICES.—The
6 term “telecommunications relay services” means
7 services that enable simultaneous communication to
8 take place between individuals who use TDDs or
9 other non-voice terminal devices and individuals
10 who do not use such devices.

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

16 **SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.**

17 (a) GENERAL RULE.—It shall be considered discrimi-
18 nation for purposes of this Act for any common carrier, as
19 defined in section 3(h) of the Communications Act of 1934
20 (47 U.S.C. 153(h)), that offers telephone services to the
21 general public, to refuse to provide, not later than one year
22 after the date of enactment of this Act, interstate and intra-
23 state telecommunication relay services so that such serv-
24 ices provide opportunities for communications that are

1 equal to those provided to individuals able to use voice
2 telephone services.

3 (b) CONSTRUCTION.—Nothing in this title shall be con-
4 strued to discourage or impair the development of im-
5 proved or future technology designed to improve access to
6 telecommunications services for individuals with handi-
7 caps.

8 SEC. 503. REGULATIONS.

9 Not later than 180 days after the date of enactment of
10 this Act, the Federal Communications Commission shall
11 issue regulations to carry out this title, and such regula-
12 tions shall establish minimum standards and guidelines for
13 telecommunications relay services.

14 SEC. 504. ENFORCEMENT.

15 (a) CIVIL ACTIONS.—Section 802(i), 813, and 814(a)
16 of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and
17 3614(a)) shall apply with respect to any aggrieved individ-
18 ual, except that—

19 (1) any reference to a discriminatory housing
20 practice or breach of a conciliation agreement shall
21 be considered to be a reference to a practice that is
22 discriminatory under this title concerning the provi-
23 sion of an appropriate interstate or intrastate tele-
24 communication relay service; and

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

4 (b) COMMUNICATIONS ACT OF 1934.—The provisions of
5 sections _____ of the Communications
6 Act of 1934 (47 U.S.C. 151 et seq.) relating to revocations
7 of licenses, forfeitures of property, enforcements of orders,
8 and civil actions, shall be available to the Federal Commu-
9 nications Commission.

10 **TITLE VI—MISCELLANEOUS**
11 **PROVISIONS**

12 SEC. 601. CONSTRUCTION.

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

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

24 (c) RELATIONSHIP AMONG TITLES.—The requirements
25 contained in titles I through V shall be construed in a

1 manner that is consistent with the other provisions of this
2 Act, and any apparent conflict between provisions of this
3 Act shall be resolved by reference to the title that specifi-
4 cally covers the type of action in question.

5 **SEC. 602. PROHIBITION AGAINST RETALIATION.**

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

12 **SEC. 603. STATE IMMUNITY.**

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

22 **SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANS-**
23 **PORTATION BARRIERS COMPLIANCE BOARD.**

24 (a) **ISSUANCE OF GUIDELINES.**—Not later than 6
25 months after the date of enactment of this Act, the Archi-

1 tectural and Transportation Barriers Compliance Board
2 shall issue minimum guidelines that shall supplement the
3 existing Minimum Guidelines and Requirements for Ac-
4 cessible Design.

5 (b) CONTENTS OF GUIDELINES.—The guidelines issued
6 under subsection (a) shall establish additional require-
7 ments, consistent with this Act, to ensure that buildings,
8 facilities, vehicles, and rolling stock are accessible, in
9 terms of architecture and design, transportation, and com-
10 munication, to individuals with handicaps.

11 SEC. 605. ATTORNEY'S FEES.

12 In any action or administrative proceeding com-
13 menced pursuant to this Act, the court, or agency, in its
14 discretion, may allow the prevailing party, other than the
15 United States, a reasonable attorney's fee, including expert
16 witness fees, and costs, and the United States shall be
17 liable for costs the same as a private individual.

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S.L.C.

Final
5/1/89

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
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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.

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TITLE II—EMPLOYMENT

- Sec. 201. Definitions.
- Sec. 202. Discrimination.
- Sec. 203. Posting notices.
- Sec. 204. Regulations.
- Sec. 205. Enforcement.
- Sec. 206. Effective date.

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.
- Sec. 306. Effective date.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED
BY PRIVATE ENTITIES

- Sec. 401. Definitions.
- Sec. 402. Prohibition of discrimination by public accommodations.
- Sec. 403. Prohibition on discrimination in public transportation services provided
by private entities.
- Sec. 404. Regulations.
- Sec. 405. Enforcement.
- Sec. 406. Effective date.

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 Compli-
ance Board.
- Sec. 605. Attorney's fees.

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;

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

6 (3) discrimination against individuals with dis-
7 abilities persists in such critical areas as employ-
8 ment, housing, public accommodations, education,
9 transportation, communication, recreation, institution-
10 alization, health services, voting, and access to
11 public services;

12 (4) people with disabilities continually encoun-
13 ter various forms of discrimination, including out-
14 right intentional exclusion, the discriminatory effects
15 of architectural, transportation, and communication
16 barriers, overprotective rules and policies, failure to
17 make modifications to existing facilities and prac-
18 tices, exclusionary qualification standards and crite-
19 ria, segregation, and relegation to lesser services,
20 programs, activities, benefits, jobs, or other opportu-
21 nities;

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

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

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

13 (7) the Nation's proper goals regarding individ-
14 uals with disabilities are to assure equality of oppor-
15 tunity, full participation, independent living, and eco-
16 nomic self-sufficiency for such individuals; and

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

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

7.
suspect
classification
14th amendment

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

4 (2) to provide a prohibition of discrimination
5 against individuals with disabilities comparable to
6 that afforded to individuals on the basis of race, sex,
7 national origin, age, and religion;

8 (3) to provide clear, strong, consistent, enforcea-
9 ble standards addressing discrimination against indi-
10 viduals with disabilities; and

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

16 SEC. 3. DEFINITIONS.

17 As used in this Act:

18 (1) AUXILIARY AIDS AND SERVICES.—The term
19 “auxiliary aids and services” shall include qualified
20 interpreters or other effective methods of making au-
21 rally delivered materials available to individuals with
22 hearing impairments, qualified readers, taped texts,
23 or other effective methods of making visually deliv-
24 ered materials available to individuals with visual
25 impairments, acquisition or modification of equip-

1 ment or devices, and other similar services and ac-
2 tions.

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

5 (A) a physical or mental impairment that
6 substantially limits one or more of the major
7 life activities of such individual;

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

9 (C) being regarded as having such an im-
10 pairment.

11 (3) REASONABLE ACCOMMODATION.—The term
12 “reasonable accommodation” shall include—

13 (A) making existing facilities used by em-
14 ployees readily accessible to and usable by indi-
15 viduals with disabilities; and

16 (B) job restructuring, part-time or modified
17 work schedules, reassignment, acquisition or
18 modification of equipment or devices, appropri-
19 ate adjustment or modifications of examinations
20 and training materials, adoption or modification
21 of procedures or protocols, the provision of
22 qualified readers or interpreters, and other simi-
23 lar accommodations.

24 (4) STATE.—The term “State” means each of
25 the several States, the District of Columbia, the

1 Commonwealth of Puerto Rico, Guam, American
2 Samoa, the Virgin Islands, the Canal Zone, the Trust
3 Territory of the Pacific Islands, and the Common-
4 wealth of the Northern Mariana Islands.

5 **TITLE I—GENERAL PROHIBITION**
6 **AGAINST DISCRIMINATION**

7 **SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.**

8 (a) **IN GENERAL.—**

9 (1) **SERVICES, PROGRAMS, ACTIVITIES, BENEFITS,**
10 **JOBS, OR OTHER OPPORTUNITIES.—**Subject to the
11 standards and procedures established in titles II
12 through V, it shall be discriminatory to subject an in-
13 dividual, directly or through contractual, licensing, or
14 other arrangements, on the basis of disability, to any
15 of the following:

16 (A) Denying the opportunity to participate
17 in or benefit from a service, program, activity,
18 benefit, job, or other opportunity.

19 (B) Affording an individual an opportunity
20 to participate in or benefit from a service, pro-
21 gram, activity, benefit, job, or other opportunity
22 that is not equal to that afforded others.

23 (C) Providing an individual with a service,
24 program, activity, benefit, job, or other opportu-

1 nity that is less effective than that provided to
2 others.

3 (D) Providing an individual or class of in-
4 dividuals with a service, program, activity, ben-
5 efit, job, or other opportunity that is different or
6 separate, unless such action is necessary to pro-
7 vide the individual or class of individuals with a
8 service, program, activity, benefit, job, or other
9 opportunity that is as effective as that provided
10 to others.

11 (E) Aiding or perpetuating discrimination
12 by providing significant assistance to an agency,
13 organization, or individual that discriminates.

14 (F) Denying an individual the opportunity
15 to participate as a member of boards or com-
16 missions.

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

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

1 achievement, in the most integrated setting appropri-
2 ate to the individual's needs.

3 (3) OPPORTUNITY TO PARTICIPATE.—Notwith-
4 standing the existence of separate or different pro-
5 grams or activities provided in accordance with this
6 section, an individual with a disability shall not be
7 denied the opportunity to participate in such pro-
8 grams or activities 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 criteria or methods of ad-
12 ministration—

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

15 (B) that have the purpose or effect of de-
16 feating or substantially impairing the accom-
17 plishment of the objectives of the services, pro-
18 grams, activities, benefits, jobs, or other oppor-
19 tunities provided with respect to an individual
20 with a disability; or

21 (C) that perpetuate the discrimination of
22 others who are subject to common administra-
23 tive control or are agencies of the same State.

24 (5) RELATIONSHIPS OR ASSOCIATIONS.—It shall be
25 discriminatory to exclude or otherwise deny equal

1 services, programs, activities, benefits, jobs, or other
2 opportunities to an individual or entity because of
3 the relationship to, or association of, that individual
4 or entity with another individual with a disability.

5 (b) DEFENSES.—

6 (1) REASONS OTHER THAN DISABILITY.—It shall
7 not be discrimination on the basis of disability to ex-
8 clude or otherwise deny equal services, programs,
9 activities, benefits, jobs, or other opportunities to an
10 individual with a disability for reasons entirely unre-
11 lated to disability.

12 (2) STANDARDS AND CRITERIA.—

13 (A) IN GENERAL.—It shall not be discrimi-
14 nation on the basis of disability to exclude or
15 otherwise deny services, programs, activities,
16 benefits, jobs, or other opportunities to an indi-
17 vidual with a disability based on the application
18 of qualification standards, selection criteria, per-
19 formance standards, or eligibility criteria that
20 are shown by a covered entity to be both neces-
21 sary and substantially related to the ability of an
22 individual to perform or participate, or take ad-
23 vantage of the essential components of such
24 particular program, activity, job, or other oppor-
25 tunity and such performance, participation, or

1 taking advantage of such essential components
2 cannot be accomplished by applicable reasona-
3 ble accommodations, modifications, or the pro-
4 vision of auxiliary aids or services.

5 (B) QUALIFICATION STANDARDS.—The term
6 “qualification standards” may include—

7 (i) requiring that the current use of al-
8 cohool or drugs by an alcoholic or drug
9 abuser not pose a direct threat to property
10 or the safety of others in the workplace or
11 program; and

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

17 TITLE II—EMPLOYMENT

18 SEC. 201. DEFINITIONS.

19 As used in this title:

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

24 (2) EMPLOYEE.—

*Parasite 504
direct threat*

*AIDS
direct threat
online*

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

3 (B) EXCEPTION.—The term “employee”
4 shall not include any individual elected to
5 public office in any State or political subdivi-
6 sion of any State by the qualified voters thereof,
7 or any individual chosen by such officer to be
8 on such officer’s personal staff, or an appointee
9 on the policy making level or an immediate ad-
10 viser with respect to the exercise of the consti-
11 tutional or legal powers of the office.

12 (C) LIMITATION ON EXCEPTION.—The excep-
13 tion contained in subparagraph (B) shall not in-
14 clude employees subject to the civil service
15 laws of a State government, governmental
16 agency or political subdivision.

17 (3) EMPLOYER.—

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

24 (B) EXCEPTIONS.—The term “employer”
25 does not include—

1 (i) the United States, a corporation
2 wholly owned by the government of the
3 United States, or an Indian tribe; or

4 (ii) a bona fide private membership
5 club (other than a labor organization) that
6 is exempt from taxation under section
7 501(c) of the Internal Revenue Code of
8 1986.

9 (4) PERSON, ETC.—The terms “person”, “labor
10 organization”, “employment agency”, “joint labor-
11 management committee”, “commerce”, “industry
12 affecting commerce”, and “State” shall have the
13 same meaning given such terms in section 701 of the
14 Civil Rights Act of 1964 (42 U.S.C. 2000e).

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

21 SEC. 202. DISCRIMINATION.

22 (a) GENERAL RULE.—No employer, employment
23 agency, labor organization, or joint labor-management
24 committee shall discriminate against any qualified individ-
25 ual with a disability because of such individual's disability

1 in regard to job application procedures, the hiring or dis-
2 charge of employees, employee compensation, advance-
3 ment, job training, and other terms, conditions, and privi-
4 leges of employment.

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

7 (1) the failure by an employer, employment
8 agency, labor organization, or joint labor-manage-
9 ment committee to make reasonable accommodations
10 to the known physical or mental limitations of a
11 qualified individual with a disability who is an appli-
12 cant or employee unless such entity can demonstrate
13 that the accommodation would impose an undue
14 hardship on the operation of its business;

15 (2) the denial of employment opportunities by a
16 covered employer, employment agency, labor organi-
17 zation, or joint labor-management committee to an
18 applicant or employee who is a qualified individual
19 with a disability if the basis for such denial is be-
20 cause of the need of the individual for reasonable ac-
21 commodation; and

22 (3) the imposition or application by a covered
23 employer, employment agency, labor organization or
24 joint labor-management committee of qualification
25 standards, tests, selection criteria or eligibility crite-

1 ria that identify or limit, or tend to identify or limit,
2 a qualified individual with a disability, or any class
3 of qualified individuals with disabilities, unless such
4 standards, tests or criteria can be shown by such
5 entity to be necessary and substantially related to the
6 ability of an individual to perform the essential func-
7 tions of the particular employment position.

8 SEC. 203. POSTING NOTICES.

9 Every employer, employment agency, labor organiza-
10 tion, or joint labor-management committee covered under
11 this title shall post notices in an accessible format to appli-
12 cants, employees, and members describing the applicable
13 provisions of this Act, in the manner prescribed by section
14 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

15 SEC. 204. REGULATIONS.

16 Not later than 180 days after the date of enactment of
17 this Act, the Commission shall issue regulations to carry
18 out this title in an accessible format in accordance with
19 subchapter II of chapter 5 of title 5, United States Code.

20 SEC. 205. ENFORCEMENT.

21 "The remedies and procedures set forth in sections
22 706, 709, and 710 of the Civil Rights Act of 1964 (42
23 U.S.C. 2000e-5, 2000e-8, and 2000e-9), and the remedies
24 and procedures available under section 1981 of the Re-
25 vised Statutes (42 U.S.C. 1981) shall be available, with

★
"limited only
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1 respect to any individual who believes that he or she is
2 being or [?]about to be subjected to discrimination on the
3 basis of disability in violation of any provisions of this
4 Act, or regulations promulgated under section 204, con-
5 cerning employment.

6 SEC. 206. EFFECTIVE DATE.

7 This title shall become effective on the date of enact-
8 ment of this Act.

9 TITLE III—PUBLIC SERVICES

10 SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABIL-
11 ITY.

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

22 SEC. 302. DISCRIMINATION.

23 No qualified individual with a disability shall, by
24 reason of his or her disability, be excluded from the par-
25 ticipation in, be denied the benefits of, or be subjected to

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1 discrimination by a State, or agency or political subdivi-
2 sion of a State or board, commission, or other instrumen-
3 tality of a State and political subdivision.

4 SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION
5 CONSIDERED DISCRIMINATORY.

6 (a) DEFINITION.—As used in this title, the term
7 “public transportation” means transportation by bus or
8 rail, or by any other conveyance (other than air travel) that
9 provides the general public with general or special service
10 (including charter service) on a regular and continuing
11 basis.

12 (b) VEHICLES.—

13 (1) NEW BUSES AND RAIL VEHICLES.—It shall be
14 considered discrimination for purposes of this Act
15 and section 504 of the Rehabilitation Act of 1973
16 (29 U.S.C. 794) for an individual or entity to pur-
17 chase or lease a new fixed route bus of any size, a
18 new intercity rail vehicle, a new commuter rail vehi-
19 cle, a new rapid rail vehicle, a new light rail vehicle
20 to be used for public transportation, or any other
21 new rail vehicle to be used for public transportation
22 and for which a solicitation by such individual or
23 entity is made later than 30 days after the date of en-
24 actment of this Act, if such bus or rail vehicle is not
25 readily accessible to and usable by individuals with

1 disabilities, including individuals who use wheel-
2 chairs.

3 (2) USED VEHICLES.—If an individual or entity
4 purchases or leases a used vehicle after the date of
5 enactment of this Act, such individual or entity shall
6 make demonstrated good faith efforts to purchase or
7 lease a used vehicle that is readily accessible to and
8 usable by individuals with disabilities, including in-
9 dividuals who use wheelchairs.

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

17 (C) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE
18 PUBLIC TRANSPORTATION SYSTEM.—If an individual or
19 entity operates a fixed route public transportation system
20 to provide public transportation, it shall be considered dis-
21 crimination, for purposes of this Act and section 504 of the
22 Rehabilitation Act of 1973 (29 U.S.C. 794), for such indi-
23 vidual or entity to fail to provide paratransit or other spe-
24 cial transportation services sufficient to provide a compa-
25 rable level of services as is provided to individuals using

1 fixed route public transportation to individuals with dis-
2 abilities, including individuals who use wheelchairs, who
3 cannot otherwise use fixed route public transportation and
4 to other individuals associated with such individuals with
5 disabilities in accordance with service criteria established
6 under regulations promulgated by the Secretary of Trans-
7 portation.

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

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small community center (pointing to line 21)

22 (e) NEW FACILITIES.—For purposes of this Act and
23 section 504 of the Rehabilitations Act of 1973 (29 U.S.C.
24 794), it shall be considered discrimination for an individual
25 or entity to build a new facility that will be used to provide

1 public transportation services, including bus service, inter-
2 city rail service, rapid rail service, commuter rail service,
3 light rail service, and other rail service used for public
4 transportation that is not readily accessible to and usable
5 by individuals with disabilities, including individuals who
6 use wheelchairs.

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

22 (g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL,
23 LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STA-
24 TIONS.—

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

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

23 (3) KEY STATIONS.—For purposes of this Act
24 and section 504 of the Rehabilitation Act of 1973
25 (29 U.S.C. 794), it shall be considered discrimination

1 for an individual or entity to fail to make stations in
2 intercity rail systems and key stations in rapid rail,
3 commuter rail and light rail systems readily accessi-
4 ble to and usable by individuals with disabilities, in-
5 cluding individuals who use wheelchairs, as soon as
6 practicable but in no event later than 3 years after
7 the date of enactment of this Act, except that the
8 time limit may be extended by the Secretary of
9 Transportation up to 20 years for extraordinarily ex-
10 pensive structural changes to, or replacement of, ex-
11 isting facilities necessary to achieve accessibility.

12 SEC. 304. REGULATIONS.

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

23 (b) SECRETARY OF TRANSPORTATION.—

24 (1) IN GENERAL.—Not later than 180 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 to ensure that
3 facilities and public conveyances covered under sec-
4 tion 303 are readily accessible to and usable by indi-
5 viduals with disabilities.

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

11 SEC. 305. ENFORCEMENT. *public*
enforcement

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

19 SEC. 306. EFFECTIVE DATE.

20 The provisions of this title shall become effective on
21 the date of enactment of this Act.

1 TITLE IV—PUBLIC ACCOMMODA-
2 TIONS AND SERVICES OPERATED
3 BY PRIVATE ENTITIES

4 SEC. 401. DEFINITIONS.

5 As used in this title:

6 (1) COMMERCE.—The term “commerce” means
7 travel, trade, traffic, commerce, transportation, or
8 communication among the several States, or between
9 the District of Columbia and any State or between
10 any foreign country or any territory or possession
11 and any State or the District of Columbia or between
12 points in the same State but through another State or
13 the District of Columbia or foreign country.

14 (2) PUBLIC ACCOMMODATION.—

15 (A) IN GENERAL.—The term “public ac-
16 commodation” means privately operated estab-
17 lishments—

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

20 (II) that are potential places of em-
21 ployment; and

22 (ii) whose operations affect commerce.

23 (B) INCLUSIONS.—Public accommodations
24 referred to in clause (i)(I) include auditoriums,
25 convention centers, stadiums, theaters, restau-

1 rants, shopping centers, inns, hotels, and motels
2 (other than inns, hotels, and motels exempt
3 under section 201(b)(1) of the Civil Rights Act
4 of 1964 (42 U.S.C. 2000a(b)(1))), terminals
5 used for public transportation, passenger vehicle
6 service stations, professional offices of health
7 care providers, office buildings, sales establish-
8 ments, personal and public service businesses,
9 parks, private schools, and recreation facilities.

10 (3) ^{These} PUBLIC TRANSPORTATION.—The term “public
11 transportation” means transportation by bus or rail,
12 or by any other conveyance (other than by air travel)
13 that provides the general public with general or spe-
14 cial service (including charter service) on a regular
15 and continuing basis.

16 SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOM-
17 MODATIONS.

18 (a) GENERAL RULE.—No individual shall be discrimi-
19 nated against in the full and equal enjoyment of the goods,
20 services, facilities, privileges, advantages, and accommo-
21 dations of any place of public accommodation, on the basis
22 of disability.

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

1 (1) the imposition or application of eligibility
2 criteria that identify or limit, or tend to identify or
3 limit, an individual with a disability or any class of
4 individuals with disabilities from fully and equally
5 enjoying any goods, services, facilities, privileges,
6 advantages, and accommodations;

7 (2) a failure to make reasonable modifications
8 in rules, policies, practices, procedures, protocols, or
9 services when such modifications may be necessary
10 to afford such privileges, advantages, and accommo-
11 dations unless the entity can demonstrate that
12 making such modifications would fundamentally
13 alter the nature of such privileges, advantages, and
14 accommodations;

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

22 (4)(A) a failure to remove architectural and
23 communication barriers that are structural in existing
24 facilities, and transportation barriers in existing vehi-
25 cles used by an establishment for transporting indi-

1 individuals (not including barriers that can only be re-
2 moved through the retrofitting of vehicles by the in-
3 stallation of a hydraulic or other lift), where such re-
4 moval is readily achievable; and

5 (B) ~~where an entity can demonstrate that re-~~^{good}
6 ~~moval of a barrier under subparagraph (A) is not~~
7 ~~readily achievable, a failure to provide alternative~~^{refusal}
8 ~~methods of making such goods, services, facilities,~~
9 ~~privileges, advantages, and accommodations avail-~~
10 ~~able;~~

11 (5) with respect to a facility or part thereof that
12 is altered by, on behalf of, or for the use of an estab-
13 lishment later than one year after the date of enact-
14 ment of this Act in a manner that affects or could
15 affect the usability of the facility or part thereof, a
16 failure to make the alterations in such a manner that,
17 to the maximum extent feasible, the altered portion
18 of the facility, the path of travel to the altered area,
19 and the bathrooms, telephones, and drinking foun-
20 tains serving the remodeled area, are readily accessi-
21 ble to and usable by individuals with disabilities;

22 (6) ~~a failure to make facilities designed and~~^{refusal (which implies intent)}
23 ~~constructed later than 30 months after the date of en-~~
24 ~~actment of this Act readily accessible to and usable~~
25 ~~by individuals with disabilities, except where an~~

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1 entity can demonstrate that it is structurally impracti-
2 cable to do so, in accordance with standards set forth
3 or incorporated by reference in regulations issued
4 under this title; and

5 (7) in the case of an entity that uses a vehicle to
6 transport individuals not covered under section 303
or 403----

8 (A) a failure to provide a level of transpor-
9 tation services to individuals with disabilities,
10 including individuals who use wheelchairs,
11 equivalent to that provided for the general
12 public; and

13 (B) a failure to purchase or lease a new
14 bus or vehicle that can carry in excess of 12
15 passengers, for which solicitations are made
16 later than 30 days after the date of enactment of
17 this Act, that is not readily accessible to and
18 usable by individuals with disabilities, including
19 individuals who use wheelchairs.

20 SEC. 403. PROHIBITION ON DISCRIMINATION IN PUBLIC TRANSPOR-
21 TATION SERVICES PROVIDED BY PRIVATE ENTI-
22 TIES.

23 (a) GENERAL RULE.—No individual shall be discrimi-
24 nated against in the full and equal enjoyment of public
25 transportation services provided by a privately operated

1 entity that is primarily engaged in the business of trans-
2 porting people, but is not in the principal business of pro-
3 viding air transportation, and whose operations affect com-
4 merce, on the basis of disability.

5 (b) CONSTRUCTION.—As used in subsection (a), the
6 term “discrimination against” includes—

7 (1) the imposition or application by an entity of
8 eligibility criteria that identify or limit, or tend to
9 identify or limit, an individual with a disability or
10 any class of individuals with disabilities from fully
11 enjoying the public transportation services provided
12 by the entity;

13 (2) the failure of an entity to—

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

16 (B) provide auxiliary aids and services
17 consistent with the requirements of section
18 402(b)(3); and

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

21 (3) the purchase or lease of a new vehicle (other
22 than an automobile) that is to be used to provide
23 public transportation services, and for which a solici-
24 tation is made later than 30 days after the date of en-
25 actment of this Act, that is not readily accessible to

1 and usable by individuals with disabilities, including
2 individuals who use wheelchairs.

3 SEC. 404. REGULATIONS.

4 (a) ACCESSIBILITY STANDARDS.—Not later than 180
5 days after the date of enactment of this Act, the Secretary
6 of Transportation shall issue regulations in an accessible
7 format that include standards to ensure that facilities and
8 public conveyances covered under section 403 are readily
9 accessible to and usable by individuals with disabilities.
10 Such standards shall be consistent with the minimum
11 guidelines and requirements issued by the Architectural
12 and Transportation Barriers Compliance Board in accord-
13 ance with section 604(b).

14 (b) OTHER PROVISIONS.—The Attorney General shall
15 issue regulations to carry out the remaining provisions of
16 this title not referred to in subsection (a).

17 SEC. 405. ENFORCEMENT.

18 Sections 802(i), 813, and 814 (a) and (d) of the Fair
19 Housing Act (42 U.S.C. 3601(i), 3613, and 3614 (a) and
20 (d)) shall be available with respect to any aggrieved indi-
21 vidual, except that—

22 (1) any reference to a discriminatory housing
23 practice or breach of a conciliation agreement shall
24 be considered to be a reference to a practice that is
25 discriminatory under this title concerning a public

1 accommodation or public transportation service oper-
2 ated by a private entity; and

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

6 SEC. 406. EFFECTIVE DATE.

7 This title shall become effective on the date of enact-
8 ment of this Act.

9 **TITLE V—TELECOMMUNICATIONS**
10 **RELAY SERVICES**

11 SEC. 501. DEFINITIONS.

12 As used in this title:

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

15 (2) TELECOMMUNICATIONS RELAY SERVICES.—The
16 term “telecommunications relay services” means
17 services that enable simultaneous communication to
18 take place between individuals who use TDDs or
19 other nonvoice terminal devices and individuals who
20 do not use such devices.

21 (3) TDD.—The term “TDD” means a Tele-
22 communication Device for the Deaf, a machine that
23 employs graphic communications in the transmission
24 of coded signals through the nationwide telecom-
25 munications system.

1 SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

2 (a) GENERAL RULE.—It shall be considered discrimi-
3 nation for purposes of this Act for any common carrier, as
4 defined in section 3(h) of the Communications Act of 1934
5 (47 U.S.C. 153(h)), that offers telephone services to the
6 general public, to refuse to provide, not later than 1 year
7 after the date of enactment of this Act, interstate and intra-
8 state telecommunication relay services so that such serv-
9 ices provide individuals who use nonvoice terminal de-
10 vices because of disabilities with opportunities for commu-
11 nications that are equal to those provided to individuals
12 able to use voice telephone services.

13 (b) CONSTRUCTION.—Nothing in this title shall be con-
14 sidered to discourage or impair the development of im-
15 proved or future technology designed to improve access to
16 telecommunications services for individuals with disabil-
17 ities.

18 SEC. 503. REGULATIONS.

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

24 SEC. 504. ENFORCEMENT.

25 (a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a)
26 and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613,

1 and 3614 (a) and (d)) shall be available with respect to any
2 aggrieved individual, except that—

3 (1) any reference to a discriminatory housing
4 practice or breach of a conciliation agreement shall
5 be considered to be a reference to a practice that is
6 discriminatory under this title concerning the provi-
7 sion of an appropriate interstate or intrastate tele-
8 communication relay service; and

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9 (2) subparagraph (B) of paragraph (1) and para-
10 graphs (2) and (3) of subsection (a) and subsection
11 (d) of section 813 shall not apply.

12 (b) ADMINISTRATIVE ENFORCEMENT.—

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

15 (2) APPLICABLE ENFORCEMENT PROVISIONS.—The
16 remedies, procedures, and rights set forth in sections
17 206, 207, 208, and 209 of the Communications Act
18 of 1934 (47 U.S.C. 206, 207, 208, and 209) and in
19 title IV of the Communications Act of 1934 (47
20 U.S.C. 401 et seq.) shall apply with respect to the
21 enforcement of this title, except that nothing in this
22 subsection shall be construed to limit or restrict in
23 any manner the remedies, procedures, or rights set
24 forth in subsection (a).

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

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

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

(4) PENALTIES.—

(A) IN GENERAL.—Any carrier that knowingly fails or neglects to comply with this title or of any regulation or order made by the Commission in carrying out this title shall forfeit to the United States the sum of \$10,000 for each such offense.

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

1 (C) RECOVERING FORFEITURES.—Such for-
2 feitures shall be payable and recoverable in the
3 same manner as prescribed in section 504 of the
4 Communications Act of 1934 (47 U.S.C. 504).

5 **TITLE VI—MISCELLANEOUS**
6 **PROVISIONS**

7 **SEC. 601. CONSTRUCTION.**

8 (a) REHABILITATION ACT OF 1973.—Nothing in this
9 Act shall be construed to reduce the scope of coverage or
10 apply a lesser standard than the coverage required or the
11 standards applied under title V of the Rehabilitation Act of
12 1973 (29 U.S.C. 790 et seq.) or the regulations issued by
13 Federal agencies pursuant to such title.

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

19 (c) RELATIONSHIP AMONG TITLES.—The requirements
20 contained in titles I through V shall be construed in a
21 manner that is consistent with the other provisions of this
22 Act, and any apparent conflict between provisions of this
23 Act shall be resolved by reference to the title that specifi-
24 cally covers the type of action in question.

1 SEC. 602. PROHIBITION AGAINST RETALIATION.

2 No individual shall discriminate against any other in-
3 dividual because such other individual has opposed any act
4 or practice made unlawful by this Act or because such
5 other individual made a charge, testified, assisted, or par-
6 ticipated in any manner in an investigation, proceeding, or
7 hearing under this Act.

8 SEC. 603. STATE IMMUNITY.

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

18 SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANS-
19 PORTATION BARRIERS COMPLIANCE BOARD.

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

1 (b) CONTENTS OF GUIDELINES.—The guidelines issued
2 under subsection (a) shall establish additional require-
3 ments, consistent with this Act, to ensure that buildings,
4 facilities, vehicles, and rolling stock are accessible, in
5 terms of architecture and design, transportation, and com-
6 munication, to individuals with disabilities.

7 SEC. 605. ATTORNEY'S FEES.

8 In any action or administrative proceeding com-
9 menced pursuant to this Act, the court, or agency, in its
10 discretion, may allow the prevailing party, other than the
11 United States, a reasonable attorney's fee and costs, in-
12 cluding expert witness fees, and the United States shall be
13 liable for costs the same as a private individual.

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S.L.C.

101ST CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. DOLE 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, and for other purposes.

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

4 SECTION 1. SHORT TITLE.

5 This Act may be cited as the "Disabilities Rights Act
6 of 1989".

7 SEC. 2. FINDINGS AND PURPOSES.

8 (a) FINDINGS.—Congress finds that—

9 (1) some 43,000,000 Americans have one or
10 more physical or mental disabilities, and this number