

May 25, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Update

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**Introduction:** The ADA was introduced in the Senate (S.933) and the House (H.R. 2273) on May 9, 1989. The Senate sponsor is Senator Harkin with 36 cosponsors. The House sponsor is Rep. Coehlo with 106 cosponsors.

**History:** In April, 1988, the ADA was originally introduced. It was developed by the National Council on Disability, an independent agency with 15 members appointed by President Reagan. The legislation had many cosponsors (including you). A hearing was held in September, 1988, but no action was taken in the 100th Congress.

**Justin Dart,** with the endorsement of Chairman Major Owens of the Subcommittee on Select Education, created the Task Force on the Rights and Empowerment of Individuals with Disabilities in May, 1988. Throughout the remaining months of 1988, he conducted forums in every State, some territories, and Puerto Rico, to collect testimony with examples of how individuals with disabilities have been discriminated against in the areas covered by the legislation. Testimony was received from 9,000 individuals and grassroots support for the legislation was mobilized.

**1988 Republican Platform --** This platform contains language that reflects and endorses the intent of the ADA.

**President Bush:** President Bush endorsed the concept of the ADA during the fall campaign. Currently, Executive Branch agencies are now analyzing the bill. The White House anticipates a final position by September, 1988.

**The Senate:** Senator Harkin anticipates speedy passage. Three hearings were held this month. Senator Hatch urged that the White House be given until June 19, 1989, to react to the ADA. If it does not, he indicated that the Committee on Labor and Human Resources would go forward without its formal input. Senators Harkin and Kennedy agreed to Senator Hatch's suggestion.

**The House:** The ADA has been referred to four Committees -- Education and Labor, Energy and Commerce, Judiciary and Transportation and Public Works. Mr. Michel asked Mr. Coehlo to work with him to develop a bipartisan bill. Mr. Coehlo has agreed. The first meeting between Republicans and Democrats is scheduled for May 31, 1989. Mr. Michel plans to meet with representatives of the disability community and to arrange meetings with the business community.

**The Business Community:** The Chamber of Commerce sponsored a briefing for business organizations on May 5, 1989. It is anticipated that small working groups on different issues will be established to work with Congressional staff. The Chamber and various other business groups are meeting with me today to discuss specific concerns with the ADA -- I will relay the concerns after our meeting.

**The Disability Community:** This community has become very organized since the Justin Dart forums. It is aggressively seeking rapid passage of the bill. It appears, however, that there is need for greater understanding, among the members of the groups both inside and outside of Washington, D.C. as to the specific provisions in the ADA and their implications for the private sector.



May 25, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Major Problems with ADA

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To follow, are the concerns voiced thus far with regard to the Americans with Disabilities Act (ADA). I also believe there are ways to strengthen the Act that will benefit all parties impacted by this legislation.

**Definition of disability** -- The ADA includes a provision which would allow an individual, "regarded as having an impairment" to be considered an individual with a disability. Although such a provision is contained in other legislation that prohibits discrimination on the basis of disability, it would appear to allow very expansive coverage of individuals and classes of individuals, such as those suspected as having AIDS.

**Equal Treatment Standard** -- The ADA requires that equal and as effective means be offered to an individual with a disability so that such an individual may achieve the same result or outcome as other individuals. This appears to be a very rigorous standard that may not allow for a covered entity to offer a comparable treatment/service/opportunity for an individual to achieve a comparable, rather than the same, outcome. It is unclear how this standard would affect, and possibly restrict, efforts to provide reasonable accommodation.

**Coverage of individuals who are alcohol and drug abusers and those with contagious diseases or infections** -- The ADA would prohibit discrimination against such individuals unless they posed a direct threat to the property and safety or health and safety, respectively, of others in the workplace. (This provision is contained only in title I which addresses general prohibitions.) The alcohol and drug provision would seem to potentially conflict with legislation requiring a drug free workplace. The provision pertaining to contagious diseases or infection would extend coverage to individuals with AIDS or individuals regarded as having AIDS.

**Anticipated discrimination** -- The ADA would allow an individual to sue if he/she was discriminated against on the basis of disability or believes he/she is about to be discriminated against on such a basis. It is unclear how a case of anticipated discrimination would be proved or disproved.



**Clarification of language** in the bill has been a concern of the small business community. Such terms as "reasonable accommodation, undue hardship, readily achievable, and good faith effort" are in need of further clarification and definition.

**Access to varied and multiple penalties** -- The ADA would allow an individual who successfully sues because of discrimination on the basis of a disability, to obtain injunctive relief and attorney's fees and and/or compensatory and punitive damages in employment cases and those involving public accommodations and services operated by private entities. An individual could obtain injunctive relief and attorney's fees in cases involving public services (likely to be transportation cases). In cases involving telecommunications relay services an individual could seek a private cause of action (injunctive relief and attorney's fees, and/or compensatory and punitive damages) or administration action (which would cease and desist orders and fines). Clarification of remedies across titles is needed and perhaps a more uniform manner of enforcement mechanisms.

**Allowance of suits in cases of both intentional and unintentional discrimination** -- Because of the phrase "fail to" in the provisions which define discrimination (for example, fail to provide opportunity, access, reasonable accommodation etc.), it is likely that covered entities would be subject to suits involving either kind of discrimination. "fail to" does not require conscious intent, it just requires that an action or the failure to act has the effect of discrimination. Other language in the ADA appears to prohibit practices with an adverse impact, regardless of intent, on individuals with disabilities. It would seem appropriate to limit the right to sue in cases of unintentional discrimination to specific circumstances where covered entities have experience, knowledge, and resources that would allow them to avoid such discrimination.

**Inclusion of section 504 references in ADA** -- Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability by recipients of Federal financial assistance. The ADA includes references in section 504 in its provisions pertaining to transportation that now apply to recipients of Federal financial assistance covered by section 504.

**Burden of proof** -- The ADA appears unclear on where the burden of proof lies in most titles. Such lack of clarity needs to be resolved, especially in cases of unanticipated discrimination.



**Cost:** While it is obvious that there will be tremendous costs associated with the enactment of this landmark legislation -- the costs to society will only increase by not dealing with issues of inaccessibility and discrimination against individuals with disabilities. It has been researched that disabled people want to work but cannot get hired and that inaccessible transportation is an impediment to employability and full integration in society. Currently 67% of people with disabilities are unemployed. The private sector will play a fundamental role in hiring people with disabilities, however a major education mission must coincide with this legislation in understanding its intent and compliance.

A technical assistance section is needed to benefit all parties, (especially the employer or any entity) in understanding the intent of the ADA and effective implementation. Under section 504 and the Fair Housing Amendments of 1988 there is technical assistance available to carry out its mandate of non discrimination practices. **Incorporating a technical assistance section** to educate and assist parties impacted by this legislation would not only assist in its implementation but reduce costs and litigation by clarifying the intent and mandated requirements. Employers and entities required to carry out the mandates of this legislation will need to be educated on meeting reasonable accommodation and accessibility standards. Examples might include the following:

Currently, there exists a Job Accommodation Network (JAN) in Virginia which is an international information network and consulting resource to enable qualified workers with disabilities to be hired and retained. It brings together information from many sources about practical ways of making accommodations for employees and applicants and can supply information on required standards in meeting Federal mandates and assuring compliance.

Also available as a resource for counsel and education under a technical assistance section is the President's Committee on Employment of Persons with Disabilities, the Architectural Transportation Barrier Compliance Board and The National Council on Disability -- all of whom can offer assistance and education to anyone impacted by this legislation. Employers and entities will have concerns and questions which must be addressed after enactment.

You authored a \$35,000 tax exemption section in the tax code for the expenditure in making any facility or public transportation vehicle owned or leased by the taxpayer accessible. This section could be amended to include expenditures towards reasonable accommodation and/or technological adaptation & devices and communication aids. I am certain all impacted parties of this legislation would welcome such an exemption.

Small Businesses and the private sector has shared concerns that this legislation appears punitive with no incentives to assist them in fullfilling compliance. They have asked that a **tax credit** be considered given the expenses that may occur in making reasonable accommodations. If the goal is to prohibit discrimination against individuals with disabilities and provide opportunities for full integration for persons with disabilities -- it appears fair to provide incentives for those who will assist in assuring a barrier free society where opportunities provide greater employability and remove individuals from the dependency rolls and onto the taxpaying rolls.



May 25, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: AIDS and the ADA

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Under the ADA persons with AIDS will be covered. This as you know, will be a highly controversial component of the bill with the very conservative groups. Recent court cases and the President's Committee on AIDS support the incorporation of individuals with AIDS in the definition of disability under Section 504 of the Rehabilitation Act -- in addition to assured anti discrimination statutes to these individuals.

I have prepared the following facts pertaining to AIDS and its relation to the Americans with Disabilities Act.

AIDS is not explicitly mentioned in the bill. Persons are protected under the bill if they are subjected to discrimination because of a physical or mental impairment, perceived impairment, or record of impairment.

In defining these terms, the bill relies upon definitions currently in effect in regulations issued under Section 504 of the Rehabilitation Act of 1973.

The definition of "physical or mental impairment" under the Rehabilitation Act does not delineate AIDS specifically, but recent interpretations and court decisions have concluded that, in particular circumstances, AIDS, AIDS Related Complex, and seropositivity may constitute an impairment.

Coverage of people infected by the AIDS virus does not mean that such individuals can never be excluded under any circumstance.

The inclusion of someone having a condition that meets the definition of a physical or mental impairment is not the end of the inquiry under the ADA.

Inquiries regarding unequal treatment of persons with disabilities, including AIDS, can be viewed as a two step test.

First, is the individual being treated unequally because of a physical or mental impairment, perceived impairment or record of impairment? This determination is based upon the definition of physical or mental impairment drawn upon from Section 504 regulations and upon the facts of the case.

Second, is the unequal treatment permitted under the Act? This will depend upon whether there are legitimate standards or criteria justifying the unequal treatment, whether such standards are necessary and can be shown to be sufficiently connected to the essential components of the job or activity, and whether such criteria or standards have been properly applied to the particular individual with a disability.

With regard to AIDS specifically, if an employer or service provider could show, in particular circumstances, that a person with AIDS poses a substantial risk to the health or safety of co-workers or other participants, it would be permissible to establish qualification standards or selection criteria that screen out such individuals.

However, the employer or service provider would have to have adequate evidence to establish that such standards or criteria were necessary and that they were substantially related to the essential components of the job or activity.

They would also have to demonstrate that the individual in question failed to meet the standards or criteria, e.g., that the individual really did endanger the health and safety of others.

Mere irrational prejudice or unfounded fears could not justify such an exclusion or unequal treatment.

The Justice Department Office of Legal Counsel issued a ruling that Section 504 covers not only those who have AIDS -- but also those who test positive for the HIV virus.

Although the Supreme Court ruling in Arline said 504 covers people with contagious diseases, they left open the question of whether those who are simply infected are also covered. All lower courts considering the issue have held that it does.

The opinion gives strength to guidelines instituted by OPM last year that Federal agencies should not discriminate individuals with AIDS or those who test positive.

While not legally binding, the Justice Department opinion does give plaintiffs a new tool in private discrimination suits.

The President's Committee on AIDS in their findings recommended a strong anti discrimination statute to protect persons with AIDS.



May 25, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Transportation Issues and the ADA

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**Issue:**

Accessible transportation is essential for people with disabilities to take part in community life and employment. The biggest issue for the disability community is lack of accessible mainline transportation and difficulty with the para-transit system.

Para-transit systems are a supplement to mass transit and provides door to door transportation to people who are unable to use public transportation. However, para-transit is not a substitute for accessible mass transportation, and both should be available. Unfortunately, problems with the existing para-transit systems include: (1) the service doesn't run the same hours as public transportation, and usually only between 9-5 or 8-4; (2) you must call 24 hours in advance, which makes unplanned virtually impossible; and (3) the para-transit systems cannot cross town lines, so that people may be left stranded if the system from another town doesn't arrive at the pick-up point.

Regulations issued by the Department of Transportation implementing the Urban Mass Transit Act have been challenged by numerous groups. Problems include (1) the regs exclude people with mental disabilities from eligibility for para-transit services; (2) the regs place an arbitrary 3% cap on the funds systems can use to make their systems accessible; and (3) there is no private rights action when discriminatory action occurs. A third circuit court decision, *Adapt v. Burnley* ruled in favor of people with disabilities which challenged the 3% limitation on funds and requires accessible mainline transportation and accommodable para-transit systems.

**Dole Transportation Record**

You have a strong record in making transportation fully accessible -- consistent with your view on full employability of persons with disabilities.

You authored the Air Carriers Access Act during the 99th Congress to prohibit discrimination against persons with disabilities in air travel. Because of this law air travel was not included in the ADA. Regulations for this Act have been recently released -- problems include safety concerns regarding blind persons requesting to sit near exit row seats -- you have remained supportive of this -- leaving this concern to the regulatory negotiations between blind groups and the DOT.

You wrote President Bush indicating your support for -- and asking that he not appeal -- the Adapt v. Burnley decision to the Supreme Court. The ruling required that buses newly purchased with federal assistance are to be accessible; that transit systems provide both accessible mainline transportation for those who can use buses and adequate para-transit to serve those who cannot; in addition, to challenging the 3% limitation on funds.

You cosponsored last year's ADA which included much broader transportation modifications and requirements. This year's ADA will do the following:

- \* requires all new buses and rail vehicles purchased after 30 days of enactment be accessible and usable to people with disabilities

- \* requires a demonstrated good faith effort to purchase or lease accessible used vehicles.

- \* purchase or lease of remanufactured vehicles must to the maximum extent feasible and within five years of life be made accessible.

operation of para-transit -- it shall be discriminatory for an entity which provides public transportation to fail to provide (refusal was eliminated) such a system as a supplement and comparable to that of the fixed route public transportation system.

operation of a community demand responsive system for the public must be comparable to that available to the public

intercity, rapid, light and commuter rail systems within five years must have at least one car per train accessible.

ket stations shall be accessible within three years, but the Secretary of Transportation may extend the period of compliance for up to 20 years for extraordinary expensive modifications.



May 25, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Fair Housing Act Amendments Summary

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FAIR HOUSING ACT AMENDMENTS: DISABILITY PROVISIONS:

Last September, President Reagan signed the Fair Housing Act Amendments of 1988, which includes major new protections for persons with disabilities. You were a cosponsor.

**Background:**

The original 1968 Fair Housing Act prohibited discrimination on the basis of race, color, sex, or national origin and described what actions would be considered discriminatory in the sale, rental, or financing of a residence. Persons with disabilities were not a "protected class".

The 1988 Amendments add the disabled, and families with children, to the protected classes. The Amendments also set, for the first time, standards of accessibility for the new construction of multifamily housing.

Discrimination against disabled persons would include:

- \* a refusal to permit, at the expense of the disabled person, reasonable modification of existing premises occupied or to be occupied by such person "if such modification may be necessary to afford such person full enjoyment of the premises";
- \* a refusal to sell or rent a dwelling to a person because he or she is disabled; and
- \* a failure to design and construct a multifamily dwelling of four or more units in such a way that the public and common use portions of the dwellings are readily accessible and usable by disabled persons, all doors into and within the premises are wide enough for wheelchairs, and include general adaptive features (light fixtures, etc., in accessible locations, reinforcements in walls that allow installation of grab bars, among others).

These new requirements for multifamily housing will be effective 30 months after enactment, and HUD is authorized to provide state and local governments with technical assistance to ensure that design and construction of new multifamily housing will be consistent with these standards.

While there is no statutory language regarding group homes for the mentally retarded and mentally ill, the House Committee report states its intent that the prohibition against discrimination based on disability apply to zoning decisions and practices. Specifically, it is intended to prohibit application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of disabled individuals to choose where to live,

Disabled persons who believe that they have been discriminated against can file a complaint with HUD who will investigate. If the complaint has merit, HUD will attempt to mediate. Investigations must be completed within 100 days. The individual can also go to Federal court.

#### **Current Status:**

HUD has recently proposed regulations, which are open for public comment. These regs include further specificity as to what constitutes discriminatory actions. I will monitor the regs and report back to you.



May 25, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Overview of ADA Problems

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OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT

**PURPOSES:**

The purpose of the Americans with Disabilities Act of 1989 (ADA) is to "establish a clear and comprehensive prohibition against discrimination on the basis of disability". Currently, such a prohibition applies to the Executive Branch. Federal contractors and recipients of Federal financial assistance through Title V of the Rehabilitation Act of 1973 and to matters related to the sale and rental of housing through the Fair Housing Amendments of 1988. The ADA (S. 933 and H.R. 2273) would extend the prohibition of discrimination on the basis of disability to the private sector and to State and local governments, public accommodations and services provided by private entities, and telecommunications relay systems. It is viewed as an extension of civil rights similar to those now available on the basis of race, national origin and religion through the Civil Rights Act of 1964.

**DEFINITIONS:**

The definition for disability is the same as that contained in section 504 of the Rehabilitation Act and in the Fair Housing Act Amendments of 1988. With respect to an individual, the term disability means -- a physical or mental impairment that substantially limits one or more of the major life activities; a record of such impairment; or being regarded as having such an impairment.

The term "qualified individual with a disability" is defined further in title II pertaining to employment to mean "an individual with a disability who, without reasonable modifications can perform the essential functions of the employment position the individual holds or desires." A similar clarification for "qualified individual with a disability" is contained in title III pertaining to public services provided by State and local governments and is defined to mean -- an individual with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for services.



## **DISCRIMINATION:**

Discrimination is construed differently in titles I through V to accommodate the different foci in each. For example, in title I which addresses general prohibitions against discrimination, discrimination is viewed as denying opportunities, providing an opportunity that is not equal to or as effective as that provided to others, or helping others to perpetuate the same forms of discrimination.

Under title II which relates to employment, discrimination includes the failure to provide reasonable accommodation; to hire someone because he/she needs such accommodation; or the application of qualification standards, tests or eligibility criteria that identify or limit individuals on the basis of disability.

Title III, Public Services, addresses principally transportation systems and facilities associated with such systems, and thus contrues discrimination as the failure to make such systems and facilities accessible to individuals with disabilities, including those in wheelchairs.

Title IV, Public Accommodations and Services operated by Private Entities covers privately operated establishments -- auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels and motels. Discrimination is construed in terms similar to those found in title II and III.

Title V applies to telecommunication relay services offered by private companies, and includes services regulated by states. Discrimination is viewed as the failure to provide access to nonvoice terminal devices to those who cannot use the conventional telephone system.

## **STANDARDS OF COMPLIANCE:**

The ADA provides exemptions and conditions for compliance that vary across titles. For example title I allows for qualification standards that require the current use of alcohol or drugs, by an abuser of such substances, not pose a direct threat to the property and safety of others; or that an individual with a contagious disease or infection, not pose a direct threat to the health and safety of others.

Elected officials and their staff, nonprofit entities that employ less than 15 individuals are exempt from coverage under title II. In addition, an employer is not required to make a reasonable accommodation for an individual on the basis of a disability, if such an employer can demonstrate that it would constitute an undue hardship on the operation of the business. Finally, special standards and criteria that discriminate against an individual on the basis of a disability may be used if an employer can demonstrate that they are necessary and substantially related to the ability of an individual to perform the essential functions of the position.



Under title III no retrofitting is required but all new vehicles and remanufactured vehicles with a life of more than five years must be accessible. In the purchase of used vehicles only a good faith effort must be demonstrated. All new facilities and those subject to alterations must be made accessible. Intercity, rapid, light, and commuter rail systems must be accessible within five years. Key stations must be made accessible within three years, but the Secretary of Transportation may give waivers for up to 20 years for extraordinarily expensive structural alterations.

Under title IV, private entities may be exempted if they can demonstrate that making reasonable accommodations would fundamentally alter the nature of privileges, advantages and accommodations; that providing auxiliary aids constitutes an undue burden; or that removing a barrier and providing an alternative method are not readily achievable. Facilities that are altered, to the maximum extent feasible, must be accessible and new facilities that would be occupied 30 months after enactment must be accessible. New vehicles that carry more than 12 individuals must be accessible.

Under title V dealing with telecommunications relay, compliance by covered entities is required within one year of enactment of the ADA.

#### **REMEDIES AND PROCEDURES:**

Remedies and procedures vary both within and across titles, encompassing the full range from injunctive relief and attorney's fees to compensatory and punitive damages. In addition, title V alone allows for administrative actions as well as individual suits. Finally, the ADA calls for the development of regulations by varying Federal agencies, including the EEOC, the Departments of Transportation and Justice, and the Federal Communications Commission. The variety in remedies and procedures throughout the ADA may cause multiple interpretations in the area of enforcement.

Further, the ADA would not preempt other disability laws that may be applicable to the same extent as the ADA. Thus, an employer could possibly be subject to different suits in different forums under different standards of compliance although the underlying facts giving rise to the disability discrimination claim were the same.



May 23, 1989

TO: Senator Dole  
FROM: Maureen West  
SUBJECT: ADA Bill

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The Americans with Disabilities Act (S.933) was introduced with 35 cosponsors -- the 10 Republican cosponsors are (Durenberger, Jeffords, McCain, Chaffee, Stevens, Cohen, Packwood, Boschwitz, Graham & Heinz).

The Americans With Disabilities Act is an omnibus civil rights statute that prohibits discrimination against individuals with disabilities in private sector employment; all public services; public accommodations; transportation; telecommunications; and State and Local governments.

The ADA extends civil rights protections to people with disabilities beyond section 504 of the Rehabilitation Act of 1973 (the anti-discrimination statute for disabled persons) by requiring the private sector and state and local governments to comply with current civil rights statutes afforded women and minorities.

The Act covers employers engaged in commerce who have 15 or more employees; transportation companies; those engaged in communications and state and local governments.

The Act specifically defines what does constitute discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; failure to make reasonable accommodations; and discriminatory qualifications and performance standards.

The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualification standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1866 for employment -- and other applicable enforcement provisions in Title VIII of the Civil Rights Act of 1964 and Section 505 of the Rehabilitation Act of 1973.



May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Narrative Summary of ADA

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OVERVIEW OF THE CURRENT PROPOSAL:

You were given two drafts of the bill and a final version prior to introduction of the Americans with Disabilities Act (ADA). As you know, the ADA introduced this year by Senator Harkin has been substantively changed from Senator Weicker's bill which was broader in scope.

To follow is a narrative description of the bill incorporating what changes were made. I am preparing a memo delineating concerns and proposed recommendations which I will have for you tomorrow.

THE PURPOSE OF THE ACT IS TO PROVIDE:

- a clear and comprehensive mandate to end discrimination against people with disabilities.
- protection comparable to that afforded to other minorities with enforceable standards addressing discrimination against individuals with disabilities.

KEY DEFINITION:

The term disability is defined to mean, with respect to an individual -- a physical or mental impairment that substantially limits one or more of the major life activities; a record of such impairment; or being regarded as having such an impairment.

This is the same definition contained in section 504 of the Rehabilitation Act and the Fair Housing Amendments of 1988. The inclusion of "substantially limits" in the bill circulated this year eliminates concerns about frivolous claims by tightening up a broad definition.

The definition section also includes definitions for "reasonable accommodation" and "auxiliary aids and services."

Reasonable accommodations include - making facilities accessible and usable, job-restructuring, modified work schedules, reassignments, modification of equipment or devices, appropriate adjustments or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar modifications.



Auxiliary aids and services shall include qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices, and other similar services and actions.

TITLE I GENERAL PROHIBITION AGAINST DISCRIMINATION:

This title identifies broad forms of discrimination on the basis of disability with regard to services, programs, activities, jobs, or other opportunities -- subject to the standards and procedures established in other titles -- it would be discriminatory to:

- deny an opportunity to participate;
- afford a person with a disability an opportunity to participate that is not equal to that afforded to others;
- afford an opportunity that is less effective,
- afford an opportunity to an individual or class of individuals with disabilities that is different or separate than that afforded to others, -- unless it is as effective,
- aiding an entity to perpetuate discrimination;
- denying participation on a board or commission,
- otherwise limiting an individual in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others.

This title further clarifies these conditions by addressing the concepts of "equal opportunity" as an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs. This title also clarifies prohibitions in the use of administrative methods that have the effect of discrimination; that substantially impair the intended objectives of the opportunity for the person with the disability; or that perpetuate discrimination by others. The title addresses discrimination pertaining to relationships and associations of individuals with persons who are disabled.

The title outlines the conditions which do not constitute discrimination. First, it would not be considered discrimination to exclude an individual with a disability, if the exclusion is unrelated to the disability.

Second, in the area of standards and criteria, exclusion of an individual with a disability would be allowed if such standards or criteria were shown to be both necessary and substantially related to an individual's ability to perform or participate.



Third, qualification standards may include 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.

Fourth, qualification standards may include requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others in the workplace or program.

## TITLE II EMPLOYMENT:

This title defines a "qualified individual with a disability" as an individual who, with or without reasonable accommodation, can perform the essential functions of a job -- either held or desired by that individual.

Discrimination under this title includes situations when a covered entity fails to make reasonable accommodations to the known limitations of an individual unless the entity can demonstrate that such an accommodation would constitute an undue hardship (This addresses/alleviates the concern about the bankruptcy standard in the original bill introduced last Congress).

As in title I the entity would have to show that standards and criteria for a job be necessary and substantially related to perform the essential functions of the job.

Exempted entities include those who are -- covered by section 501(c) of the Internal Revenue Code (This includes corporations organized and operated for religious or charitable purposes.), elected officials, Indian tribes, or entities who have less than 15 employees.

This title incorporates by reference the remedies and procedures set out in sections 706, 709, and 710 of title VII of the Civil Right Act of 1964 and section 1981 of the Civil Rights Act of 1866. Such remedies and procedures would be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability. Note that under section 1981, an individual has a private cause of action and may recover for compensatory damages such as pain and suffering. The individual may also pursue a cause of action through EEOC.

The authors of the current draft indicate that all remedies and procedures under these laws may only be used in cases of intentional discrimination (which is more difficult to prove) as distinguished from practices which are unintentional but have a disparate adverse impact on individuals with disabilities. This intended limitation is not directly apparent in the current draft of the ADA.



### TITLE III PUBLIC SERVICES:

In this title, a "qualified individual with a disability" means one who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for services from or participation in a program of a public agency.

Although broadly construed as the above suggests, most of this title addresses public transportation. Such language does not limit coverage to public entities.

This title covers a wide range of actions related to public transportation and reasonable accommodation/accessibility, including:

purchasing or lease of **new** buses and rail vehicles (those purchased after 30 days of enactment must be accessible to and usable by individuals with disabilities );

purchase or lease of **used** vehicles (language includes the standard of -- "demonstrated good faith to acquire accessible vehicles")

purchase or lease of remanufactured vehicles (new provision standard includes -- "to the maximum extent feasible vehicles with five-years of life should be made accessible");

operation of paratransit systems (standard includes -- "it shall be considered discrimination for an entity which provides public transportation to fail to provide ("refusal" was eliminated) such a system as a supplement and comparable to that of the fixed route public transportation system");

operation of a community demand responsive system for the public (standard -- comparable to that available to the general public");

This title also deals with new facilities, alterations to existing facilities, rail systems, and key stations. The standards include

for new facilities -- readily accessible and useable by individuals with disabilities;

for alterations -- after one year of enactment, to the maximum extent feasible, the path to the altered area, bathrooms, telephones, and drinking fountains serving the remodeled area must be accessible;



existing facilities -- when viewed in their entirety are readily accessible and usable;

intercity, rapid, light, and commuter rail systems -- within five years at least one car per train must be accessible;

key stations -- any system shall be accessible within three years, but the Secretary of Transportation may extend the period of compliance for up to 20 years for extraordinary expensive modifications.

Enforcement, include remedies and procedures (limited to injunctive relief and attorney's fees) of section 505 of the Rehabilitation Act. An individual who believes he or she is being or about to be subjected to discrimination on the basis of disability, may access the protections in section 505.

Three key points --

These requirements apply to newly covered entities under ADA and those covered under section 504 of the Rehabilitation Act;

Elimination of "refusal" with "fail to " would appear to make it easier to prove discrimination since this would appear to eliminate the requirement for proving intent.

The "or about to be subjected to discrimination" language under this title of the act could be proved by way of blueprints and other methods in justifying intentional discrimination. This language was appropriately taken from the Fair Housing Act of 1988.

#### TITLE IV PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES:

This title defines several terms broadly --

Commerce -- means travel, trade, traffic, commerce, or communication among the States...

Public accommodation -- means privately operated establishments that are used by the general public... and are potential places of employment, including auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns hotels, motels -- (except for those covered by section 201(b)(1) of the Civil Rights Act of 1964; e.g., those with less than five rooms), terminals, gas stations, sales establishments, professional offices of health care providers, office buildings, personal and public service buildings, private schools, parks and recreational facilities.

Public transportation -- defined as in title III --The title states that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, on the basis of disability.

Discrimination includes --

the imposition of eligibility criteria that identify or limit or tend to identify or limit, an individual with a disability or a class of such individuals from full and equal enjoyment.

the failure to make reasonable accommodations unless it would fundamentally alter the nature of privileges, advantages...

the failure to ensure no exclusion, segregation, or different treatment, unless such would result in an undue burden,

the failure to remove architectural, communication, and transportation barriers, where such removal is readily achievable (if such a standard cannot be achieved, an alternative must be offered to avoid discrimination);

with respect to a facility -- to the maximum extent feasible, the failure to make it or its altered part accessible and useable within one year of enactment (New facilities built 30 months after enactment shall be accessible, unless the covered entity can demonstrate that it is structurally impracticable to do so.);

with respect to transportation -- the failure to provide transportation equivalent to the general public; -- and in the case of vehicles that carry 12 or more individuals -- purchased after 30 months of enactment, that are accessible and usable by individuals with disabilities.

This title also includes a separate section on prohibition of discrimination in public transportation provided by private entities.

This title, like title III, replaces "refuse to" in the first draft with "fail to," in the second draft, and would appear to allow discrimination charges on effects of, as well as intent to, discriminate. Selected enforcement provisions in the Fair Housing Act would apply to this title. They represent a very broad and permissive basis for discrimination charges.



#### TITLE V TELECOMMUNICATION RELAY SERVICES:

This title defines -- Telecommunications Relay Services -- as services that enable simultaneous communication to take place between individuals who use nonvoice terminal devices (like a telecommunication device for the deaf --TDD) and individuals who do not use such devices.

The title states that it shall be considered discrimination for any common carrier (as defined in section 3(h) of the Communications Act of 1934), that offers telephone service to the general public, to refuse to provide, not later than one year after enactment, interstate and intrastate telecommunication relay services.

Enforcement provisions reference provisions in the Fair Housing Act (in the case of charges brought by an individual), and for purposes of administrative enforcement, various provisions in the Communications Act of 1934, access to cease and desist orders, and the requirement that each violation of this title shall be construed as a separate offense.

#### TITLE VI MISC. PROVISIONS:

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

May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Differences in Harkin and Weicker bill

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Substantial changes were made to the Harkin/Kennedy bill from Senator Weicker version of ADA introduced last Congress. Senator Weicker's bill was much broader in its interpretation.

For purposes of clarifying the changes between the American with Disabilities Act (ADA) from last year and the bill Senators Harkin and Kennedy have just introduced, I have termed last years ADA as the original ADA and the Harkin/Kennedy bill as the revised ADA. I have delineated changes according to the titles within the Act.

DEFINITION OF PROTECTED CLASS AND PROVING DISCRIMINATION:

Under sections 504 and 504 of the Rehabilitation Act of 1973 there is a two step process for proving discrimination. First, an individual must prove that he or she is disabled -- having a physical or mental impairment that substantially limits a major life activity. Second there must be evidence that he or she is otherwise qualified.

Section 503 and 504 also include provisions which states that if someone with a contagious disease or someone who is a alcoholic or drug addict poses a direct threat to the health and safety of others, then he or she is not a "qualified disabled person".

The original ADA had a much broader definition of disability than sections 503 and 504 -- whereby there had to be no proof that one had a disability that substantially limits a major life activity. The original ADA did not incorporate provisions regarding persons with contagious diseases and alcoholics and drug abusers. The definition did not include the term "otherwise qualified".

The revised ADA incorporates the section 503 and 504 definition which requires an individual must prove that his/her disability substantially limits a major life activity.



#### EMPLOYMENT:

Sections 503 and 504 generally require covered entities to make reasonable accommodations for disabled applicants and employees unless it would pose an "undue hardship."

The original ADA had a "bankruptcy" provision under which a recipient would have to provide the accommodations unless it would "threaten the existence of the company."

The revised ADA incorporates section 503 and 504 standards of undue hardship.

Both versions have a small provider of 15 employees or less consistent with title VII of the Civil Rights Act of 1964.

#### PUBLIC ACCOMMODATIONS:

The original ADA used the definition of "public accommodation" set out in title II of the Civil Rights Act of 1964 (e.g. restaurants, hotels, theaters, etc.) and required that all existing facilities be retrofitted within 2 to 5 years to assure full accessibility unless the retrofitting would "threaten the existence of" the business (the so called bankruptcy provisions).

The original ADA also required that all new facilities be fully accessible and required public entities provide reasonable accommodations -- unless it would "threaten the existence of" the entity.

The revised ADA reaches beyond the title II provision to include all entities that are open to the public as customers, clients, visitors, or which are potentially places of employment.

With respect to existing facilities, the revised ADA only requires structural changes that are "readily achievable." and providing alternative methods for those which are not.

The revised ADA requires reasonable accommodations (termed "auxiliary aids and services) be made unless it would result in "undue burden" which is the current standard in section 504.

Both versions require that new facilities be made accessible.

#### PUBLIC SERVICES:

The original bill requires that all new facilities be accessible within 2 to 5 years, regardless whether an entity receives federal aid.

The revised ADA extends section 504 to cover all state and local governments their programs and activities.

#### COMMUNICATIONS:

The original ADA required all those engaged in the business of broadcasting to progressively close caption shows. It also establishes an interstate and intrastate relay system for deaf persons. (a deaf person using a TDD can speak to an operator who can relay a message to an individual who has no TDD).

The revised ADA requires only a TDD relay system and deletes the captioning provisions.

#### TRANSPORTATION:

The original ADA required 50% of all a public authority's fleet be accessible within 7 years (which includes retrofitting) in addition to all making all new buses accessible

The revised ADA requires that all buses on a fixed route be accessible with no retrofitting required. It also permits a transit authority to purchase used buses that are not accessible if the transit authority has demonstrated a good faith effort to purchase a used bus that is accessible.

Both versions require a paratransit system be made available for those disabled individuals who cannot use the mainline system and that all new facilities be accessible.

The revised ADA has a separate standard for communities that have a demand responsive system ( advanced reservation transportation) for the general public. Under this standard, all new buses need not be accessible if the transit authority can demonstrate that it can meet the needs of disabled people with current accessible buses.

The original ADA required that 50% of existing rail cars be made accessible within 7 years (requiring extensive retrofitting).



The revised ADA requires that at least one rail car be made accessible within 5 years and that only key stations be made accessible within 20 years.

The original ADA required all stations be made accessible within 10 years.

The original ADA covered air travel and required accessible taxis.

The revised ADA does not cover air travel and does not require accessible taxicabs but prohibits a driver from refusing to pick up a disabled person.

#### ENFORCEMENT:

The original ADA included an enforcement provision (injunctive and monetary damages) that applied to the entire Act.

The revised ADA has a separate enforcement section for each title. Under employment, the revised ADA incorporates by reference the enforcement provisions in title VII of the Civil Rights Act of 1964. For acts of intentional discrimination, it applies section 1981 of the Civil Rights Act of 1968.

The revised ADA incorporates by reference the provisions of section 505 of the Rehabilitation Act (attorney's fees) to public entities. Under public accommodations and communications, the revised ADA incorporates the enforcement provisions in the Fair Housing Act of 1988.

Both versions incorporate attorneys' fees provisions.

May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Update

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Senator Hatch announced at the last day of hearings on the Americans with Disabilities Act last week that he would like to work in a bipartisan effort to assure a compromise prior to marking up this legislation -- scheduled for early July. He has invited the Administration to testify on the bill the week of June 19. They have not to date commented on the ADA bill

Because of the strong grass roots support for this bill and the Administration's previous statements in support of the Americans with Disabilities Act, Senator Hatch will refrain from introducing his bill and work towards further compromise.

I have attached a copy of his statement and will keep you informed of the proposed June hearing.



May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Sen. Hatch's ADA bill

---

I have examined Senator Hatch's alternative bill to the Americans with Disabilities Act and consulted with legal staff of the American Law Division at Congressional Research.

Senator Hatch's bill differs from the ADA in five areas:

First, the small business provider exemption has been raised to 25 in his bill from 15 in the ADA bill. It is likely that this exemption will be an issue given the accommodations that small businesses must make to comply with mandated standards of non discrimination. -- A probable negotiation tactic might be a phase in of this exemption number given the accommodations that must be made in assuring compliance under this Act.

Second, his bill will tighten the remedies available under each title to parallel current civil rights statutes by deleting section 1981 remedies currently in Title II of the ADA. Under Title II (the Employment Section) of the ADA remedies would extend section 1981 of the Civil Rights Act of 1866 to include punitive damages and attorney's fees.

Third, he tightens up the public accommodation definition consistent with title II of the Civil Rights Act to include entities covered under this title which include restaurants, entertainment and lodging entities. The ADA will go beyond title II entities to those aforementioned. However, if we are going to assure a barrier free society -- entities must go beyond restaurants, theaters and hotels -- this is another area for negotiation.

Fourth, the Hatch bill does not include language for a telecommunications relay system for the deaf and instead requires that networks progressively close caption their broadcasts. The relay services are key to full integration of deaf people -- the deaf community would prefer a relay system given networks are currently working at close captioning programs.

Fifth, the Hatch bill does not cover private transportation and the ADA stipulates that private transportation (which is a necessity given that all mainline transportation is not accessible) must comply with anti-discrimination statutes in making accessible transportation. This would include making buses such as Greyhound accessible and local transportation services accessible which are not federally funded.

I believe Senator Hatch has some valid concerns, however, his bill is limiting in the areas of public accommodations and transportation. Your past accomplishments and views on accessible transportation to assure employability for people with disabilities is inconsistent with the language of Senator Hatch's bill.

You are suited well for a compromise between the two bills. I would not recommend cosponsoring Senator Hatch's bill at this time. Senator Hatch would like to work at a compromise instead of introducing his own version.

Do you want to cosponsor Senator Hatch's bill?

Yes \_\_\_\_\_ No \_\_\_\_\_



May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Update

---

Senator Hatch announced at the last day of hearings on the Americans with Disabilities Act last week that he would like to work in a bipartisan effort to assure a compromise prior to marking up this legislation -- scheduled for early July. He has invited the Administration to testify on the bill the week of June 19. They have not to date commented on the ADA bill.

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## Statement of Sen. Hatch

May 16, 1989

Mr. Chairman, I want to raise with you the timing of the Committee's consideration of S.933. I think it is clear that we both want to proceed in a bipartisan fashion. Senator Dole came before us last week and said the same thing. The Administration wants a bipartisan approach.

In my view, it is imperative that this Committee hear testimony from the Administration on this bill.

We need to hear from the FCC on the telephone relay system provision. We need to hear from the Department of Transportation about the transportation provisions of the bill. We need the



analysis of the Department of Labor and the EEOC on the employment provisions. The Department of Justice has to give us the benefit of its experience over 25 years of civil rights enforcement in analyzing not only the substance of the bill but its detailed enforcement scheme.

Now, Mr. Chairman, the Executive Branch has a great deal of expertise in this area. I have told the Administration they must move expeditiously. But let us be fair. This is a new Administration. This is a complex bill with enormous ramifications. It is much like the 1964 Civil Rights Act in its scope, and in some cases even broader. I support the underlying concept of the bill, and we've worked together to try to reach a

consensus; I hope we continue to do so. President Bush supports the concept of the bill, and you and others have frequently quoted the President on this. He is sincere. He is proceeding in good faith, but the Administration has asked for time to review this and comment in depth.

I don't believe we should wait indefinitely for the Administration, and I've conveyed that to them. I propose the following: that you schedule a hearing in the Committee during the week of June 19 and extend an invitation to testify to the relevant federal agencies this week. This is less time than they requested, but in my view, that gives them fair notice, a realistic deadline to work toward, and a sharpened focus. If they still are not



ready to give us their definitive view, then we should resume the discussions that we were having when you decided to wait for the Administration rather than continuing the dialog with me last month--and I had no quarrel with that. If they have a position to give us during the week of June 19, then we can work together with the President to come up with a common ground or move ahead on our own. In either case, we can mark up the bill in July, take one mark-up session or two mark-up sessions back-to-back, and have it ready for floor action by the August recess, if not earlier. That is ample time to pass it this year. I pledge that I will not seek delay in Committee, and I will seek only to have a fair and expeditious consideration of any unresolved

differences, if we can agree to this schedule.

If you can quote George Bush about the bill, if the President can act in a bipartisan way on so many issues--the budget, contra aid--then you can take him at his word and give him some more time. I might add that in response to Congressman Coelho's request to me in the hearing last week and in a personal call to me, in order to prevent unnecessary fragmentation and division, I have refrained thus far from introducing my own bill. I've had some Senators express interest in it, but I've held off. On top of that, I have just publicly delivered an ultimatum to my own President, that if they can't give us help



five weeks to present his detailed  
position? Can we agree to the timetable I  
mentioned?

May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Sen. Hatch's ADA bill

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I have examined Senator Hatch's alternative bill to the Americans with Disabilities Act and consulted with legal staff of the American Law Division at Congressional Research.

Senator Hatch's bill differs from the ADA in five areas:

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I believe Senator Hatch has some valid concerns, however, his bill is limiting in the areas of public accommodations and transportation. Your past accomplishments and views on accessible transportation to assure employability for people with disabilities is inconsistent with the language of Senator Hatch's bill.

You are suited well for a compromise between the two bills. I would not recommend cosponsoring Senator Hatch's bill at this time. Senator Hatch would like to work at a compromise instead of introducing his own version.

Do you want to cosponsor Senator Hatch's bill?

Yes \_\_\_\_\_ No \_\_\_\_\_

May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Narrative Summary of ADA

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OVERVIEW OF THE CURRENT PROPOSAL:

You were given two drafts of the bill and a final version prior to introduction of the Americans with Disabilities Act (ADA). As you know, the ADA introduced this year by Senator Harkin has been substantively changed from Senator Weicker's bill which was broader in scope.

To follow is a narrative description of the bill incorporating what changes were made. I am preparing a memo delineating concerns and proposed recommendations which I will have for you tomorrow.

THE PURPOSE OF THE ACT IS TO PROVIDE:

- a clear and comprehensive mandate to end discrimination against people with disabilities.
- protection comparable to that afforded to other minorities with enforceable standards addressing discrimination against individuals with disabilities.

KEY DEFINITION:

The term disability is defined to mean, with respect to an individual -- a physical or mental impairment that substantially limits one or more of the major life activities; a record of such impairment; or being regarded as having such an impairment.

This is the same definition contained in section 504 of the Rehabilitation Act and the Fair Housing Amendments of 1988. The inclusion of "substantially limits" in the bill circulated this year eliminates concerns about frivolous claims by tightening up a broad definition.

The definition section also includes definitions for "reasonable accommodation" and "auxiliary aids and services."

Reasonable accommodations include - making facilities accessible and usable, job-restructuring, modified work schedules, reassignments, modification of equipment or devices, appropriate adjustments or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar modifications.



Auxiliary aids and services shall include qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices, and other similar services and actions.

TITLE I GENERAL PROHIBITION AGAINST DISCRIMINATION:

This title identifies broad forms of discrimination on the basis of disability with regard to services, programs, activities, jobs, or other opportunities -- subject to the standards and procedures established in other titles -- it would be discriminatory to:

- deny an opportunity to participate;
- afford a person with a disability an opportunity to participate that is not equal to that afforded to others;
- afford an opportunity that is less effective,
- afford an opportunity to an individual or class of individuals with disabilities that is different or separate than that afforded to others, -- unless it is as effective,
- aiding an entity to perpetuate discrimination;
- denying participation on a board or commission,
- otherwise limiting an individual in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others.

This title further clarifies these conditions by addressing the concepts of "equal opportunity" as an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs. This title also clarifies prohibitions in the use of administrative methods that have the effect of discrimination; that substantially impair the intended objectives of the opportunity for the person with the disability; or that perpetuate discrimination by others. The title addresses discrimination pertaining to relationships and associations of individuals with persons who are disabled.

The title outlines the conditions which do not constitute discrimination. First, it would not be considered discrimination to exclude an individual with a disability, if the exclusion is unrelated to the disability.

Second, in the area of standards and criteria, exclusion of an individual with a disability would be allowed if such standards or criteria were shown to be both necessary and substantially related to an individual's ability to perform or participate.



Third, qualification standards may include 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.

Fourth, qualification standards may include requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others in the workplace or program.

## TITLE II EMPLOYMENT:

This title defines a "qualified individual with a disability" as an individual who, with or without reasonable accommodation, can perform the essential functions of a job -- either held or desired by that individual.

Discrimination under this title includes situations when a covered entity fails to make reasonable accommodations to the known limitations of an individual unless the entity can demonstrate that such an accommodation would constitute an undue hardship (This addresses/alleviates the concern about the bankruptcy standard in the original bill introduced last Congress).

As in title I the entity would have to show that standards and criteria for a job be necessary and substantially related to perform the essential functions of the job.

Exempted entities include those who are -- covered by section 501(c) of the Internal Revenue Code (This includes corporations organized and operated for religious or charitable purposes.), elected officials, Indian tribes, or entities who have less than 15 employees.

This title incorporates by reference the remedies and procedures set out in sections 706, 709, and 710 of title VII of the Civil Right Act of 1964 and section 1981 of the Civil Rights Act of 1866. Such remedies and procedures would be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability. Note that under section 1981, an individual has a private cause of action and may recover for compensatory damages such as pain and suffering. The individual may also pursue a cause of action through EEOC.

The authors of the current draft indicate that all remedies and procedures under these laws may only be used in cases of intentional discrimination (which is more difficult to prove) as distinguished from practices which are unintentional but have a disparate adverse impact on individuals with disabilities. This intended limitation is not directly apparent in the current draft of the ADA.



### TITLE III PUBLIC SERVICES:

In this title, a "qualified individual with a disability" means one who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for services from or participation in a program of a public agency.

Although broadly construed as the above suggests, most of this title addresses public transportation. Such language does not limit coverage to public entities.

This title covers a wide range of actions related to public transportation and reasonable accommodation/accessibility, including:

- purchasing or lease of new buses and rail vehicles (those purchased after 30 days of enactment must be accessible to and usable by individuals with disabilities );

- purchase or lease of used vehicles (language includes the standard of -- "demonstrated good faith to acquire accessible vehicles")

- purchase or lease of remanufactured vehicles (new provision standard includes -- "to the maximum extent feasible vehicles with five-years of life should be made accessible");

- operation of paratransit systems (standard includes -- "it shall be considered discrimination for an entity which provides public transportation to fail to provide ("refusal" was eliminated) such a system as a supplement and comparable to that of the fixed route public transportation system");

- operation of a community demand responsive system for the public (standard -- comparable to that available to the general public");

This title also deals with new facilities, alterations to existing facilities, rail systems, and key stations. The standards include

- for new facilities -- readily accessible and useable by individuals with disabilities;

- for alterations -- after one year of enactment, to the maximum extent feasible, the path to the altered area, bathrooms, telephones, and drinking fountains serving the remodeled area must be accessible;



existing facilities -- when viewed in their entirety are readily accessible and usable;

intercity, rapid, light, and commuter rail systems -- within five years at least one car per train must be accessible;

key stations -- any system shall be accessible within three years, but the Secretary of Transportation may extend the period of compliance for up to 20 years for extraordinary expensive modifications.

Enforcement, include remedies and procedures (limited to injunctive relief and attorney's fees) of section 505 of the Rehabilitation Act. An individual who believes he or she is being or about to be subjected to discrimination on the basis of disability, may access the protections in section 505.

Three key points --

These requirements apply to newly covered entities under ADA and those covered under section 504 of the Rehabilitation Act;

Elimination of "refusal" with "fail to " would appear to make it easier to prove discrimination since this would appear to eliminate the requirement for proving intent.

The "or about to be subjected to discrimination" language under this title of the act could be proved by way of blueprints and other methods in justifying intentional discrimination. This language was appropriately taken from the Fair Housing Act of 1988.

#### TITLE IV PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES:

This title defines several terms broadly --

Commerce -- means travel, trade, traffic, commerce, or communication among the States...

Public accommodation -- means privately operated establishments that are used by the general public... and are potential places of employment, including auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns hotels, motels -- (except for those covered by section 201(b)(1) of the Civil Rights Act of 1964; e.g., those with less than five rooms), terminals, gas stations, sales establishments, professional offices of health care providers, office buildings, personal and public service buildings, private schools, parks and recreational facilities.



Public transportation -- defined as in title III --The title states that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, on the basis of disability.

Discrimination includes --

the imposition of eligibility criteria that identify or limit or tend to identify or limit, an individual with a disability or a class of such individuals from full and equal enjoyment.

the failure to make reasonable accommodations unless it would fundamentally alter the nature of privileges, advantages...

the failure to ensure no exclusion, segregation, or different treatment, unless such would result in an undue burden,

the failure to remove architectural, communication, and transportation barriers, where such removal is readily achievable (if such a standard cannot be achieved, an alternative must be offered to avoid discrimination);

with respect to a facility -- to the maximum extent feasible, the failure to make it or its altered part accessible and useable within one year of enactment (New facilities built 30 months after enactment shall be accessible, unless the covered entity can demonstrate that it is structurally impracticable to do so.);

with respect to transportation -- the failure to provide transportation equivalent to the general public; -- and in the case of vehicles that carry 12 or more individuals -- purchased after 30 months of enactment, that are accessible and usable by individuals with disabilities.

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This title defines -- Telecommunications Relay Services -- as services that enable simultaneous communication to take place between individuals who use nonvoice terminal devices (like a telecommunication device for the deaf --TDD) and individuals who do not use such devices.

The title states that it shall be considered discrimination for any common carrier (as defined in section 3(h) of the Communications Act of 1934), that offers telephone service to the general public, to refuse to provide, not later than one year after enactment, interstate and intrastate telecommunication relay services.

Enforcement provisions reference provisions in the Fair Housing Act (in the case of charges brought by an individual), and for purposes of administrative enforcement, various provisions in the Communications Act of 1934, access to cease and desist orders, and the requirement that each violation of this title shall be construed as a separate offense.

#### TITLE VI MISC. PROVISIONS:

This title includes provisions to stipulate the intent of current civil rights statutes in assuring that their scope not be reduced -- this pertains specifically to section 504 of the Rehabilitation Act of 1973.

It also requires minimum guidelines on accessibility be issued by the Architectural Transportation Barriers Compliance Board not later than 6 months after enactment.



RECOMMENDATIONS:

The most likely concerns, reservations, and bases for changing the proposed legislation are the following.

First, a major concern may be the use of multiple remedies and procedures within titles with no preemption, and the use of different remedies and procedures across titles. A possible solution would be to adopt the remedies and procedures of title V of the Rehabilitation Act for all titles or at least as applicable to private sector employment. (It should be noted that the procedures and remedies of sections 503 and 504 of the Rehabilitation Act are different; e.g., section 503 has no private cause of action, whereas section 504 does, and allowable damages also differ under these two sections.) Further, in provisions pertaining to compensatory damages, the conditions, limits, and nature of such damages should be clearly defined in the ADA.\*

The second concern may be making the standard for discrimination "failure," rather than "refusal." If the intent of the legislation is to encourage access for individuals with disabilities, the public and private sector must first be educated. The use of "refusal" as the standard, requires proving conscious intent to discriminate not just demonstrating that an action has the effect of discrimination. The "failure" standard could be applied later after the public and private sectors have had experience with and have been educated about the prohibition of discrimination on the basis of disability.

The third concern is that the draft bill speaks in terms of absolute equality in both process and results. Since a disability may have a varying impact on an individual's ability to perform or participate, even with reasonable accommodation, a standard such as similarity or comparability may be more appropriate.

Two provisions warrant clarification. First, what is the practical effect of an individual charging discrimination when that individual believes he/she is about to be discriminated against on the basis of disability? What does this concept mean? How would it be proved or disproved?

Elimination of punitive and compensatory damages altogether may be appropriate, bringing the remedy provisions more in line with other labor statutes.

Second, what is the effect of including the section 504 Rehabilitation Act under the coverage of title III of the ADA?

One element of the employment title may warrant a phase-in approach. It may be appropriate, for the first three years following enactment, to have the employment provisions apply to employers with 50 or more employees, and then after that period to have it apply to employers with 35 or more employees. (These are the current restrictions in the Family Leave legislation.) As mentioned previously, in the ADA draft an exemption to coverage applies to employers with less than 15 employees. This should at least be the case until employers can prepare for compliance and reasonable accommodation.

Finally, the provisions pertaining to transportation and public transportation, as drafted, are confusing in terms of their varied placements, varying discrimination standards, and applications of differing remedies and procedures, and should be redrafted to be more clear, consolidated, and consistent.



May 23, 1989

TO: Senator Dole  
FROM: Maureen West  
SUBJECT: ADA Bill

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The Americans with Disabilities Act (S.933) was introduced with 35 cosponsors -- the 10 Republican cosponsors are (Durenberger, Jeffords, McCain, Chaffee, Stevens, Cohen, Packwood, Boschwitz, Graham & Heinz).

The Americans With Disabilities Act is an omnibus civil rights statute that prohibits discrimination against individuals with disabilities in private sector employment; all public services; public accommodations; transportation; telecommunications; and State and Local governments.

The ADA extends civil rights protections to people with disabilities beyond section 504 of the Rehabilitation Act of 1973 (the anti-discrimination statute for disabled persons) by requiring the private sector and state and local governments to comply with current civil rights statutes afforded women and minorities.

The Act covers employers engaged in commerce who have 15 or more employees; transportation companies; those engaged in communications and state and local governments.

The Act specifically defines what does constitute discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; failure to make reasonable accommodations; and discriminatory qualifications and performance standards.

The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualification standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1866 for employment -- and other applicable enforcement provisions in Title VIII of the Civil Rights Act of 1964 and Section 505 of the Rehabilitation Act of 1973.

May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Update

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May 23, 1989

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SUBJECT: Sen. Hatch's ADA bill

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I have examined Senator Hatch's alternative bill to the Americans with Disabilities Act and consulted with legal staff of the American Law Division at Congressional Research.

Senator Hatch's bill differs from the ADA in five areas:

First, the small business provider exemption has been raised to 25 in his bill from 15 in the ADA bill. It is likely that this exemption will be an issue given the accommodations that small businesses must make to comply with mandated standards of non discrimination. -- A probable negotiation tactic might be a phase in of this exemption number given the accommodations that must be made in assuring compliance under this Act.

Second, his bill will tighten the remedies available under each title to parallel current civil rights statutes by deleting section 1981 remedies currently in Title II of the ADA. Under Title II (the Employment Section) of the ADA remedies would extend section 1981 of the Civil Rights Act of 1866 to include punitive damages and attorney's fees.

Third, he tightens up the public accommodation definition consistent with title II of the Civil Rights Act to include entities covered under this title which include restaurants, entertainment and lodging entities. The ADA will go beyond title II entities to those aforementioned. However, if we are going to assure a barrier free society -- entities must go beyond restaurants, theaters and hotels -- this is another area for negotiation.

Fourth, the Hatch bill does not include language for a telecommunications relay system for the deaf and instead requires that networks progressively close caption their broadcasts. The relay services are key to full integration of deaf people -- the deaf community would prefer a relay system given networks are currently working at close captioning programs.

Fifth, the Hatch bill does not cover private transportation and the ADA stipulates that private transportation (which is a necessity given that all mainline transportation is not accessible) must comply with anti-discrimination statutes in making accessible transportation. This would include making buses such as Greyhound accessible and local transportation services accessible which are not federally funded.

I believe Senator Hatch has some valid concerns, however, his bill is limiting in the areas of public accommodations and transportation. Your past accomplishments and views on accessible transportation to assure employability for people with disabilities is inconsistent with the language of Senator Hatch's bill.

You are suited well for a compromise between the two bills. I would not recommend cosponsoring Senator Hatch's bill at this time. Senator Hatch would like to work at a compromise instead of introducing his own version.

Do you want to cosponsor Senator Hatch's bill?

Yes \_\_\_\_\_ No \_\_\_\_\_



May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Update

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Senator Hatch announced at the last day of hearings on the Americans with Disabilities Act last week that he would like to work in a bipartisan effort to assure a compromise prior to marking up this legislation -- scheduled for early July. He has invited the Administration to testify on the bill the week of June 19. They have not to date commented on the ADA bill.

Because of the strong grass roots support for this bill and the Administration's previous statements in support of the Americans with Disabilities Act, Senator Hatch will refrain from introducing his bill and work towards further compromise.

I have attached a copy of his statement and will keep you informed of the proposed June hearing.

Statement of Sen. Hatch

May 16, 1989

Mr. Chairman, I want to raise with you the timing of the Committee's consideration of S.933. I think it is clear that we both want to proceed in a bipartisan fashion. Senator Dole came before us last week and said the same thing. The Administration wants a bipartisan approach.

In my view, it is imperative that this Committee hear testimony from the Administration on this bill.

We need to hear from the FCC on the telephone relay system provision. We need to hear from the Department of Transportation about the transportation provisions of the bill. We need the



analysis of the Department of Labor and the EEOC on the employment provisions. The Department of Justice has to give us the benefit of its experience over 25 years of civil rights enforcement in analyzing not only the substance of the bill but its detailed enforcement scheme.

Now, Mr. Chairman, the Executive Branch has a great deal of expertise in this area. I have told the Administration they must move expeditiously. But let us be fair. This is a new Administration. This is a complex bill with enormous ramifications. It is much like the 1964 Civil Rights Act in its scope, and in some cases even broader. I support the underlying concept of the bill, and we've worked together to try to reach a

consensus; I hope we continue to do so. President Bush supports the concept of the bill, and you and others have frequently quoted the President on this. He is sincere. He is proceeding in good faith, but the Administration has asked for time to review this and comment in depth.

I don't believe we should wait indefinitely for the Administration, and I've conveyed that to them. I propose the following: that you schedule a hearing in the Committee during the week of June 19 and extend an invitation to testify to the relevant federal agencies this week. This is less time than they requested, but in my view, that gives them fair notice, a realistic deadline to work toward, and a sharpened focus. If they still are not



ready to give us their definitive view, then we should resume the discussions that we were having when you decided to wait for the Administration rather than continuing the dialog with me last month--and I had no quarrel with that. If they have a position to give us during the week of June 19, then we can work together with the President to come up with a common ground or move ahead on our own. In either case, we can mark up the bill in July, take one mark-up session or two mark-up sessions back-to-back, and have it ready for floor action by the August recess, if not earlier. That is ample time to pass it this year. I pledge that I will not seek delay in Committee, and I will seek only to have a fair and expeditious consideration of any unresolved

differences, if we can agree to this schedule.

If you can quote George Bush about the bill, if the President can act in a bipartisan way on so many issues--the budget, contra aid--then you can take him at his word and give him some more time. I might add that in response to Congressman Coelho's request to me in the hearing last week and in a personal call to me, in order to prevent unnecessary fragmentation and division, I have refrained thus far from introducing my own bill. I've had some Senators express interest in it, but I've held off. On top of that, I have just publicly delivered an ultimatum to my own President, that if they can't give us help



by the week of June 19, I'll move ahead without them.

Finally, let me say this. If we can get together on a bill, liberals and conservatives, Republicans and Democrats, and the Administration, that broad consensus will be just as important to the success of this entire effort as the language of the bill itself. This is because there is prejudice out there and there will be resistance to any bill in some portions of our society. A united front, across the spectrum I just mentioned, in support of the bill, will go a long way toward gaining acceptance for the principles of the bill and head off some potential compliance problems. Isn't that worth giving the President another

five weeks to present his detailed  
position? Can we agree to the timetable I  
mentioned?



May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Sen. Hatch's ADA bill

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I have examined Senator Hatch's alternative bill to the Americans with Disabilities Act and consulted with legal staff of the American Law Division at Congressional Research.

Senator Hatch's bill differs from the ADA in five areas:

First, the small business provider exemption has been raised to 25 in his bill from 15 in the ADA bill. It is likely that this exemption will be an issue given the accommodations that small businesses must make to comply with mandated standards of non discrimination. -- A probable negotiation tactic might be a phase in of this exemption number given the accommodations that must be made in assuring compliance under this Act.

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Do you want to cosponsor Senator Hatch's bill?

Yes \_\_\_\_\_ No \_\_\_\_\_



May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Narrative Summary of ADA

---

OVERVIEW OF THE CURRENT PROPOSAL:

You were given two drafts of the bill and a final version prior to introduction of the Americans with Disabilities Act (ADA). As you know, the ADA introduced this year by Senator Harkin has been substantively changed from Senator Weicker's bill which was broader in scope.

To follow is a narrative description of the bill incorporating what changes were made. I am preparing a memo delineating concerns and proposed recommendations which I will have for you tomorrow.

THE PURPOSE OF THE ACT IS TO PROVIDE:

- a clear and comprehensive mandate to end discrimination against people with disabilities.
- protection comparable to that afforded to other minorities with enforceable standards addressing discrimination against individuals with disabilities.

KEY DEFINITION:

The term disability is defined to mean, with respect to an individual -- a physical or mental impairment that substantially limits one or more of the major life activities; a record of such impairment; or being regarded as having such an impairment.

This is the same definition contained in section 504 of the Rehabilitation Act and the Fair Housing Amendments of 1988. The inclusion of "substantially limits" in the bill circulated this year eliminates concerns about frivolous claims by tightening up a broad definition.

The definition section also includes definitions for "reasonable accommodation" and "auxiliary aids and services."

Reasonable accommodations include - making facilities accessible and usable, job-restructuring, modified work schedules, reassignments, modification of equipment or devices, appropriate adjustments or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar modifications.



Auxiliary aids and services shall include qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices, and other similar services and actions.

TITLE I GENERAL PROHIBITION AGAINST DISCRIMINATION:

This title identifies broad forms of discrimination on the basis of disability with regard to services, programs, activities, jobs, or other opportunities -- subject to the standards and procedures established in other titles -- it would be discriminatory to:

- deny an opportunity to participate;
- afford a person with a disability an opportunity to participate that is not equal to that afforded to others;
- afford an opportunity that is less effective,
- afford an opportunity to an individual or class of individuals with disabilities that is different or separate than that afforded to others, -- unless it is as effective,
- aiding an entity to perpetuate discrimination;
- denying participation on a board or commission,
- otherwise limiting an individual in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others.

This title further clarifies these conditions by addressing the concepts of "equal opportunity" as an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs. This title also clarifies prohibitions in the use of administrative methods that have the effect of discrimination; that substantially impair the intended objectives of the opportunity for the person with the disability; or that perpetuate discrimination by others. The title addresses discrimination pertaining to relationships and associations of individuals with persons who are disabled.

The title outlines the conditions which do not constitute discrimination. First, it would not be considered discrimination to exclude an individual with a disability, if the exclusion is unrelated to the disability.

Second, in the area of standards and criteria, exclusion of an individual with a disability would be allowed if such standards or criteria were shown to be both necessary and substantially related to an individual's ability to perform or participate.



Third, qualification standards may include 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.

Fourth, qualification standards may include requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others in the workplace or program.

## TITLE II EMPLOYMENT:

This title defines a "qualified individual with a disability" as an individual who, with or without reasonable accommodation, can perform the essential functions of a job -- either held or desired by that individual.

Discrimination under this title includes situations when a covered entity fails to make reasonable accommodations to the known limitations of an individual unless the entity can demonstrate that such an accommodation would constitute an undue hardship (This addresses/alleviates the concern about the bankruptcy standard in the original bill introduced last Congress).

As in title I the entity would have to show that standards and criteria for a job be necessary and substantially related to perform the essential functions of the job.

Exempted entities include those who are -- covered by section 501(c) of the Internal Revenue Code (This includes corporations organized and operated for religious or charitable purposes.), elected officials, Indian tribes, or entities who have less than 15 employees.

This title incorporates by reference the remedies and procedures set out in sections 706, 709, and 710 of title VII of the Civil Right Act of 1964 and section 1981 of the Civil Rights Act of 1866. Such remedies and procedures would be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability. Note that under section 1981, an individual has a private cause of action and may recover for compensatory damages such as pain and suffering. The individual may also pursue a cause of action through EEOC.

The authors of the current draft indicate that all remedies and procedures under these laws may only be used in cases of intentional discrimination (which is more difficult to prove) as distinguished from practices which are unintentional but have a disparate adverse impact on individuals with disabilities. This intended limitation is not directly apparent in the current draft of the ADA.



### TITLE III PUBLIC SERVICES:

In this title, a "qualified individual with a disability" means one who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for services from or participation in a program of a public agency.

Although broadly construed as the above suggests, most of this title addresses public transportation. Such language does not limit coverage to public entities.

This title covers a wide range of actions related to public transportation and reasonable accommodation/accessibility, including:

- purchasing or lease of new buses and rail vehicles (those purchased after 30 days of enactment must be accessible to and usable by individuals with disabilities );

- purchase or lease of used vehicles (language includes the standard of -- "demonstrated good faith to acquire accessible vehicles")

- purchase or lease of remanufactured vehicles (new provision standard includes -- "to the maximum extent feasible vehicles with five-years of life should be made accessible");

- operation of paratransit systems (standard includes -- "it shall be considered discrimination for an entity which provides public transportation to fail to provide ("refusal" was eliminated) such a system as a supplement and comparable to that of the fixed route public transportation system");

- operation of a community demand responsive system for the public (standard -- comparable to that available to the general public");

This title also deals with new facilities, alterations to existing facilities, rail systems, and key stations. The standards include

- for new facilities -- readily accessible and useable by individuals with disabilities;

- for alterations -- after one year of enactment, to the maximum extent feasible, the path to the altered area, bathrooms, telephones, and drinking fountains serving the remodeled area must be accessible;



existing facilities -- when viewed in their entirety are readily accessible and usable;

intercity, rapid, light, and commuter rail systems -- within five years at least one car per train must be accessible;

key stations -- any system shall be accessible within three years, but the Secretary of Transportation may extend the period of compliance for up to 20 years for extraordinary expensive modifications.

Enforcement, include remedies and procedures (limited to injunctive relief and attorney's fees) of section 505 of the Rehabilitation Act. An individual who believes he or she is being or about to be subjected to discrimination on the basis of disability, may access the protections in section 505.

Three key points --

These requirements apply to newly covered entities under ADA and those covered under section 504 of the Rehabilitation Act;

Elimination of "refusal" with "fail to " would appear to make it easier to prove discrimination since this would appear to eliminate the requirement for proving intent.

The "or about to be subjected to discrimination" language under this title of the act could be proved by way of blueprints and other methods in justifying intentional discrimination. This language was appropriately taken from the Fair Housing Act of 1988.

#### TITLE IV PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES:

This title defines several terms broadly --

Commerce -- means travel, trade, traffic, commerce, or communication among the States...

Public accommodation -- means privately operated establishments that are used by the general public... and are potential places of employment, including auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns hotels, motels -- (except for those covered by section 201(b)(1) of the Civil Rights Act of 1964; e.g., those with less than five rooms), terminals, gas stations, sales establishments, professional offices of health care providers, office buildings, personal and public service buildings, private schools, parks and recreational facilities.



Public transportation -- defined as in title III --The title states that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, on the basis of disability.

Discrimination includes --

the imposition of eligibility criteria that identify or limit or tend to identify or limit, an individual with a disability or a class of such individuals from full and equal enjoyment.

the failure to make reasonable accommodations unless it would fundamentally alter the nature of privileges, advantages...

the failure to ensure no exclusion, segregation, or different treatment, unless such would result in an undue burden,

the failure to remove architectural, communication, and transportation barriers, where such removal is readily achievable (if such a standard cannot be achieved, an alternative must be offered to avoid discrimination);

with respect to a facility -- to the maximum extent feasible, the failure to make it or its altered part accessible and useable within one year of enactment (New facilities built 30 months after enactment shall be accessible, unless the covered entity can demonstrate that it is structurally impracticable to do so.);

with respect to transportation -- the failure to provide transportation equivalent to the general public; -- and in the case of vehicles that carry 12 or more individuals -- purchased after 30 months of enactment, that are accessible and usable by individuals with disabilities.

This title also includes a separate section on prohibition of discrimination in public transportation provided by private entities.

This title, like title III, replaces "refuse to" in the first draft with "fail to," in the second draft, and would appear to allow discrimination charges on effects of, as well as intent to, discriminate. Selected enforcement provisions in the Fair Housing Act would apply to this title. They represent a very broad and permissive basis for discrimination charges.



#### TITLE V TELECOMMUNICATION RELAY SERVICES:

This title defines -- Telecommunications Relay Services -- as services that enable simultaneous communication to take place between individuals who use nonvoice terminal devices (like a telecommunication device for the deaf --TDD) and individuals who do not use such devices.

The title states that it shall be considered discrimination for any common carrier (as defined in section 3(h) of the Communications Act of 1934), that offers telephone service to the general public, to refuse to provide, not later than one year after enactment, interstate and intrastate telecommunication relay services.

Enforcement provisions reference provisions in the Fair Housing Act (in the case of charges brought by an individual), and for purposes of administrative enforcement, various provisions in the Communications Act of 1934, access to cease and desist orders, and the requirement that each violation of this title shall be construed as a separate offense.

#### TITLE VI MISC. PROVISIONS:

This title includes provisions to stipulate the intent of current civil rights statutes in assuring that their scope not be reduced -- this pertains specifically to section 504 of the Rehabilitation Act of 1973.

It also requires minimum guidelines on accessibility be issued by the Architectural Transportation Barriers Compliance Board not later than 6 months after enactment.

RECOMMENDATIONS:

The most likely concerns, reservations, and bases for changing the proposed legislation are the following.

First, a major concern may be the use of multiple remedies and procedures within titles with no preemption, and the use of different remedies and procedures across titles. A possible solution would be to adopt the remedies and procedures of title V of the Rehabilitation Act for all titles or at least as applicable to private sector employment. (It should be noted that the procedures and remedies of sections 503 and 504 of the Rehabilitation Act are different; e.g., section 503 has no private cause of action, whereas section 504 does, and allowable damages also differ under these two sections.) Further, in provisions pertaining to compensatory damages, the conditions, limits, and nature of such damages should be clearly defined in the ADA.\*



The second concern may be making the standard for discrimination "failure," rather than "refusal." If the intent of the legislation is to encourage access for individuals with disabilities, the public and private sector must first be educated. The use of "refusal" as the standard, requires proving conscious intent to discriminate not just demonstrating that an action has the effect of discrimination. The "failure" standard could be applied later after the public and private sectors have had experience with and have been educated about the prohibition of discrimination on the basis of disability.

The third concern is that the draft bill speaks in terms of absolute equality in both process and results. Since a disability may have a varying impact on an individual's ability to perform or participate, even with reasonable accommodation, a standard such as similarity or comparability may be more appropriate.

Two provisions warrant clarification. First, what is the practical effect of an individual charging discrimination when that individual believes he/she is about to be discriminated against on the basis of disability? What does this concept mean? How would it be proved or disproved?

Elimination of punitive and compensatory damages altogether may be appropriate, bringing the remedy provisions more in line with other labor statutes.

Second, what is the effect of including the section 504 Rehabilitation Act under the coverage of title III of the ADA?

One element of the employment title may warrant a phase-in approach. It may be appropriate, for the first three years following enactment, to have the employment provisions apply to employers with 50 or more employees, and then after that period to have it apply to employers with 35 or more employees. (These are the current restrictions in the Family Leave legislation.) As mentioned previously, in the ADA draft an exemption to coverage applies to employers with less than 15 employees. This should at least be the case until employers can prepare for compliance and reasonable accommodation.

Finally, the provisions pertaining to transportation and public transportation, as drafted, are confusing in terms of their varied placements, varying discrimination standards, and applications of differing remedies and procedures, and should be redrafted to be more clear, consolidated, and consistent.



May 23, 1989

TO: Senator Dole  
FROM: Maureen West  
SUBJECT: ADA Bill

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The Americans with Disabilities Act (S.933) was introduced with 35 cosponsors -- the 10 Republican cosponsors are (Durenberger, Jeffords, McCain, Chaffee, Stevens, Cohen, Packwood, Boschwitz, Graham & Heinz).

The Americans With Disabilities Act is an omnibus civil rights statute that prohibits discrimination against individuals with disabilities in private sector employment; all public services; public accommodations; transportation; telecommunications; and State and Local governments.

The ADA extends civil rights protections to people with disabilities beyond section 504 of the Rehabilitation Act of 1973 (the anti-discrimination statute for disabled persons) by requiring the private sector and state and local governments to comply with current civil rights statutes afforded women and minorities.

The Act covers employers engaged in commerce who have 15 or more employees; transportation companies; those engaged in communications and state and local governments.

The Act specifically defines what does constitute discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; failure to make reasonable accommodations; and discriminatory qualifications and performance standards.

The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualification standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1866 for employment -- and other applicable enforcement provisions in Title VIII of the Civil Rights Act of 1964 and Section 505 of the Rehabilitation Act of 1973.



May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Update

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Senator Hatch announced at the last day of hearings on the Americans with Disabilities Act last week that he would like to work in a bipartisan effort to assure a compromise prior to marking up this legislation -- scheduled for early July. He has invited the Administration to testify on the bill the week of June 19. They have not to date commented on the ADA bill

Because of the strong grass roots support for this bill and the Administration's previous statements in support of the Americans with Disabilities Act, Senator Hatch will refrain from introducing his bill and work towards further compromise.

I have attached a copy of his statement and will keep you informed of the proposed June hearing.

May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Differences in Harkin and Weicker bill

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Substantial changes were made to the Harkin/Kennedy bill from Senator Weicker version of ADA introduced last Congress. Senator Weicker's bill was much broader in its interpretation.

For purposes of clarifying the changes between the American with Disabilities Act (ADA) from last year and the bill Senators Harkin and Kennedy have just introduced, I have termed last years ADA as the original ADA and the Harkin/Kennedy bill as the revised ADA. I have delineated changes according to the titles within the Act.

DEFINITION OF PROTECTED CLASS AND PROVING DISCRIMINATION:

Under sections 504 and 504 of the Rehabilitation Act of 1973 there is a two step process for proving discrimination. First, an individual must prove that he or she is disabled -- having a physical or mental impairment that substantially limits a major life activity. Second there must be evidence that he or she is otherwise qualified.

Section 503 and 504 also include provisions which states that if someone with a contagious disease or someone who is a alcoholic or drug addict poses a direct threat to the health and safety of others, then he or she is not a "qualified disabled person".

The original ADA had a much broader definition of disability than sections 503 and 504 -- whereby there had to be no proof that one had a disability that substantially limits a major life activity. The original ADA did not incorporate provisions regarding persons with contagious diseases and alcoholics and drug abusers. The definition did not include the term "otherwise qualified".

The revised ADA incorporates the section 503 and 504 definition which requires an individual must prove that his/her disability substantially limits a major life activity.



#### EMPLOYMENT:

Sections 503 and 504 generally require covered entities to make reasonable accommodations for disabled applicants and employees unless it would pose an "undue hardship."

The original ADA had a "bankruptcy" provision under which a recipient would have to provide the accommodations unless it would "threaten the existence of the company."

The revised ADA incorporates section 503 and 504 standards of undue hardship.

Both versions have a small provider of 15 employees or less consistent with title VII of the Civil Rights Act of 1964.

#### PUBLIC ACCOMMODATIONS:

The original ADA used the definition of "public accommodation" set out in title II of the Civil Rights Act of 1964 (e.g. restaurants, hotels, theaters, etc.) and required that all existing facilities be retrofitted within 2 to 5 years to assure full accessibility unless the retrofitting would "threaten the existence of" the business (the so called bankruptcy provisions).

The original ADA also required that all new facilities be fully accessible and required public entities provide reasonable accommodations -- unless it would "threaten the existence of" the entity.

The revised ADA reaches beyond the title II provision to include all entities that are open to the public as customers, clients, visitors, or which are potentially places of employment.

With respect to existing facilities, the revised ADA only requires structural changes that are "readily achievable." and providing alternative methods for those which are not.

The revised ADA requires reasonable accommodations (termed "auxiliary aids and services) be made unless it would result in "undue burden" which is the current standard in section 504.

Both versions require that new facilities be made accessible.

#### PUBLIC SERVICES:

The original bill requires that all new facilities be accessible within 2 to 5 years, regardless whether an entity receives federal aid.

The revised ADA extends section 504 to cover all state and local governments their programs and activities.

#### COMMUNICATIONS:

The original ADA required all those engaged in the business of broadcasting to progressively close caption shows. It also establishes an interstate and intrastate relay system for deaf persons. (a deaf person using a TDD can speak to an operator who can relay a message to an individual who has no TDD).

The revised ADA requires only a TDD relay system and deletes the captioning provisions.

#### TRANSPORTATION:

The original ADA required 50% of all a public authority's fleet be accessible within 7 years (which includes retrofitting) in addition to all making all new buses accessible

The revised ADA requires that all buses on a fixed route be accessible with no retrofitting required. It also permits a transit authority to purchase used buses that are not accessible if the transit authority has demonstrated a good faith effort to purchase a used bus that is accessible.

Both versions require a paratransit system be made available for those disabled individuals who cannot use the mainline system and that all new facilities be accessible.

The revised ADA has a separate standard for communities that have a demand responsive system ( advanced reservation transportation) for the general public. Under this standard, all new buses need not be accessible if the transit authority can demonstrate that it can meet the needs of disabled people with current accessible buses.

The original ADA required that 50% of existing rail cars be made accessible within 7 years (requiring extensive retrofitting).



The revised ADA requires that at least one rail car be made accessible within 5 years and that only key stations be made accessible within 20 years.

The original ADA required all stations be made accessible within 10 years.

The original ADA covered air travel and required accessible taxis.

The revised ADA does not cover air travel and does not require accessible taxicabs but prohibits a driver from refusing to pick up a disabled person.

#### ENFORCEMENT:

The original ADA included an enforcement provision (injunctive and monetary damages) that applied to the entire Act.

The revised ADA has a separate enforcement section for each title. Under employment, the revised ADA incorporates by reference the enforcement provisions in title VII of the Civil Rights Act of 1964. For acts of intentional discrimination, it applies section 1981 of the Civil Rights Act of 1968.

The revised ADA incorporates by reference the provisions of section 505 of the Rehabilitation Act (attorney's fees) to public entities. Under public accommodations and communications, the revised ADA incorporates the enforcement provisions in the Fair Housing Act of 1988.

Both versions incorporate attorneys' fees provisions.

May 23, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Narrative Summary of ADA

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OVERVIEW OF THE CURRENT PROPOSAL:

You were given two drafts of the bill and a final version prior to introduction of the Americans with Disabilities Act (ADA). As you know, the ADA introduced this year by Senator Harkin has been substantively changed from Senator Weicker's bill which was broader in scope.

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- aiding an entity to perpetuate discrimination;
- denying participation on a board or commission,
- otherwise limiting an individual in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others.

This title further clarifies these conditions by addressing the concepts of "equal opportunity" as an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs. This title also clarifies prohibitions in the use of administrative methods that have the effect of discrimination; that substantially impair the intended objectives of the opportunity for the person with the disability; or that perpetuate discrimination by others. The title addresses discrimination pertaining to relationships and associations of individuals with persons who are disabled.

The title outlines the conditions which do not constitute discrimination. First, it would not be considered discrimination to exclude an individual with a disability, if the exclusion is unrelated to the disability.

Second, in the area of standards and criteria, exclusion of an individual with a disability would be allowed if such standards or criteria were shown to be both necessary and substantially related to an individual's ability to perform or participate.



Third, qualification standards may include 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.

Fourth, qualification standards may include requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others in the workplace or program.

## TITLE II EMPLOYMENT:

This title defines a "qualified individual with a disability" as an individual who, with or without reasonable accommodation, can perform the essential functions of a job -- either held or desired by that individual.

Discrimination under this title includes situations when a covered entity fails to make reasonable accommodations to the known limitations of an individual unless the entity can demonstrate that such an accommodation would constitute an undue hardship (This addresses/alleviates the concern about the bankruptcy standard in the original bill introduced last Congress).

As in title I the entity would have to show that standards and criteria for a job be necessary and substantially related to perform the essential functions of the job.

Exempted entities include those who are -- covered by section 501(c) of the Internal Revenue Code (This includes corporations organized and operated for religious or charitable purposes.), elected officials, Indian tribes, or entities who have less than 15 employees.

This title incorporates by reference the remedies and procedures set out in sections 706, 709, and 710 of title VII of the Civil Right Act of 1964 and section 1981 of the Civil Rights Act of 1866. Such remedies and procedures would be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability. Note that under section 1981, an individual has a private cause of action and may recover for compensatory damages such as pain and suffering. The individual may also pursue a cause of action through EEOC.

The authors of the current draft indicate that all remedies and procedures under these laws may only be used in cases of intentional discrimination (which is more difficult to prove) as distinguished from practices which are unintentional but have a disparate adverse impact on individuals with disabilities. This intended limitation is not directly apparent in the current draft of the ADA.



### TITLE III PUBLIC SERVICES:

In this title, a **"qualified individual with a disability"** means one who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for services from or participation in a program of a public agency.

Although broadly construed as the above suggests, most of this title addresses public transportation. Such language does not limit coverage to public entities.

This title covers a wide range of actions related to public transportation and reasonable accommodation/accessibility, including:

purchasing or lease of **new** buses and rail vehicles (those purchased after 30 days of enactment must be accessible to and usable by individuals with disabilities );

purchase or lease of **used** vehicles (language includes the standard of -- "demonstrated good faith to acquire accessible vehicles")

purchase or lease of remanufactured vehicles (new provision standard includes -- "to the maximum extent feasible vehicles with five-years of life should be made accessible");

operation of paratransit systems (standard includes -- "it shall be considered discrimination for an entity which provides public transportation to fail to provide (**"refusal"** was eliminated) such a system as a supplement and comparable to that of the fixed route public transportation system");

operation of a community demand responsive system for the public (standard -- comparable to that available to the general public");

This title also deals with new facilities, alterations to existing facilities, rail systems, and key stations. The standards include

for new facilities -- readily accessible and useable by individuals with disabilities;

for alterations -- after one year of enactment, to the maximum extent feasible, the path to the altered area, bathrooms, telephones, and drinking fountains serving the remodeled area must be accessible;

existing facilities -- when viewed in their entirety are readily accessible and usable;

intercity, rapid, light, and commuter rail systems -- within five years at least one car per train must be accessible;

key stations -- any system shall be accessible within three years, but the Secretary of Transportation may extend the period of compliance for up to 20 years for extraordinary expensive modifications.

Enforcement, include remedies and procedures (limited to injunctive relief and attorney's fees) of section 505 of the Rehabilitation Act. An individual who believes he or she is being or about to be subjected to discrimination on the basis of disability, may access the protections in section 505.

Three key points --

These requirements apply to newly covered entities under ADA and those covered under section 504 of the Rehabilitation Act;

Elimination of "refusal" with "fail to " would appear to make it easier to prove discrimination since this would appear to eliminate the requirement for proving intent.

The "or about to be subjected to discrimination" language under this title of the act could be proved by way of blueprints and other methods in justifying intentional discrimination. This language was appropriately taken from the Fair Housing Act of 1988.

#### TITLE IV PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES:

This title defines several terms broadly --

Commerce -- means travel, trade, traffic, commerce, or communication among the States...

Public accommodation -- means privately operated establishments that are used by the general public... and are potential places of employment, including auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns hotels, motels -- (except for those covered by section 201(b)(1) of the Civil Rights Act of 1964; e.g., those with less than five rooms), terminals, gas stations, sales establishments, professional offices of health care providers, office buildings, personal and public service buildings, private schools, parks and recreational facilities.



Public transportation -- defined as in title III --The title states that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, on the basis of disability.

Discrimination includes --

the imposition of eligibility criteria that identify or limit or tend to identify or limit, an individual with a disability or a class of such individuals from full and equal enjoyment.

the failure to make reasonable accommodations unless it would fundamentally alter the nature of privileges, advantages...

the failure to ensure no exclusion, segregation, or different treatment, unless such would result in an undue burden,

the failure to remove architectural, communication, and transportation barriers, where such removal is readily achievable (if such a standard cannot be achieved, an alternative must be offered to avoid discrimination);

with respect to a facility -- to the maximum extent feasible, the failure to make it or its altered part accessible and useable within one year of enactment (New facilities built 30 months after enactment shall be accessible, unless the covered entity can demonstrate that it is structurally impracticable to do so.);

with respect to transportation -- the failure to provide transportation equivalent to the general public; -- and in the case of vehicles that carry 12 or more individuals -- purchased after 30 months of enactment, that are accessible and usable by individuals with disabilities.

This title also includes a separate section on prohibition of discrimination in public transportation provided by private entities.

This title, like title III, replaces "refuse to" in the first draft with "fail to," in the second draft, and would appear to allow discrimination charges on effects of, as well as intent to, discriminate. Selected enforcement provisions in the Fair Housing Act would apply to this title. They represent a very broad and permissive basis for discrimination charges.

#### TITLE V TELECOMMUNICATION RELAY SERVICES:

This title defines -- Telecommunications Relay Services -- as services that enable simultaneous communication to take place between individuals who use nonvoice terminal devices (like a telecommunication device for the deaf --TDD) and individuals who do not use such devices.

The title states that it shall be considered discrimination for any common carrier (as defined in section 3(h) of the Communications Act of 1934), that offers telephone service to the general public, to refuse to provide, not later than one year after enactment, interstate and intrastate telecommunication relay services.

Enforcement provisions reference provisions in the Fair Housing Act (in the case of charges brought by an individual), and for purposes of administrative enforcement, various provisions in the Communications Act of 1934, access to cease and desist orders, and the requirement that each violation of this title shall be construed as a separate offense.

#### TITLE VI MISC. PROVISIONS:

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



April 17, 1989

TO: Senator Dole  
FROM: Maureen West  
SUBJECT: ADA Strategy

As you requested I spoke with Senator Grassley concerning the Americans with Disabilities Act and shared with him the progress made thus far on the drafting of a bill. He would still like an alternative to the Harkin bill and would consider signing onto a Hatch bill. As I stated earlier Senators Harkin and Hatch are both interested in moving this bill but at odds in reaching any compromise on a bi-partisan bill.

The Subcommittee on the Handicapped <sup>of</sup> (which Senators Harkin and Hatch are members) has jurisdiction over federal legislation, Section 504 of the Rehabilitation Act of 1973 containing the nondiscrimination statute barring discrimination against individuals with handicaps receiving federal financial assistance. The ADA would apply non-discrimination to the private sector as well and is much more specific in its statutory requirements. }

The ADA is a comprehensive and ambitious bill that seeks <sup>to</sup> parallel in scope the civil rights protections provided racial and ethnic minorities, women, and older persons, but framed to combat the forms of discrimination confronting people with disabilities in such areas as: inaccessible housing, transportation, and communication; denial of reasonable / accomodation; and prejudice. (See attached summary of bill). The costs of this legislation are unknown but speculated to be high.

To accomodate a more palatable bill for introduction, key disability groups have provided input and made revisions to the legislation in encouraging bi-partisan support and further clarification of statutory requirements. While Senator Hatch made some considerable changes to the draft bill it has yet to go far enough to assure his full support. Hence the disability groups have asked for your support and chief cosponsorship of the Harkin bill. In keeping you uncommitted to this bill and sensitive to the Iowa politics I have consistently stated, as have you, that you are supportive of a comprehensive civil rights bill for people with disabilities to keep you open to many options at this point. I recommend not going on either bill at this point as this is a no win situation with the disability groups -- and introducing your own bill would be premature, given the private sector has not even seen such legislation yet.

*and the private sector*



My recommendation at this point, is to hold off cosponsoring any bill or introducing your own bill for the following reasons:

First of all, this bill emanated as a National Council bill which took approximately three years to write. (The Council is an independent Federal agency comprised of 15 members appointed by the President to review all laws, programs and policies relating to disabilities.) With both Senators Harkin and Hatch still at odds in reaching any compromise on a bipartisan bill, the introduction of two ADA bills is becoming a reality. Whereupon, Senator Grassley may want to consider supporting Senator Hatch's version.

The disability community feels they carried President Bush through his election and had his commitment to the Americans with Disabilities Act by the strong statement he made regarding full integration of people with disabilities into the mainstream of society. His statements of support for the Americans with Disabilities Act or similar legislation, as well as, his promise to assure a more fully integrated society that is free from discrimination of people with disabilities and fully accessible -- is fuel the disability community is planning to use should he not support the Americans with Disabilities Act.

In recent discussions with concerned parties at the White House I understand that the Administration would like more time at this point to study the bill. After recent dissemination of the draft bill to all relative agencies to be affected by this legislation, feedback was obtained with much reluctance from the agencies to support the bill until further studies can be done on the implications and ramifications of ADA legislation. In short, the Administration needs more time to digest this legislation and determine the regulatory impact, the cost factors as well as the affect this legislation will have on small business and the economy at large. As I stated to you earlier, there has to date been no cost estimate done on this bill which is sure to become a heated debate and of considerable concern to the private sector who must come into compliance with accessibility requirements in making reasonable accommodations in addition to assuring a discrimination free society for people with disabilities. The costs will be tremendous.



Of particular importance to you, is your stand on the recent Adapt V. Burnley decision in which you wrote to President Bush asking that he carefully consider this case and refrain from seeking a Supreme Court appeal (see attached memo and letter). The Bush Administration came out with their decision last week in favor of appealing the case to the Supreme Court -- which has the disability groups up in arms and fails to be consistent with President Bush's statements of a fully accessible and barrier free society in integrating people with disabilities into the economic and social mainstream. The Administration seeking an appeal on the grounds that it would be a drain financially on society has irritated Administration officials as well, for its critical and harsh stance on the decision. The Administration's decision is inconsistent with the President's promise to fully integrate people with disabilities and the transportation section of the ADA bill. It is also inconsistent with your support for an accessible society. This should give rise to diplomatically compromising on this issue should you introduce a bill which the Administration will support. The groups will be certain to point this discrepancy out.

Another consideration is that of cost and the implications this legislation will have on the private sector and the economy. I have yet to hear from the private sector or talk to the Chamber of Commerce on this legislation but I am certain that when this bill has been disseminated to those off the Hill you are sure to see opposition. I suggest you wait on introducing your own bill or supporting any other bill until further developments and feedback can be obtained. I know this is of concern to the Administration and letting Senator Harkin and Hatch contend with some of these major issues within the Committee and during the course of committee hearings will put you in a prime position to be a grand compromiser should it reach the floor.

Introducing your own bill at this time may be premature and a disservice to the private sector who has yet to see the draft legislation. You are a moving target on this bill. If you introduce your own bill prior to hearings, you will be seen as undercutting the disability community efforts and the private sector will certainly have concerns and want your representation given that this legislation will extend anti-discrimination statutes to the private sector with enforcement remedies and increased litigation to those not in compliance with accessibility standards.

I am not all sure that this legisaltion will be a pivotal decision at the polls in Iowa especially if the private sector and small business have concerns compounded with the fact that Iowa's rural areas could be impacted financially.

I still firmly suggest that you not introduce a bill at this time and instead write a letter to Senators Hatch and Kennedy asking for balanced committee hearings regarding this legislation as soon as possible. In addition, we can send that letter to Senator Grassley to disseminate to concerned Iowans to assure a balanced approach to this controversial legislation while perhaps he might consider joining Senator Hatch on the ADA.

If you do nothing and let the Committee battle out the highly controversial aspects of the bill and state your consistent support for a comprehensive civil rights bill that is fair, you will surface as the hero for compromise without irritating the disability groups and remain sensitive to Senator Grassley's concern with Iowa politics and appeasing the private sector.

These are your options as I see them:

\_\_\_\_\_ Hold off introducing your own bill and send a letter to Committee Chairmen showing your interest and concern for balanced hearings. Inform Senator Grassley of letter to disseminate to concerned Iowans waiting for your bill. And of course stay away from the Harkin bill.

\_\_\_\_\_ Develop Dole bill.

\_\_\_\_\_ Sign on Hatch bill.

\_\_\_\_\_ Sign on Harkin bill.

\_\_\_\_\_ Do nothing and keep you abreast of legislative activity.



March 10, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Americans with Disabilities Act

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Senator Harkin will soon introduce a revised version of the Americans with Disabilities Act (ADA). You were an original cosponsor of last year's bill introduced by Senators Weicker and Harkin, which emanated from the National Council on Disability after several years of constructing the legislation. The disability community will look for your support again this year.

Senator Harkin shared a copy of the draft bill with Senator Hatch and it is my understanding that Senator Harkin approached Senator Hatch last November to ascertain whether he would like to be the chief Republican sponsor. To date, their staff are discussing the draft version. A final draft of the bill is not yet available, however, I have been in contact with many of the disability groups and was assured a copy of the draft legislation from staff of the Subcommittee on the Handicapped next week.

President Bush and Vice-President Quayle on numerous occasions expressed support for "Federal legislation that gives people with disabilities the same protections that is now enjoyed by women and minorities." President Bush has pledged a commitment that his Administration will oppose discrimination of the past that has kept too many people with disabilities out of the American mainstream. He has been on record in support of accessibility of new facilities and vehicles for people with disabilities. Statements to this effect were included in the President's first debate, his acceptance speech, as well as his address to the joint Members of Congress.

Justin Dart, a longtime disability rights advocate and a favored of this Administration to serve as the President's liaison with the disability community, is currently Chairperson of the Task Force on Rights and Empowerment of Americans with Disabilities. He is strongly opposed to the proliferation of bills similar to ADA and has to date, generated nationwide support for a bipartisan ADA bill.

You should be very wary of committing yourself to introducing your own version, as no one knows what Senators Harkin and Hatch will agree upon at this point. Should Senator Hatch refrain from joining Senator Harkin, because of differences which prevent him from sponsoring the bill at this time, you may want to consider joining Senator Harkin as an original sponsor?



It is my experience, that Senator Hatch hasn't always wanted to join in on disability legislation from its inception but rather will render his support at a later time. For example, Senator Hatch may not believe that retrofitting a number of new buses is legally required for mainstreaming to be a reality, whereas, Justin Dart and the disability community often think accessible buses are bottom line standards. Key disability advocates have approached me as to whether you would join Senator Harkin as an original cosponsor, given the principles the disability community has agreed to in this bill, as well as President Bush's vocal support of an ADA bill.

The momentum from the perspective of the disability community will be behind the Harkin bill and President Bush has made a point of embracing the concerns of the disabled and barring discrimination against persons with disabilities as previously explained.

My initial reaction at this point is to hold off on introducing your own bill and wait out the reaction to the draft bill. I would like to discuss perceptions of the draft legislation with the disability groups not yet privy to the bill as well as the National Council on Disability. In addition, the Administration will by then officially have commented on the bill.

I have reiterated your support for a civil rights bill for people with disabilities and shared with concerned groups your interest in seeing a draft bill before making a decision on supporting the ADA. I suggest you wait to see what compromise Senators Harkin and Hatch can agree upon and remain committed to a comprehensive civil rights bill for persons with disabilities.

I have attached a summary of the Americans with Disabilities Act and delineated draft revisions made to the original ADA bill from last Congress. I was informed today by key disability groups of the revisions made.



April 17, 1989

TO: Senator Dole  
FROM: Maureen West  
SUBJECT: Americans with Disabilities Act

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The Americans with Disabilities Act originated with a proposal from the National Council on Disabilities to establish a comprehensive nationwide prohibition against discrimination on the basis of a handicap. Although federal legislation, section 504 of the Rehabilitation Act of 1973 already exists concerning discrimination against individuals with handicaps, the existing law is limited to programs or activities receiving federal financial assistance, executive agencies, or the U.S. Postal Service. The Americans with Disabilities Act seeks to parallel in scope the civil rights protections provided racial and ethnic minorities, women and older persons, but frames to combat the forms of discrimination people with disabilities face on a daily basis: inaccessible housing, transportation, and communication; denial of reasonable accomodation; and rampant prejudice. If enacted this legislation would go far to remove unfair and discriminatory barriers against people with disabilities. This, in turn, should result in significant Federal budget savings as limited transportation access is an impediment to the large numbers of people with disabilities who want to work but cannot due to inaccessible transportation to employment. The bill would provide broader coverage than section 504 since it would cover the private sector as well. Last year's bill (which Senator Weicker introduced) has changed substantially in the current draft proposals both Senators Harkin and Hatch together or individually may introduce.

## OVERVIEW OF THE LEGISLATION

### Findings and Purposes:

The purpose of the Act is to provide a clear and comprehensive national mandate to end discrimination against people with disabilities; provide protection against discrimination comparable to that afforded to minorities and others; and provide enforceable standards addressing discrimination against people with disabilities.

### Definitions:

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

### Title I: General Prohibitions Against Discrimination:

Title I sets out the general forms of discrimination prohibited by the Act. It is considered discriminatory to subject an individual, directly or indirectly, on the basis of a disability, to any of the following:

- (1) denying the opportunity to participate in or benefit from an opportunity;
- (2) affording an opportunity that is not equal to that afforded others;
- (3) providing an opportunity that is less effective than that provided to others;
- (4) providing an individual or class of individuals with an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others;
- (5) aiding or perpetuating discrimination by providing significant assistance to others that discriminate;
- (6) denying an opportunity to participate as a member of boards or commissions; and
- (7) otherwise limiting an individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.



For the purposes of this Act, for an aid, benefit, or service to be equally effective, an entity must afford an individual with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's need.

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

Title I also sets out several defenses to allegations of discrimination. It is not considered discrimination to exclude or deny opportunities to an individual with a disability for reasons entirely unrelated to his or her disability. Further, it is not discrimination to exclude or deny opportunities to an individual based on the application of qualification standards or other criteria that are shown by a covered entity to be both necessary and substantially related to the ability of the individual to perform or participate or take advantage of an opportunity and such participation cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

Qualifications standards may include requiring that the current use of alcohol or drugs by an alcohol or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health and safety of other individuals in the workplace or program. These defenses are comparable to the defenses currently available under section 504 of the Rehabilitation Act of 1973.

## Title II Employment:

The provisions in title II of the Act use or incorporate by reference many of the definitions in title VII of the Civil Rights Act of 1964 (employee, employer, Commission, person, labor organization, employment agency, joint labor management committee, commerce, industry affecting commerce). The scope of the bill is identical i.e., only employers who have 15 or more employees are covered.

A "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. This definition is comparable to the definition used for purposes of section 504.



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

Thus, discrimination includes, for example, the failure by a covered entity to make reasonable accommodations to the known limitations of a qualified individual with a disability unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Discrimination also includes the denial of employment opportunities because a qualified individual with a disability needs a reasonable accommodation.

The definition of the term "reasonable accommodation" included in the bill is comparable to the definition in the section 504 framework. The term includes: making existing facilities accessible, job restructuring, part-time and modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers and interpreters, and other similar accommodations.

Discrimination also includes the imposition or application of qualification standards and other criteria that identify or limit a qualified individual with a disability unless such standards or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

Consistent with title VII of the Civil Rights Act of 1964, every covered entity must post notices in an accessible format describing the applicable provisions of this Act. The Commission is also directed to promulgate regulations within 180 days in an accessible format.

The bill incorporates by reference the remedies and procedures set out in section 706, 709, and 710 of title VII of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964 for acts of intentional discrimination.

### Title III: Public Services

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



A "qualified individual with a disability " means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, or the removal of architectural, communication, and transportation barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, or other instrumentality of a State and political subdivision.

Title III also specifies the actions applicable to public transportation (not including air travel) provided by public entities that are considered discriminatory. The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis).

1. New fixed route buses of any size and rail vehicles for which a solicitation is made later than 30 days after the date of enactment of this Act must be readily accessible to and usable by individuals with disabilities. No retrofitting of existing buses is required.

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

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

4. In those communities with fixed route transportation, there must also be a paratransit system to serve those individuals with disabilities who cannot use the fixed route public transportation and to other individuals associated with such individuals in accordance with service criteria established by the Secretary of Transportation.

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

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

7. When alterations are made to existing facilities one year after the date of enactment that affect or could affect the usability of the facility, the alterations, the path of travel to the altered area, the bathrooms, telephones, and drinking fountains serving the remodeled area must be, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities.



8. A mass transportation program or activity, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities. All stations in intercity rail systems and key stations in rapid rail, commuter rail systems must be readily accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinary expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

9. Intercity, light rail, rapid, and commuter rail systems must have at least one car per train that is accessible as soon as practicable to recipients of Federal financial assistance. The Secretary of the Department of Transportation is also directed to issue regulations in an accessible format that includes standards which are consistent with minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

#### Title IV: Public Accommodations and Services Operated by Private Entities

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

The term "public accommodation" means privately operated establishments that are used by the general public as customers, clients, or visitors or that are potential places of employment and whose operations affect commerce. Examples of public accommodations include: auditoriums, theaters, restaurants, shopping centers, hotels, terminals used for public transportation, office buildings and recreation facilities.

Examples of discrimination include the following:

The imposition or application of eligibility criteria that identify or limit an individual with a disability.

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

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



A failure to remove architectural and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles where such removal is readily achievable; and, where the entity can demonstrate that such removal is not readily achievable, a failure to provide alternative methods.

With respect to a facility that is altered one year after the effective date of the Act, the failure to make the alterations in a manner that, to the maximum extent feasible, the altered portion, the path of travel, to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area where readily accessible to and usable by individuals with disabilities.

A failure to make facilities designed and constructed later than 30 months after the date of enactment readily accessible to and accessible by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to do so in accordance with standards set forth or incorporated by reference in regulations.

A failure by a public accomodation to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and a refusal to purchase or lease vehicles that carry in excess of 12 passengers for which solicitations are made later than 30 days after the date of enactment which are readily accessible to and usable by individuals with disabilities.

The bill also includes a specific section prohibiting discrimination in public transportation services (other than air travel) provided by private entities. In general, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people (but not in the principal business of providing air transportation) and whose operations affect commerce.

Examples of discrimination include:

the imposition or application of eligibility criteria, that identify or limit an individual with a disability.

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

new vehicles (other than automobiles) purchased 30 days after the date of enactment must be made accessible, new taxicabs are not required to be made Taxicab companies are liable, however, if their drivers refuse to pick up an individual with a disability.

The bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the Attorney General (section 814 )a)). Regulations must be issued in



an accessible format by the Attorney General and by the Secretary of Transportation, consistent with the provisions applicable to public agencies under title .

#### Title V: Communications

Title V specifies that it is considered discrimination for a common carrier that offers telephone services to the general public to fail to provide, within one year after the date of enactment of this Act, interstate and intrastate telecommunication relay services so that such services provide individuals who use non-voice terminals devices because of their disabilities opportunities for communications that are equal to those provided to persons able to use voice telephone services. Nothing in this title is to be constructed to discourage or impair the developed of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

The Federal Communications Commission is directed to issue regulations establishing minimum standards and guidelines for telecommunications relay services. With respect to enforcement, the bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the General Attorney General (section 814 (a)). Further, the Federal Communications Commission is authorized to use enforcement provisions generally applicable to it for remedying violations of the Communications Act of 1934.

#### Title VI: Miscellaneous Provisions

Title VI explains the relationship between section 504 and this Act; this Act and State laws that provide greater protections; and the relationship among the various titles of the Act. Title VI also includes an anti-retaliation provision; directs the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines; and makes it clear that States are immune under the 11th Amendment for violations of the Act.

With respect to attorney's fees, the bill specifies that any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including expert witness fees, and costs.



April 17, 1989

TO: Senator Dole  
FROM: Maureen West  
SUBJECT: Americans with Disabilities Act

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The Americans with Disabilities Act originated with a proposal from the National Council on Disabilities to establish a comprehensive nationwide prohibition against discrimination on the basis of a handicap. Although federal legislation, section 504 of the Rehabilitation Act of 1973 already exists concerning discrimination against individuals with handicaps, the existing law is limited to programs or activities receiving federal financial assistance, executive agencies, or the U.S. Postal Service. The Americans with Disabilities Act seeks to parallel in scope the civil rights protections provided racial and ethnic minorities, women and older persons, but ~~frames~~ to combat the forms of discrimination people with disabilities face on a daily basis: inaccessible housing, transportation, and communication; denial of reasonable accomodation; and rampant prejudice. If enacted this legislation would go far to remove unfair and discriminatory barriers against people with disabilities. This, in turn, should result in significant Federal budget savings as limited transportation access is an impediment to the large numbers of people with disabilities who want to work but cannot due to inaccessible transportation to employment. The bill would provide broader coverage than section 504 since it would cover the private sector as well. Last year's bill (which Senator Weicker introduced) has changed substantially in the current draft proposals both Senators Harkin and Hatch together or individually may introduce.

↓ is framed?

## OVERVIEW OF THE LEGISLATION

### Findings and Purposes:

The purpose of the Act is to provide a clear and comprehensive national mandate to end discrimination against people with disabilities; provide protection against discrimination comparable to that afforded to minorities and others; and provide enforceable standards addressing discrimination against people with disabilities.

### Definitions:

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

### Title I: General Prohibitions Against Discrimination:

Title I sets out the general forms of discrimination prohibited by the Act. It is considered discriminatory to subject an individual, directly or indirectly, on the basis of a disability, to any of the following:

- (1) denying the opportunity to participate in or benefit from an opportunity;
- (2) affording an opportunity that is not equal to that afforded others;
- (3) providing an opportunity that is less effective than that provided to others;
- (4) providing an individual or class of individuals with an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others;
- (5) aiding or perpetuating discrimination by providing significant assistance to others that discriminate;
- (6) denying an opportunity to participate as a member of boards or commissions; and
- (7) otherwise limiting an individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.



For the purposes of this Act, for an aid, benefit, or service to be equally effective, an entity must afford an individual with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's need.

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

Title I also sets out several defenses to allegations of discrimination. It is not considered discrimination to exclude or deny opportunities to an individual with a disability for reasons entirely unrelated to his or her disability. Further, it is not discrimination to exclude or deny opportunities to an individual based on the application of qualification standards or other criteria that are shown by a covered entity to be both necessary and substantially related to the ability of the individual to perform or participate or take advantage of an opportunity and such participation cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

Qualifications standards may include requiring that the current use of alcohol or drugs by an alcohol or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health and safety of other individuals in the workplace or program. These defenses are comparable to the defenses currently available under section 504 of the Rehabilitation Act of 1973.

## Title II Employment:

The provisions in title II of the Act use or incorporate by reference many of the definitions in title VII of the Civil Rights Act of 1964 (employee, employer, Commission, person, labor organization, employment agency, joint labor management committee, commerce, industry affecting commerce). The scope of the bill is identical i.e., only employers who have 15 or more employees are covered.

A "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. This definition is comparable to the definition used for purposes of section 504.



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

Thus, discrimination includes, for example, the failure by a covered entity to make reasonable accommodations to the known limitations of a qualified individual with a disability unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Discrimination also includes the denial of employment opportunities because a qualified individual with a disability needs a reasonable accommodation.

The definition of the term "reasonable accommodation" included in the bill is comparable to the definition in the section 504 framework. The term includes: making existing facilities accessible, job restructuring, part-time and modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers and interpreters, and other similar accommodations.

Discrimination also includes the imposition or application of qualification standards and other criteria that identify or limit a qualified individual with a disability unless such standards or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

Consistent with title VII of the Civil Rights Act of 1964, every covered entity must post notices in an accessible format describing the applicable provisions of this Act. The Commission is also directed to promulgate regulations within 180 days in an accessible format.

The bill incorporates by reference the remedies and procedures set out in section 706, 709, and 710 of title VII of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964 for acts of intentional discrimination.

### Title III: Public Services

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



A "qualified individual with a disability " means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, or the removal of architectural, communication, and transportation barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, or other instrumentality of a State and political subdivision.

Title III also specifies the actions applicable to public transportation (not including air travel) provided by public entities that are considered discriminatory. The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis).

1. New fixed route buses of any size and rail vehicles for which a solicitation is made later than 30 days after the date of enactment of this Act must be readily accessible to and usable by individuals with disabilities. No retrofitting of existing buses is required.

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

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

4. In those communities with fixed route transportation, there must also be a paratransit system to serve those individuals with disabilities who cannot use the fixed route public transportation and to other individuals associated with such individuals in accordance with service criteria established by the Secretary of Transportation.

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

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

7. When alterations are made to existing facilities one year after the date of enactment that affect or could affect the usability of the facility, the alterations, the path of travel to the altered area, the bathrooms, telephones, and drinking fountains serving the remodeled area must be, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities.



8. A mass transportation program or activity, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities. All stations in intercity rail systems and key stations in rapid rail, commuter rail systems must be readily accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinary expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

9. Intercity, light rail, rapid, and commuter rail systems must have at least one car per train that is accessible as soon as practicable to recipients of Federal financial assistance. The Secretary of the Department of Transportation is also directed to issue regulations in an accessible format that includes standards which are consistent with minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

#### Title IV: Public Accommodations and Services Operated by Private Entities

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

The term "public accommodation" means privately operated establishments that are used by the general public as customers, clients, or visitors or that are potential places of employment and whose operations affect commerce. Examples of public accommodations include: auditoriums, theaters, restaurants, shopping centers, hotels, terminals used for public transportation, office buildings and recreation facilities.

Examples of discrimination include the following:

The imposition or application of eligibility criteria that identify or limit an individual with a disability.

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

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



A failure to remove architectural and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles where such removal is readily achievable; and, where the entity can demonstrate that such removal is not readily achievable, a failure to provide alternative methods.

With respect to a facility that is altered one year after the effective date of the Act, the failure to make the alterations in a manner that, to the maximum extent feasible, the altered portion, the path of travel, to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area where readily accessible to and usable by individuals with disabilities.

A failure to make facilities designed and constructed later than 30 months after the date of enactment readily accessible to and accessible by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to do so in accordance with standards set forth or incorporated by reference in regulations.

A failure by a public accomodation to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and a refusal to purchase or lease vehicles that carry in excess of 12 passengers for which solicitations are made later than 30 days after the date of enactment which are readily accessible to and usable by individuals with disabilities.

The bill also includes a specific section prohibiting discrimination in public transportation services (other than air travel) provided by private entities. In general, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people (but not in the principal business of providing air transportation) and whose operations affect commerce.

Examples of discrimination include:

the imposition or application of eligibility criteria, that identify or limit an individual with a disability.

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

new vehicles (other than automobiles) purchased 30 days after the date of enactment must be made accessible, new taxicabs are not required to be made Taxicab companies are liable, however, if their drivers refuse to pick up an individual with a disability.

The bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the Attorney General (section 814 )a)). Regulations must be issued in



an accessible format by the Attorney General and by the Secretary of Transportation, consistent with the provisions applicable to public agencies under title .

#### Title V: Communications

Title V specifies that it is considered discrimination for a common carrier that offers telephone services to the general public to fail to provide, within one year after the date of enactment of this Act, interstate and intrastate telecommunication relay services so that such services provide individuals who use non-voice terminals devices because of their disabilities opportunities for communications that are equal to those provided to persons able to use voice telephone services. Nothing in this title is to be constructed to discourage or impair the developed of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

The Federal Communications Commission is directed to issue regulations establishing minimum standards and guidelines for telecommunications relay services. With respect to enforcement, the bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the General Attorney General (section 814 (a)). Further, the Federal Communications Commission is authorized to use enforcement provisions generally applicable to it for remedying violations of the Communications Act of 1934.

#### Title VI: Miscellaneous Provisions

Title VI explains the relationship between section 504 and this Act; this Act and State laws that provide greater protections; and the relationship among the various titles of the Act. Title VI also includes an anti-retaliation provision; directs the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines; and makes it clear that States are immune under the 11th Amendment for violations of the Act.

With respect to attorney's fees, the bill specifies that any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including expert witness fees, and costs.



April 18, 1989

TO: Senator Dole  
FROM: Maureen West  
SUBJECT: ADA Strategy

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As you requested I spoke with Senator Grassley concerning the Americans with Disabilities Act (ADA). He would consider signing onto a Hatch bill which could avoid a no win situation of your introducing your own bill at this time.

The Americans with Disabilities Act establishes a broad scoped prohibition of discrimination against people with disabilities and sets forth specific methods by which discrimination is to be eliminated, extending Section 504 to the private sector. Currently this nondiscrimination statute barring discrimination against individuals with handicaps applies only to entities receiving federal financial assistance.

The ADA is a comprehensive and ambitious bill that seeks to parallel in scope the civil rights protections provided racial and ethnic minorities, women, and older persons, but framed to combat the forms of discrimination confronting people with disabilities. (See attached summary).

This bill is so complex and sure to send the private sector in a rage not to mention the financial ramifications this bill will have on small businesses to comply with statutory requirements. There has been no cost estimate done but this is sure to effect the economy tremendously.

You are a moving target and introducing your bill prior to the Administration's stance and the private sector's response sets you up as a fall guy for an Administration who has strongly supported ADA or similar legislation to date -- but now wants to refrain from endorsing this legislation. It is premature to introduce your bill until the Administration responds and until further clarification of the heated issues are brought out in hearings to begin soon.



The private sector is just getting a head of this bill and what response has been generated is all the more reason to be leery of what response lies ahead.

The disability community feels they carried President Bush through his election and had his commitment to the Americans with Disabilities Act. He made strong statements in support of this legislation and full integration of people with disabilities into the mainstream of society. His statements of support for the Americans with Disabilities Act or similar legislation, as well as, his promise to assure a more fully integrated society that is free from discrimination of people with disabilities and fully accessible -- is fuel the disability community is planning to use should he not support the Americans with Disabilities Act.

It is not all far fetched to predict that the disability community will stage protests and react militantly should President Bush not support the ADA bill. In addition, you may look as though you are undermining their efforts with a bill early in the process.

The White House would like more time at this point to study the bill as relative agencies have voiced much reluctance until further studies can be done on the implications and ramifications of ADA legislation. In short, the Administration needs more time to digest this legislation and determine the regulatory impact, the cost factors, as well as, the affect this legislation will have on small business and the economy at large.

No cost estimate has been done on this bill which is sure to become a heated debate and of considerable concern to the private sector who must come into compliance with accessibility requirements in making reasonable accommodations, in addition to, assuring a discrimination free society for people with disabilities. The costs will be tremendous and I can sense that there are many untapped land mines in this legislation that no one is aware of yet.

Of particular importance to you, is your stand on the recent Adapt V. Burnley decision in which you wrote to President Bush asking that he carefully consider this case and refrain from seeking a Supreme Court appeal (see attached memo and letter). The Bush Administration came out with their decision last week in favor of appealing the case to the Supreme Court -- which has the disability groups up in arms and fails to be consistent with President Bush's statements of a fully accessible and barrier free society in integrating people with disabilities into the economic and social mainstream. The Administration seeking an appeal on the grounds that it would be a drain financially on society has irritated Administration officials as well, for its critical and harsh stance on the decision. The Administration's decision is inconsistent with the President's promise to fully integrate people with disabilities and the transportation section of the ADA bill. It is also inconsistent with your support for an accessible society. This should give rise to diplomatically compromising on this issue should you introduce a bill which the Administration will support. The groups will be certain to point this discrepancy out.



I suggest you wait on introducing your own bill or supporting any other bill until further developments and feedback can be obtained. I know this is of concern to the Administration and letting Senator Harkin and Hatch contend with some of these major issues within the Committee and during the course of committee hearings will put you in a prime position to be a grand compromiser should it reach the floor.

Introducing your own bill at this time may be premature and a disservice to the private sector who has yet to see the draft legislation. You are a moving target on this bill. If you introduce your own bill prior to hearings, you will be seen as undercutting the disability community efforts and the private sector will certainly have concerns and want your representation given that this legislation will extend anti-discrimination statutes to the private sector with enforcement remedies and increased litigation to those not in compliance with accessibility standards and non discrimination statutes.

I am not all sure that this legislation will be a pivotal decision at the polls in Iowa especially if the private sector and small business have concerns compounded with the fact that Iowa's rural areas could be impacted financially.

I still firmly suggest that you not introduce a bill at this time and instead prepare a floor statement when the ADA is introduced indicating your personal interest in this legislation and close monitoring of the bill in Committee in hearing out all concerns associated with this legislation. This will leave you open options in drafting your bill and let the Administration decide what their strategy will be.

If you do nothing and let the Committee battle out the highly controversial aspects of the bill and state your consistent support for a comprehensive civil rights bill that is fair, you will surface as the hero for compromise with both the disability groups and the private sector.

These are your options as I see them:

Prepare a floor statement indicating your interest in monitoring committee hearings and hearing out all concerns with the bill, thereby, reserving your option to be a hero for compromise and introduce your own legislation at a later date

\_\_\_\_\_ Develop Dole bill.

July 24, 1989

M E M O R A N D U M

TO: SENATOR DOLE  
FROM: DENNIS SHEA  
SUBJECT: AMERICANS WITH DISABILITIES ACT

Attached is a side-by-side analysis of the Administration and Kennedy/Harkin positions on the various provisions of the Americans with Disabilities Act. The analysis was prepared by the White House negotiating team.

The following is a summary of some of the important issues that remain unresolved. Bill Roper, Director of the White House Office of Policy Development, would like to meet with you at 2:30 this afternoon to discuss these issues and the status of the negotiations.

Betty tells me that you currently have nothing scheduled for 2:30.

Would you like to meet with Bill Roper at 2:30 this afternoon?

Yes \_\_\_\_\_

No \_\_\_\_\_

TITLE II -- EMPLOYMENT

1. Religious Entities. The Administration would like to exempt all religious-affiliated employers from the provisions of Title II. Kennedy/Harkin would exempt only those employment practices that are based on a bona fide religious belief.

2. Phase-In. The Administration proposes the following phase-in: The effective date of the ADA would be 2 years after its enactment. On the effective date, Title II would apply to all employers with 25 employees or less. Title II would apply to all employers with 15 employees or less commencing 4 years from the date of enactment.

Kennedy/Harkin have yet to respond to the Administration's proposal.

3. Remedies. The Administration proposes that Title II incorporate only those remedies found in Title VII of the Civil Rights Act of 1964. Under Title VII of the Civil Rights Act of 1964, an aggrieved party has the right to file a charge with the Equal Employment Opportunity Commission (the "EEOC"). If the EEOC fails to conciliate the dispute, the aggrieved party has the right to initiate a lawsuit in federal court to receive backpay and rightful seniority.



Kennedy/Harkin insist on maintaining the remedies available in 42 U.S.C. Section 1981, a post-Civil war statute that provides for an extended statute of limitations, jury trials, and awards of compensatory and punitive damages. These remedies would be in addition to the remedies found in Title VII of the Civil Rights Act of 1964.

#### TITLE III -- TRANSPORTATION/STATE AND LOCAL GOVERNMENT

1. Paratransit Cap. The Administration would require that all public transit authorities allocate 2% of their operating budgets for the provision of paratransit services. This requirement would be effective at the time of the ADA's enactment.

Kennedy/Harkin insist that all public transit authorities allocate 3% of their operating budgets for the provision of paratransit services. This requirement would be phased-in over a 12-year period.

2. Private Transportation. The Administration would require the Secretary of Transportation to perform a feasibility study of requiring that all new privately-owned buses be lift-equipped.

Kennedy/Harkin insist that all new privately-owned buses be lift-equipped within 3 years.

3. Waivers by Secretary of Transportation. The Administration proposes to give the Secretary of Transportation some authority to grant waivers to the requirement that all new privately-owned buses be lift-equipped.

Kennedy/Harkin oppose any waiver authority.

#### TITLE IV -- PUBLIC ACCOMODATIONS

1. Scope of Definition. The Administration proposes that Title IV duplicate the coverage of Title II of the Civil Rights Act of 1964. As a general matter, Title II of the Civil Rights Act of 1964 covers places of lodging, restaurants, places of entertainment, and gasoline stations. The Administration also proposes extending Title IV's coverage to medical offices.

Kennedy/Harkin insist that Title IV cover virtually the entire private sector, except private homes and places of lodging with five rooms or less.

#### MARK-UP

The Labor Committee has scheduled a mark-up of the ADA for Wednesday, July 26.



August 1, 1989

M E M O R A N D U M

TO: SENATOR DOLE  
FROM: DENNIS SHEA  
SUBJECT: STATUS OF NEGOTIATIONS ON THE AMERICANS WITH  
DISABILITIES ACT

The Administration is "close" to agreement with Senators Kennedy and Harkin on the Americans with Disabilities Act and hopes to reach final agreement prior to tomorrow's mark-up. The following is a summary of the issues on which tentative agreement has been reached.

I. REMEDIES

The parties have agreed to accept the proposal on remedies that was spelled out in Attorney General Thornburgh's recent letter.

As a result, the ADA will not provide for jury trials or compensatory and punitive damages. The ADA, however, will make available the remedies found in Title VII of the Civil Rights Act of 1964. It will also give the Attorney General discretionary authority to seek civil penalties in cases involving egregious and willful violations. These penalties will be \$50,000 for the first violation and \$100,000 for any subsequent violation. SENATOR HATCH BELIEVES THAT THESE PENALTIES ARE TOO LARGE.

II. PUBLIC ACCOMMODATIONS

With several exceptions, the parties have agreed to accept the "laundry list" of public accommodations circulated by Kennedy/Harkin at the last meeting of principals. As a result, public accommodations will be broken down into two-tiers.

The ADA, however, will exempt religious entities entirely from the public accommodations section. The ADA will also provide that elevators need not be installed in any new building if the building has fewer than three floors or fewer than 3000 square feet per floor.

III. EMPLOYMENT

The parties have agreed to phase-in the ADA's employment section as follows: The effective date of the ADA will be 2 years after its enactment. On the effective date, the ADA's employment section will apply to all employers with 25 employees or less. The employment section will apply to all employers with 15 employees or less commencing 4 years from the date of enactment.

The parties have also agreed that employment practices based on bona fide religious beliefs will be exempt from the ADA.



-2-

#### IV. PUBLIC TRANSPORTATION

The parties have agreed to give the Secretary of Transportation some limited authority to grant waivers from the requirement that all new buses be lift-equipped.

The parties have also agreed to exempt public transit authorities from the paratransit requirements if these requirements constitute an undue financial burden. As a result, the Administration's original proposal to cap paratransit services at 2% of a public transit authority's operating budget has been dropped.

#### V. PRIVATE TRANSPORTATION

The parties have agreed to a modified version of the Durenberger proposal.

As a result, the ADA will require the Architectural and Transportation Compliance Board to conduct a study of the feasibility of lift-equipping privately-owned buses and trains. Lift-equipping buses and trains, however, will be mandatory commencing five years from the date of the ADA's enactment. The original Durenberger proposal delayed this mandate for three-to-four years.

FRED CURREY WILL NOT BE PLEASED WITH MANDATING ANY REQUIREMENTS, EVEN IF THESE REQUIREMENTS ARE DELAYED FOR SEVERAL YEARS.

#### HATCH'S POSITION

I have been informed by Mark Disler, Sen. Hatch's staff person covering the ADA, that Sen. Hatch will probably not sign on as a co-sponsor of the ADA tomorrow.

#### POSSIBLE AREAS OF IMPROVEMENT (POSSIBLE AMENDMENTS)

1. Civil penalties of \$50,000 for the first violation and \$100,000 for subsequent violations are too large. A more appropriate amount would be \$1,000 for the first violation and \$5,000 for subsequent violations.

2. A small business exemption from the ADA's public accommodations section should be created. This exemption would protect the local Mom and Pop grocery store.

3. Private transportation should be left alone. Nothing more than a study by the Architectural and Transportation Compliance Board should be required at this time.



July 27, 1989

M E M O R A N D U M

TO: SENATOR DOLE  
FROM: DENNIS SHEA  
SUBJECT: AMERICANS WITH DISABILITIES ACT

Attached is a letter from Attorney General Thornburgh to Sen. Kennedy summarizing the Administration's view of the status of the pending negotiations on the Americans with Disabilities Act. The letter represents a "bill of particulars" outlining the Administration's positions, including its willingness to compromise on certain unresolved issues.

The following is a brief summary of the Thornburgh letter.

I. EMPLOYMENT

In the Thornburgh letter, the Administration reiterates its position on a phase-in: The effective date of the ADA should be 2 years after its enactment. On the effective date, Title II would apply to all employers with 25 employees or less. Title II would apply to all employers with 15 employees or less commencing 4 years from the date of enactment.

II. REMEDIES

Original Administration Position: The Administration originally proposed that the employment section of the ADA incorporate only those remedies found in Title VII of the Civil Rights Act of 1964.

Kennedy/Harkin Position: Kennedy/Harkin insist on maintaining the remedies available in 42 U.S.C. Section 1981, a post-Civil War statute that provides for an extended statute of limitations, jury trials, and awards of compensatory and punitive damages. These remedies would be in addition to the remedies found in Title VII of the Civil Rights Act of 1964.

The Administration Compromise: In the Thornburgh letter, the Administration proposes giving the Attorney General discretionary authority to seek civil penalties in cases involving egregious and willful violations of the employment and public accommodations sections of the ADA. These civil penalties would be in addition to the remedies found in Title VII of the Civil Rights Act of 1964.

**WARNING: IN A DRAFT OF THE THORNBURGH LETTER, THE ADMINISTRATION HAD PROPOSED PENALTIES OF UP TO \$50,000 FOR THE FIRST VIOLATION, AND UP TO \$100,000 FOR ANY SUBSEQUENT**



-2-

VIOLATIONS, OF THE PUBLIC ACCOMODATIONS AND EMPLOYMENT SECTIONS OF THE ADA. THIS PROPOSAL WAS DELETED FROM THE FINAL VERSION OF THE THORNBURGH LETTER.

ALTHOUGH THE SIZE OF THESE PENALTIES IS OUTRAGEOUSLY HIGH, THORNBURGH AND KENNEDY MAY HAVE MADE A PRIVATE DEAL ON THIS SUBJECT. I KNOW THAT SEN. HATCH WAS PERSONALLY INFURIATED BY THE SIZE OF THE PENALTIES AND YESTERDAY VENTED HIS ANGER ON BILL ROPER.

### III. PUBLIC ACCOMODATIONS

Original Administration Position: The Administration originally proposed that the public accomodations section of the ADA duplicate the coverage of Title II of the Civil Rights Act of 1964. As a general matter, Title II of the Civil Rights Act of 1964 covers places of lodging, restaurants, places of entertainment, and gasoline stations. The Administration also proposed extending the coverage of the ADA's public accomodations section to medical offices.

Kennedy/Harkin Position: Kennedy/Harkin insist that the public accomodations section of the ADA cover virtually the entire private sector, except private homes and places of lodging with five rooms or less.

The Administration Compromise: In the Thornburgh letter, the Administration proposes a two-tier approach.

The first-tier would include all public accomodations covered by Title II of the Civil Rights Act of 1964 and all medical offices. These public accomodations would be subject to all of the nondiscrimination provisions of the ADA, including minimal retrofitting requirements.

The second-tier would include some -- not all -- of those public accomodations described in the ADA but outside the coverage of Title II of the Civil Rights Act of 1964. These second-tier public accomodations would be subject to a less burdensome set of nondiscrimination requirements.

### IV. RELIGIOUS ENTITIES

In the Thornburgh letter, the Administration insists that all religious entities be fully exempt from the ADA.

WARNING: WE NEED TO MAKE SURE THAT THE PHRASE "RELIGIOUS ENTITIES" INCLUDES NOT ONLY CHURCHES AND SYNAGOGUES, BUT ALSO RELIGIOUSLY-AFFILIATED DAY CARE CENTERS AND SCHOOLS.

As you know, Kennedy/Harkin would exempt from Title II of the ADA only those employment practices that are based on a bona fide religious belief.

-3-

#### V. PUBLIC TRANSPORTATION

In the Thornburgh letter, the Administration insists that the Secretary of Transportation be given some authority to grant waivers to the requirement that all new buses be lift-equipped. The Administration also insists that public transit authorities be required to allocate only 2% of their operating budgets for paratransit services.

#### VI. PRIVATE TRANSPORTATION

In the Thornburgh letter, the Administration insists that no requirements should be placed on private bus and rail companies, until the Secretary of Transportation has first conducted a full study of the feasibility and cost of these requirements.



August 1, 1989

M E M O R A N D U M

TO: SENATOR DOLE  
FROM: DENNIS SHEA  
SUBJECT: STATUS OF NEGOTIATIONS ON THE AMERICANS WITH  
DISABILITIES ACT

The Administration is "close" to agreement with Senators Kennedy and Harkin on the Americans with Disabilities Act and hopes to reach final agreement prior to tomorrow's mark-up. The following is a summary of the issues on which tentative agreement has been reached.

I. REMEDIES

The parties have agreed to accept the proposal on remedies that was spelled out in Attorney General Thornburgh's recent letter.

As a result, the ADA will not provide for jury trials or compensatory and punitive damages. The ADA, however, will make available the remedies found in Title VII of the Civil Rights Act of 1964. It will also give the Attorney General discretionary authority to seek civil penalties in cases involving egregious and willful violations. These penalties will be \$50,000 for the first violation and \$100,000 for any subsequent violation. SENATOR HATCH BELIEVES THAT THESE PENALTIES ARE TOO LARGE.

II. PUBLIC ACCOMMODATIONS

With several exceptions, the parties have agreed to accept the "laundry list" of public accommodations circulated by Kennedy/Harkin at the last meeting of principals. As a result, public accommodations will be broken down into two-tiers.

The ADA, however, will exempt religious entities entirely from the public accommodations section. The ADA will also provide that elevators need not be installed in any new building if the building has fewer than three floors or fewer than 3000 square feet per floor.

III. EMPLOYMENT

The parties have agreed to phase-in the ADA's employment section as follows: The effective date of the ADA will be 2 years after its enactment. On the effective date, the ADA's employment section will apply to all employers with 25 employees or less. The employment section will apply to all employers with 15 employees or less commencing 4 years from the date of enactment.

The parties have also agreed that employment practices based on bona fide religious beliefs will be exempt from the ADA.



-2-

#### IV. PUBLIC TRANSPORTATION

The parties have agreed to give the Secretary of Transportation some limited authority to grant waivers from the requirement that all new buses be lift-equipped.

The parties have also agreed to exempt public transit authorities from the paratransit requirements if these requirements constitute an undue financial burden. As a result, the Administration's original proposal to cap paratransit services at 2% of a public transit authority's operating budget has been dropped.

#### V. PRIVATE TRANSPORTATION

The parties have agreed to a modified version of the Durenberger proposal.

As a result, the ADA will require the Architectural and Transportation Compliance Board to conduct a study of the feasibility of lift-equipping privately-owned buses and trains. Lift-equipping buses and trains, however, will be mandatory commencing five years from the date of the ADA's enactment. The original Durenberger proposal delayed this mandate for three-to-four years.

FRED CURREY WILL NOT BE PLEASED WITH MANDATING ANY REQUIREMENTS, EVEN IF THESE REQUIREMENTS ARE DELAYED FOR SEVERAL YEARS.

#### HATCH'S POSITION

I have been informed by Mark Disler, Sen. Hatch's staff person covering the ADA, that Sen. Hatch will probably not sign on as a co-sponsor of the ADA tomorrow.

#### POSSIBLE AREAS OF IMPROVEMENT (POSSIBLE AMENDMENTS)

1. Civil penalties of \$50,000 for the first violation and \$100,000 for subsequent violations are too large. A more appropriate amount would be \$1,000 for the first violation and \$5,000 for subsequent violations.

2. A small business exemption from the ADA's public accommodations section should be created. This exemption would protect the local Mom and Pop grocery store.

3. Private transportation should be left alone. Nothing more than a study by the Architectural and Transportation Compliance Board should be required at this time.



January 3, 1991

TO: Senator Dole  
FROM: Mo West/Andy Weis  
SUBJECT: ADA Commission Update

At your request, we will continue to pursue the establishment of a Commission on the Americans With Disabilities Act (ADA). Since one of the primary goals of the proposed ADA Commission would be to provide expertise to and enhance communication with the small business community, we will be meeting in mid-January with the SBA Administrator, Susan Engeleiter.

SBA has expressed interest in the creation of a commission that would assist the small business community with compliance of ADA requirements. The purpose of the meeting is to discuss the role of the commission and its relationship with small business. Other participants at the SBA meeting will include Russell Redenbaugh, Commissioner, U.S. Commission on Civil Rights, and Sandra Swift Parrino, Chairperson, National Council on Disability.

Following our meeting with SBA officials, under your guidance we would like to discuss the administration's view with John Sununu. Simultaneously, we will be in the process of attempting to round-up bi-partisan support for this initiative.

It is also important to note that former Representative Tony Coelho supported the establishment of the commission in early December during a meeting with Sandy Parrino and Russell Redenbaugh.

May 16, 1991

TO: Sheila Burke  
FROM: Andy Weis  
SUBJECT: Dole ADA Education Implementation Agenda

With Congressional reauthorization of the Higher Education Act (HEA) and the unveiling of President Bush's education reform plan, I have identified a number of potential disability issues for the Senator's consideration. The specific issues, which I have outlined below, are:

- o teacher training;
- o TRIO program eligibility;
- o education reform programs;
- o post-secondary participation rates of students with disabilities

Initiatives in these areas create an opportunity for the Senator to promote special education programs, as well as implementation of the ADA. Few members are updating, or reviewing, programs to ensure compliance with the ADA's mandate: the inclusion of people with disabilities into the mainstream of American society. By focusing on a few, timely initiatives, Senator Dole would establish a precedent for the integration of disability issues into regular public policies.

Reps. Steve Gunderson and Pat Williams have independently expressed interest in related issues. My specific proposals have been positively received by education and disability experts. While I am cognizant that education reform is controversial and highly politicized, I believe these proposals are worth pursuing.

#### AMENDMENTS TO THE HIGHER EDUCATION ACT

##### Teacher Training

The Individuals with Disabilities Education Act (IDEA), formerly the Education of the Handicapped Act (EHA), is an integral part of our nation's effort to ensure children with disabilities an equal educational opportunity. This law contains procedures to assure that these children are educated with non-disabled children to the maximum extent appropriate.

The mandate that states educate children with disabilities in the "least restrictive environment" suggests that all teachers study special education techniques. It also suggests that teachers become familiar with assessment and evaluation procedures to ensure children with disabilities are appropriately served and to prevent the misclassification of students. The development of certain teaching skills is particularly important to minority groups who have been traditionally overrepresented in special education.



There is extensive evidence to support training regular education teachers in special education techniques. A major 1986 study of special education programs concluded that "unless training in special education is extended to more principals and regular classroom teachers, handicapped students may not receive adequate education suited for their needs."

#### Policy Options:

Title V of the Higher Education Act is focused on teacher recruitment, retention, and development. The Senator could introduce an amendment authorizing a pilot project of grants to State Education Agencies to support training in special education techniques for regular classroom teachers. There are a few successful programs which might serve as a model.

The President's proposal to establish principal and teacher training academies might serve as another appropriate vehicle for a Dole initiative.

#### **TRIO Programs**

Authorized under Title IV of the HEA, TRIO programs are designed to help disadvantaged students pursue higher education. Among TRIO's six programs is Student Support Services. This program provides information, counseling, academic instruction, tutoring, etc. Student Support Services is the only TRIO program required to address the needs of physically disabled students as well as low-income, first-generation college students.

Many TRIO service providers, however, are concerned that the program has been skewed by the recent influx of learning disabled (LD) students. As a result, the National Council of Educational Opportunity Associations (NCEO) has revised their eligibility criteria to exclude all LD students. To receive services from a Student Support Services project, LD students must now qualify on the basis of income or generational status. This eligibility distinction is contrary to Congressional intent and discriminates against students with learning disabilities.

#### Policy Options:

The reauthorization of the HEA creates an opportunity to remedy this problem. Although this is a controversial issue, the Association on Handicapped Student Service Programs in Post-Secondary Education (AHSSPPE) would work closely with our office.

### **AMENDMENTS TO SCHOOL REFORM**

#### **America 2000: An Education Strategy**

President Bush's new education plan aims to reform existing schools; launch a massive research and development effort to invent new types of schools; and encourage adults to continue learning.



This reform package does not directly address special education and the needs of students with disabilities. There are a number of important questions that need to be addressed. For example, how do we reconcile the demand for world-class standards in achievement testing with the alternative learning styles of the special education population? What effect will school choice programs have on the provision of special education programs and services? There are a litany of proposals, including the establishment of 535 model, high-performance schools, that could concentrate on the inclusion and assessment of students with disabilities.

#### Policy Options:

A letter to Secretary Alexander asking how special education and opportunities for children with disabilities will fit in with the new reform proposal could be drafted.

Another option includes an editorial for the mainstream press (Washington Post, New York Times, Wall Street Journal). Should the Senator pursue this option, I have several experts available to assist our office in drafting an Administration-friendly article with constructive ideas.

#### Participation in Post-Secondary Education Programs

Recent research suggests that many disabled youths do not pursue post-secondary education. A government study and other data indicates that "the post-secondary education participation rates of special education students are well below the national norms for non-disabled youth." In light of this situation, youth with disabilities experience tremendous difficulty developing the necessary skills to lead productive, independent adult lives. Without these skills, the ADA is an empty promise of equal opportunity.

#### Policy Options:

A letter to Secretary Alexander requesting that the Department set targets for increasing the post-secondary participation rates of students with disabilities, study the high school drop-out rates for students with disabilities, and increase awareness of disabled students about the financial aid process.

If the Department fails to respond, an amendment to the HEA requiring a study of drop-out rates, etc. is a possibility.

Institutions of Higher Education have a federal financial aid escape clause enabling them to refuse extraordinary costs for disability related services if there is another available funding source, such as vocation rehabilitation. A technical amendment to eliminate this escape clause would stop higher education entities from "passing the buck."

\*\*\*Thank you for your consideration of these proposals.\*\*\*



October 26, 1990

TO: Senator Dole  
FROM: Maureen West and Andy Weis  
SUBJECT: Assistance for Disability-Related Expenditures

The recently enacted Americans with Disabilities Act (ADA) will require businesses and other public facilities to make "reasonable accommodations" for persons with disabilities. In some cases this could mean that a business will be required to make expenditures to adapt a job or service to a person with a disability.

A number of legislative initiatives designed to ease the financial burden placed on businesses by ADA were introduced this session. Outlined below are four programs you sponsored that provide financial and/or technical assistance to businesses for disability-related expenditures: EEOC technical assistance, targeted jobs tax credit (TJTC), Pryor-Kohl disability access tax credit, and Section 190 deductions.

#### Technical Assistance

You authored a technical assistance amendment to ADA that would assist with its implementation. This amendment directs the Equal Employment Opportunity Commission (EEOC) to clarify and answer questions regarding the rights of persons with disabilities and the obligations of businesses under ADA. This technical assistance amendment was also included in the Commerce, Justice, State, and Judiciary Appropriations Bill. The conference agreement includes \$1 million for the implementation of a technical assistance program as authorized by section 506 of ADA.

#### Targeted Jobs Tax Credit

The targeted jobs tax credit, which aims to increase the employability of disadvantaged youth and persons with disabilities, has been extended for another 15 months. Many businesses in Kansas have successfully utilized this program to employ people with disabilities. The extension will further ease the burden faced by businesses in accommodating persons with disabilities as required by ADA.

#### Pryor-Kohl Disability Access Tax Credit

The tax credit is designed to assist the small business community with the cost of ADA compliance. The credit applies to any ADA-related expenditures for the accommodation of persons with disabilities. ADA-related expenditures include the following: removal of architectural, transportation, physical, or



communications barriers; procurement or modification of equipment and/or services; translation of materials for the visually or hearing impaired; personal assistant services; technical support and training for business and employee compliance; auxiliary aids and services. The variety of eligible disability related expenditures will enable businesses to more easily accommodate persons with disabilities.

Small businesses are responsible for the first \$250 of expense to accommodate the disabled. Costs above \$250 are eligible for a 50% non-refundable credit, up to \$5,000. Any ADA-disability related expenditure above \$5,000 is eligible for a more restricted deduction of \$15,000. If the entire access tax credit is not used in one year, it can be accumulated and carried forward to subsequent years or carried back to previous tax years.

Only small businesses are eligible to receive tax credit. A small business is defined as any business with less than \$1 million gross receipts or fewer than 30 full time employees qualify for the credit. Eligibility for the tax credit is narrowly defined for several reasons. Small businesses will be called on most often to accommodate and employee persons with disabilities. Small business have limited resources and, therefore, require the most technical and financial assistance to comply with ADA. In addition, all other businesses qualify for the \$15,000 deduction.

The access tax credit is revenue neutral. The cost of this new credit, however, is offset by lowering the deduction in Section 190 of the Internal Revenue Code to \$15,000.

#### Section 190

Section 190 of the Internal Revenue Code, which you authored, provides a \$35,000 deduction for disability related expenditures. A disability related expenditure is defined as the removal of architectural and transportation barriers to the disabled and elderly. Given a number of assumptions related to company size and income, large businesses have tended to benefit more from the Section 190 deduction.

The Pryor-Kohl Disability Access Tax Credit (as described above) lowers the deduction to \$15,000. Justification for this change to the Section 190 deduction is based upon two arguments. First, Section 190 does not focus assistance effectively to small businesses. Small businesses, however, will bare the burden of ADA and will most need help. And second, Section 190 deductions for disability related expenditures apply to only a limited class of expenditures.

Consequently, Section 190 provides a \$15,000 deduction for disability related expenditures.



October 20, 1992

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Small Business Relief under the ADA

In the event you are asked about assistance available to the small businesses on how to comply with and understand their new obligations under the ADA, I suggest you share the following information.

TECHNICAL ASSISTANCE:

During consideration of the ADA you authored a technical assistance provision which was included in the law. You have been instrumental in securing funds to implement Section 506 -- the Technical Assistance provision of the ADA.

The government-wide technical assistance program requires Federal agencies (EEOC, Justice, FCC etc.) to provide information to the public and private sector on implementation and enforcement of the ADA. This program entails a very targeted information dissemination system for employers on how to comply with and understand their new obligations under ADA.

Information dissemination has been made available through hotlines, compliance manuals and pamphlets on what the ADA means and requires. Additionally, there is a national network of ten "Regional ADA Technical Assistance Resource Centers" to provide comprehensive assistance on ADA and on-site evaluation and training for small businesses. Attached is a listing of these centers and other employer resources.

TAX INCENTIVES:

You authored a tax incentive provision of the Internal Revenue Code (IRC) while Chairman of the Finance Committee. Section 190 of the IRC provided a \$35,000 tax deduction for disability related expenditures. With passage of the ADA, the deduction was lowered to \$15,000 to secure a yearly \$5,000 tax credit for small businesses who will incur costs in providing ADA related expenditures.

The Targeted Jobs Tax Credit (TJTC) aimed at increasing the employability of disadvantaged youth and persons with disabilities will be permanently extended in the Urban Aid Package -- should it become law. Many businesses in Kansas have successfully utilized this program to employ people with disabilities and will want it to be permanently extended.



President's Committee on Employment  
of People with Disabilities

**Telephone Numbers for ADA Technical Assistance**

President's Committee on Employment of People with Disabilities  
202-376-6200 (Voice) 202-376-6205 (TDD) 202-376-6219 (Fax)

Job Accommodation Network (A Service of the President's Committee)  
800-526-7234 (Voice/TDD) 800-526-4698 (Voice/TDD, W. Va. only)

Architectural and Transportation Barriers Compliance Board  
800-872-2253 (Voice/TDD) 202-272-5434 (Voice/TDD)

U.S. Department of Justice  
202-514-0301 (Voice) 202-514-0381 (TDD)

U.S. Department of Transportation  
202-366-9306 or 4011 (Voice) 202-755-7687 or 366-2979 (TDD)

Disability Rights Education and Defense Fund  
800-466-4232 (Voice/TDD) 202-986-0375  
510-644-2555 (Voice) 510-644-2629 (TDD)

Equal Employment Opportunity Commission  
800-669-3362 (Voice) 800-800-3302 (TDD)

Federal Communications Commission  
202-632-7260 (Voice) 202-632-6999 (TDD)

National Association of the Deaf  
301-587-1788 (Voice) 301-587-1789 (TDD)

National Association of Protection and Advocacy Systems  
202-408-9514 (Voice) 202-408-9521 (TDD)

National Center for Law and the Deaf  
202-651-5373 (Voice/TDD)

National Institute on Disability and Rehabilitation Research  
202-732-1139 (Voice) 202-732-5316 (TDD)

Project Action - National Easter Seal Society  
202-347-3066 (Voice) 202-347-7385 (TDD)

Rehabilitation Services Administration  
202-732-1331 (Voice) 202-732-4538 (TDD)



**National Institute on Disability and Rehabilitation Research (NIDRR)  
Regional Disability and Business Technical Assistance Centers (DBTACs)**

**1-800-949-4232 V/TDD**

*your free call will ring through to the NIDRR DBTAC responsible for the region that contains your area code*

I New England DBTAC CT, ME, MA, NH, RI, VT	U. of So. Maine; Muskie Institute of Public Affairs	Jennifer Eckel	145 Newbuey St. Portland, ME 04101 207-874-6535 V/TDD 207-874-6529 fax
II Northeast DBTAC NJ, NY, PR, VI	United Cerebral Palsy Ass./NJ	Richard Dodds	354 So. Broad St. Trenton, NJ 08608 609-392-4004 609-392-7044 TDD 609-392-3505 fax
III Mid Atlantic DBTAC DE, DC, MD, PA, VA, WV	Endependence Ctr. of No. Virginia	Sharon Mistler	2111 Wilson Blvd., # 400 Arlington, VA 22201 703-525-3268 V/TDD 800-232-4999 703-525-6835 fax
IV Southeast DBTAC AL, FL, GA, KY, MS, NC, SC, TN	United Cerebral Palsy Ass., Inc. / Nat. Alliance of Business	Shelley Kaplan	1776 Peachtree Rd., #310N Atlanta, GA 30309 404-888-0022 404-888-9098 V/TDD 404-888-9091 fax
V Great Lakes DBTAC IL, IN, MI, MN, OH, WI	U. of Illinois at Chicago / U. Affiliated Program	David Braddock	1640 W. Roosevelt Rd. M/C 627 Chicago, IL 60608 312-413-7756 V/TDD 312-413-1326 fax
VI Southwest DBTAC AR, LA, NM, OK, TX	Independent Living Research Utilization / The Inst. for Rehab. & Research	Lex Frieden	2323 S. Shepherd St. Suite 1000 Houston, TX 77019 713-520-0232 713-520-5136 TDD 713-520-5785 fax
VII Great Plains DBTAC IA, KS, NE, MO	U. of Missouri at Columbia	Jim de Jong	4816 Santana Dr. Columbia, MO 65203 314-882-3600 V/TDD 314-884-4925 fax
VIII Rocky Mtn. DBTAC CO, MT, ND, SD, UT, WY	Meeting the Challenge, Inc.	Randy W. Dipner	3630 Sinton Rd., # 103 Colorado Springs, CO 80907-5072 719-444-0252 V/TDD 719-444-0269 fax
IX Pacific DBTAC AZ, CA, HI, NV, Pacific Basin	Berkeley Planning Associates	Erica Jones	440 Grand Ave., #500 Oakland, CA 94610 510-465-7884 800-949-4232 TDD 510-465-7885 fax
X Northwest DBTAC AK, ID, OR, WA	Washington State Gov.'s Comm. on Disability Issues & Employment	Toby Olson	P.O. Box 9046 Olympia, WA 98507-9046 206-438-3168 206-438-3167 TDD 800-HELP-ADA 206-438-4014 fax

05/11/92



# Employer Resources

## Programs and Resources for Employers

Employer Incentives/Resources			
Program	Description	Restrictions	More Information
Abledata	Contains more than 15,000 listings of adaptive devices for all disabilities. A consumer referral service that responds with printed reports to requests for information.	Does not make diagnoses.	Abledata 8455 Colesville Rd. #935 Silver Spring, MD 20910 -3319 1-800-346-2742 voice/tdd 301-588-9284 voice/tdd
Disabled Access Credit (Section 44 of the IRS Code)	Encourages small businesses to comply with the Americans with Disabilities Act by allowing a tax credit of up to \$5,000 a year.	Expenditures must exceed \$250 and may not exceed \$10,250. Can only deduct up to 50% of "eligible access expenditures".	Internal Revenue Service
IBM Special Needs Information Referral Center	Conducts database searches in response to specific queries. Will provide resource guides and instructional videotapes upon request.	None	1-800-426-2133 voice 1-800-284-9482 tdd
Job Accommodation Network (JAN)	Free consulting service on available aids, devices and methods for accommodating workers with disabilities.	None	1-800-526-7234 voice/tdd
Job Training and Partnership Act (JTPA)	Customized training or retraining to meet local employer needs.	Employer must hire trainee with intent of permanent full-time position.	Private Industry Council (State or Local) Chamber of Commerce City or State government
Special Education Transition and Vocational Education Training Programs	Provides training, placement and on-the-job supervision for youth with disabilities. Can gear training to local employer needs.	Restricted to school-age youth.	Local secondary school authorities.
Supported Employment	A technique for providing on-the-job supervision for an extended time period for workers with severe disabilities.	Employer may be required to help fund the cost of "job coaches".	Local Vocational Rehabilitation Agency or secondary school authorities.



## **Employer Resources (cont'd)**

<b>Program</b>	<b>Description</b>	<b>Restrictions</b>	<b>More Information</b>
Targeted Jobs Tax Credit (TJTC)	Tax credit of 40% of first \$6,000 earned per employee provided the employment lasts at least 90 days or 120 hours.	May not claim TJTC and OJT for same wages. Certification must be requested on or before first day of work.	IRS (See Publication #907) State Employment Service Private Industry Council Vocational Rehabilitation (Check State and City government)
Tax Credit on Architectural and Transportation Barrier Removal (Section 190 of the IRS Code)	Tax deduction on up to \$15,000 spent to make a workplace more accessible for employees and customers.	Improvements must meet Treasury Department standards.	Internal Revenue Service
Vocational Rehabilitation On-The-Job Training Program	Shared payment of the disabled employee's wages for a limited time on a negotiated schedule.	Worker must be a VR client. Position must be permanent, full-time, pay minimum wage.	Local Vocational Rehabilitation Agency
Windmills (Attitudinal Awareness Training)	Enables employers to build more understanding and acceptance in the workplace.	None	California Governor's Committee for Employment of Disabled Persons 916-323-2545

### **For Additional General Information**

Write to:

President's Committee on Employment  
of People with Disabilities  
1331 F Street, NW, Washington, DC  
20004-1107

Phone: 202-376-6200 (Voice)  
202-376-6205 (TDD)  
202-376-6219 (FAX)

All public documents produced by the President's  
Committee on Employment of People with  
Disabilities are available in alternative formats.

FOR MOST  
BUSINESSES, IT WOULD COST  
MUCH MORE TO PRODUCE THIS  
AD THAN TO COMPLY WITH  
THE AMERICANS WITH  
DISABILITIES ACT.

FOR INFORMATION, CALL OUR JOB ACCOMMODATION NETWORK (JAN) AT 1-800-ADA-WORK.



**THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES**





## President's Committee on Employment of People with Disabilities

### COST OF JOB ACCOMMODATIONS

Q. What is meant by the phrase "reasonable accommodation" when we talk about employment of people with disabilities?

A. The term "accommodation" can be equated to "adjustments" or "modifications", which can range from very simple (often costing nothing) to more sophisticated, "state of the art" assistive devices. In any case, accommodation is made to functional limitations of individuals, on an individual basis. Accommodations are made daily at workplaces to both workers without disabilities as well as to those with disabilities. There is nothing new or mysterious about "accommodation". The necessity for reasonable accommodation rests on the need to consider people's actual abilities and limitations, and match them with actual work requirements to provide meaningful opportunities.

Q. What does the term "reasonable" mean?

A. Since accommodations are made on a case-by-case basis, reasonableness is also determined on a case-by-case basis. It is important that the individual worker or applicant with a disability be consulted initially as to individual needs and ideas for responding to those needs. By consulting services such as the Job Accommodation Network (JAN), the cost of responding to identified needs can be obtained. Once costs are known, and logistical feasibility discussed, what is "reasonable" for both parties becomes apparent.

Q. How can employers and people with disabilities find cost figures?

A. Through the Job Accommodation Network, it is relatively simple to determine the cost of individual items that serve as accommodations to the limitations of workers at the worksite. For specific information, call 1-800-JAN-7234.

Q. Generally, how costly is it to make accommodations?

A. From JAN experience reflected in evaluation of data on file: 31% of accommodations suggested are no cost

19%	"	"	cost between \$1 and \$50
19%	"	"	" " \$50 and \$500
19%	"	"	" " \$500 and \$1000
11%	"	"	" " \$1,000 and \$5000
-1%	"	"	" more than \$5000

Quick addition shows that 69% (more than 2/3rds) of accommodations suggested cost less than \$500, and 50% cost less than \$50.

over



In a study (Berkeley Planning Assoc. for the Department of Labor, 1982) it was found that half of accommodations made cost nothing, and more than 2/3rds cost less than \$100. Only 22% of employees with disabilities in companies surveyed required accommodation. The Berkeley Study correlated benefits accrued to company with costs of accommodations made. It was reported that benefits to the companies exceeded costs of accommodations.

Q. Is there information about specific, itemized costs?

1. JAN database information gives details of dollar costs of accommodations. Available listings indicate that there are many accommodations costing less than \$100, with an average cost of \$32. Obviously this includes many low-tech or no-tech items, and these are valid accommodations in every sense since they enable a worker with a disability to work or work better.

2. There are other listings of "typical accommodation costs", such as those that Prudential Insurance submitted to JAN. Catalogues of products designed with people with disabilities in mind, such as "Personal Computers and the Disabled" by Peter McWilliams (1984), include costs. The Human Resources Center (Albertson, NY), Trace Research and Development Center (University of Wisconsin) and other Research & Training Centers have constantly updated listings of devices, computer software and hardware items.

Also, it has been reported that about 80% of computer modifications cost less than \$300 (Newsweek, 4/24/89). For instance, for \$200 a computer can be equipped to read out loud virtually anything appearing on its screen; and another device attached to a personal computer allows a deaf employee to make and receive phone calls. (Bove, Harvard Business Review, 1985)

Q. How do employers feel about Accommodations?

A. According to the Harris Poll of 1987, 74% of Top Management regard accommodations either "Not too expensive" or "Not expensive at all". 72% of EEO officers said the same thing, and 80% of Line Managers said this, as well.

Q. Why is it important to know about reasonable accommodation?

A. Since 1973, with passage of the Rehabilitation Act, accommodations have been part of affirmative action and non-discrimination requirements covering employment of people with disabilities. Parts of Title V of the Act apply to employers who either have contracts with the federal government or who receive grants or subsidies from the federal government. Proposed comprehensive civil rights legislation, if enacted as currently drafted, will apply to all employers having 15 or more employees and includes non-discrimination provisions covering people with disabilities who are qualified to work with or without "accommodation".



July 22, 1992

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Title I Implementation

As you are aware, Title I of the Americans with Disabilities Act will become effective this Sunday, July 26, 1992. The employment provisions found in Title I will apply to 25 or more employees for the next two years and will drop down to include those employers with 15 or more employees beginning July 26, 1994.

Attached is a memo summarizing the employment provisions found in Title I of the ADA. Are you interested in giving a floor statement on employment implementation of the ADA next Monday since the effective date falls on a Sunday?

Yes \_\_\_\_\_ No

June 8, 1992

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Watch Hearings

As author of the Americans with Disabilities Act's provision on Technical Assistance -- Section 506, the National Council on Disability has invited you to stop by a two day conference in the Dirksen Building on implementation of the ADA. The hearings are being held in Room 106 of the Dirksen Building from 9:00 a.m. - 5:00 p.m.

Yvonne inquired earlier into your interest in offering testimony or brief remarks on ADA implementation. I attended the first day of hearings which were very good and have attached a schedule for tomorrow's hearing for your perusal.

The National Council is still very interested in your stopping by the hearings tomorrow to recognize the importance of technical assistance and implementation of the ADA. I could prepare some brief remarks if you's like to stop by before or after the Finance Committee hearings tomorrow morning. C-Span is covering these hearings all day today and tomorrow.

Will you stop by the ADA Watch hearing with some brief remarks?

Yes \_\_\_\_\_ No \_\_\_\_\_





National Council on Disability

800 Independence Avenue, S.W.  
Suite 814  
Washington, DC 20591

202-267-3846 voice  
202-267-3232 TDD

An Independent  
Federal Agency

May 22, 1992

Honorable Bob Dole  
U.S. Senate  
Room 141, Senate Hart OB  
Washington, D.C. 20510

Dear Senator Dole:

As we move toward the full implementation of the Americans with Disabilities Act (ADA), the National Council on Disability is sponsoring the first national public hearing addressing all aspects of this landmark federal civil rights law for people with disabilities. We would like to invite you, as one with a strong interest in the ADA, to join us to receive testimony and make remarks about the implementation of the ADA.

As an independent federal agency mandated by Congress to develop and review disability policy, the National Council originated the ADA in 1987, and has an ongoing commitment to ensuring its effective implementation. A vital component of the Council's efforts to fulfill its mandate regarding the ADA is our project called the ADA Watch. ADA Watch is a uniquely comprehensive initiative to observe ADA implementation nationwide, and will provide critical information to the Congress, the President, and federal agencies on the progress and impact of ADA implementation. These hearings are being conducted as part of ADA Watch.

The National Council on Disability invites you to join us in receiving testimony from the more than thirty invited witnesses and present formal testimony, if you so desire. The hearings will take place on Monday and Tuesday, June 15-16, from 9:00 a.m. to 5:00 p.m. in the Senate Dirksen Office Building, room 106. Please have your staff contact Billie Jean Hill of the National Council staff at (202)267-3846 to inform us if you will be participating in the hearing. If you have written remarks, we would greatly appreciate receiving copies in advance of the hearing.

Others who will be invited to testify at the hearing include senior officials from the federal agencies having ADA responsibilities, persons with disabilities, and representatives of all parties affected by the ADA, including large and small businesses, nonprofits, and state and local governments. The enclosed agenda presents the schedule for testimony on each ADA content area.

If you have questions or comments or need accommodations for a disability, please contact Ms. Hill at the National Council. We look forward to your participation in the hearings.

Sincerely,

*Sandra Swift Parrino /sd*

Sandra Swift Parrino  
Chairperson

Mon, June 15  
or  
Tues, June 16  
SD-106

**ADA WATCH**  
Public Hearing in Washington, D.C.  
June 15-16, 1992  
Room 106, Senate Dirksen Office Building

**Proposed Agenda**

Monday, June 16, 1992

9:00 - 9:45 a.m.	Opening Remarks by Mrs. Parrino & Members of Congress
9:45 - 11:00	Employment Panel #1
11:00 - 11:15	Break
11:15 - 12:30 p.m.	Employment Panel #2
12:30 - 2:00	Lunch
2:00 - 3:15	Public Accommodations Panel #1
3:15 - 3:30	Break
3:30 - 4:45	Public Accommodations Panel #2
4:45 - 5:00	Closing Remarks by Mrs. Parrino

Tuesday, June 16, 1992

9:00 - 9:15 a.m.	Opening Remarks by Mrs. Parrino & Members of Congress
9:15 - 10:45	Cross Content Areas Issues Panel
10:45 - 11:00	Break
11:00 - 12:30 p.m.	Transportation Panel
12:30 - 2:00	Lunch
2:00 - 3:15	Telecommunications Panel
3:15 - 3:30	Break
3:30 - 4:45	State & Local Governments Panel
4:45 - 5:00	Closing Remarks by Mrs. Parrino



NATIONAL COUNCIL ON DISABILITY  
ADA WATCH

Public Hearing on the Americans with Disabilities Act  
Room 106, Senate Dirksen Office Building  
Washington, DC  
June 15-16, 1992

- AGENDA -

Monday, June 15, 1992

9:00 - 9:45 a.m.      Opening Remarks

*Sandra Swift Parrino*, Chairperson, National Council on Disability

*John R. Dunne*, Assistant Attorney General, Civil Rights Division, U.S.  
Department of Justice

9:45 - 11:00 a.m.      Employment Panel #1

*Christopher G. Bell*, Acting Associate Legal Counsel for ADA Services, Equal  
Employment Opportunity Commission

*Justin Dart*, Chairman, The President's Committee on Employment of People  
with Disabilities

*Barbara T. Judy*, Project Manager, Job Accommodation Network

11:00 - 11:15 a.m.      Break

11:15 a.m. - 12:30 p.m.      Employment Panel #2

*Susan Meisinger*, Vice President for Government Affairs, Society for Human  
Resource Management

*Wendy Lechner*, Manager, Research and Policy Development, National Federation  
of Independent Business

*Mitchell Travers*, President, The Travers Group

*Richard Gunden*, President and CEO, The Ability Center of Greater Toledo

NCD/ADA WATCH PUBLIC HEARING ON THE ADA

- 2 -

Monday, June 15, 1992 (cont.)

12:30 - 2:00 p.m.                      Lunch

2:00 - 3:15 p.m.                      Public Accommodations Panel #1

Remarks: *The Honorable Steny H. Hoyer*, U.S. House of Representatives

*Gordon H. Mansfield*, Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development; Chairman, U.S. Architectural and Transportation Barriers Compliance Board

*John L. Wodatch*, Director, Office on the Americans with Disabilities Act, U.S. Department of Justice

*Robert D. Lynch*, American Institute of Architects

*James C. Dinegar*, Vice President, Government and Industry Affairs, Building Owners and Managers Association

3:15 - 3:30 p.m.                      Break

3:30 - 4:45 p.m.                      Public Accommodations Panel #2

*Barbara Bode*, Vice President and Executive Director, Council of Better Business Bureaus' Foundation

*Maureen McCloskey*, Paralyzed Veterans of America

*Barry F. Scher*, Vice President of Public Affairs, Giant Food Inc.

*Sally Weiss*, Information and Publications Coordinator, United Cerebral Palsy Association

*Robert Watson*, Executive Director, DateAble



NCD/ADA WATCH PUBLIC HEARING ON THE ADA

- 3 -

Tuesday, June 16, 1992

9:00 - 9:15 a.m.

Opening Remarks

*Sandra Swift Parrino*, Chairperson, National Council on Disability

*The Honorable Benjamin A. Gilman*, U.S. House of Representatives

*The Honorable Hamilton Fish, Jr.*, U.S. House of Representatives

9:15 - 10:45 a.m.

Cross-Content Area Issues

*William H. Graves*, Director, National Institute on Disability and Rehabilitation Research, U.S. Department of Education

*Carolyn L. Feis*, Program and Evaluation Methodology Division, U.S. General Accounting Office

*Paul Marchand*, Director, Governmental Relations, The Arc

*John Ambrose*, National Mental Health Association

10:45 - 11:00 a.m.

Break

11:00 a.m. - 12:30 p.m. Transportation

Receiving testimony: *The Honorable William F. Goodling*, U.S. House of Representatives

*Donald Trilling*, U.S. Department of Transportation

*Rosalyn Simon*, Executive Director, Project ACTION

*Tom Waldron*, Director of Operations, Virginia Railway Express; American Public Transit Association

*David Raphael*, Community Transportation Association

*Paul Schroeder*, Director of Governmental Affairs, American Council of the Blind/Transportation Co-Chair, Consortium for Citizens with Disabilities

NCD/ADA WATCH PUBLIC HEARING ON THE ADA

- 4 -

Tuesday, June 16, 1992 (cont.)

12:30 - 2:00 p.m.

Lunch

2:00 - 3:15 p.m.

Telecommunications

*The Honorable John McCain*, United States Senate

*Linda B. Dubroof*, Director of TRS Implementation, Federal Communications Commission

*David Rosenthal*, Kansas Relay Service

3:15 - 3:30 p.m.

Break

3:30 - 4:45 p.m.

State and Local Government

*Stewart B. Oneglia*, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice

*Marian Schooling Vessels*, Special Assistant to the Governor for the Americans with Disabilities Act; Executive Director, Maryland Governor's Committee on Employment of People with Disabilities

*Homer Page*, Commissioner, Boulder County, Colorado; National Association of Counties

4:45 - 5:00 p.m.

Closing Remarks

*Sandra Swift Parrino*, Chairperson, National Council on Disability





## National Council on Disability

800 Independence Avenue, S.W.  
Suite 814  
Washington, DC 20591

202-267-3846 voice  
202-267-3232 TDD

## ***FACT SHEET ON ADA WATCH***

An Independent  
Federal Agency

### ***WHAT IS ADA WATCH?***

ADA Watch is a project of the National Council on Disability to monitor implementation of the Americans with Disabilities Act (ADA). The ADA is a landmark federal civil rights law that provides protection against discrimination for people with physical or mental disabilities. Areas covered by the ADA are employment, public accommodations, transportation, telecommunications, and state and local government.

### ***WHAT IS THE GOAL OF THE WATCH?***

The ADA Watch will observe and report on whether the ADA accomplishes what it was designed to do, that is, to provide equal opportunity for people with disabilities to participate fully in American life. The Watch will look at the effect of complying with the ADA on businesses, governments, and other groups covered by it, and on people with disabilities, to see what challenges and opportunities the ADA presents.

The ADA Watch team will gather many different kinds of information from individuals and organizations to see both the "good news" and "bad news" of ADA implementation.

### ***HOW DOES THE ADA WATCH WORK?***

The ADA Watch team is developing a network of organizations and individuals that are involved and interested in the ADA. The members of this extensive network will provide specific information about their own experiences or the experiences of those they represent.

In addition, the ADA Watch will be involved in several other kinds of information-gathering, including:

- *Media tracking* to gather stories about the ADA from the press
- *Information sharing* with organizations and agencies already collecting ADA data
- *Toll-free telephone line* for those who want to provide ADA-related information
- *Public meetings* to provide a public forum to discuss ADA implementation

Five advisory committees (one for each ADA area) will give the Watch expert assistance.

## ***HOW DO I FIND OUT MORE ABOUT THE ADA WATCH?***

If you would like to know more about the ADA Watch, or to provide specific information that may be useful to the project, please write or call either the National Council on Disability or our ADA Watch contractor.

*National Council on Disability  
800 Independence Avenue, SW  
Suite 814*

*Washington, DC 20591  
(202) 267-3846 (voice)  
(202) 267-3232 (TDD)  
(202) 453-4240 (fax)*

*Robert G. Kramer & Associates, Inc.  
8200 Professional Place  
Suite 112*

*Landover, MD 20785  
(301) 577-7814 (v/TDD)  
(301) 577-4603 (fax)*





# **AMERICANS WITH DISABILITIES ACT**

**Signed by President Bush, July 26, 1990**



**National Council on Disability**



The National Council on Disability is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate. It is the only federal agency charged by Congress with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities.

The Americans with Disabilities Act (ADA), was first proposed in the 1986 special report of the National Council on Disability, *Toward Independence*. In 1988, the National Council outlined the blueprint for the ADA in another special report entitled *On The Threshold of Independence*.

The ADA, which was signed into law by President Bush on July 26, 1990, is a wide-ranging civil rights statute that prohibits discrimination against people with disabilities — similar to the protection given to women, minorities and others since the Civil Rights Act of 1964 was enacted.

Protected are an estimated 43 million Americans with physical or mental impairments that substantially limit activities such as working, walking, talking, seeing, hearing, or caring for oneself. People who have a record of such an impairment and those regarded as having an impairment are also protected.

People with AIDS or who are HIV-positive are protected. Individuals who are in or have successfully completed rehabilitation for alcoholism or drug abuse are protected, but not those currently engaging in the illegal use of drugs.

## Title I — Employment

Title I of ADA bars employment discrimination in the public and private sectors and in state and local governments. Prior to its passage, any discrimination — including employment — was prohibited in Federal Government operations, as well as in those of employers — including state and local government — that received federal funds. Companies doing more than \$2,500 a year of business with the Federal Government had to take “affirmative steps” in hiring and promoting people with disabilities.

ADA takes an across-the-board approach to antidiscrimination protection in employment. It bans discrimination and requires reasonable accommodation in recruiting, hiring, employing, promoting and training qualified workers with disabilities. The term “qualified” refers to an individual with a disability who — with or without reasonable accommodation — can perform the essential functions of the job held or sought. Consideration is given to the employer’s judgment as to what functions of a job are essential. If an employer develops a written job description before recruiting or interviewing applicants, this description is considered evidence of the essential functions.

Employers of 25 or more workers — the number employed each work day in each of 20 weeks in the current or preceding year — are affected starting 2 years after ADA was signed. Employers of 15 or more are covered 2 years later. Private membership clubs — except labor unions — are exempt. “Reasonable accommodation” may include making facilities used by employees accessible and usable by individuals with disabilities. It may also include restructuring jobs, setting up a part-time or modified work schedules, purchasing or modifying equipment or devices; modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

Accommodation is required unless it results in “undue hardship” — significant difficulty or expense to the employer. Factors to be considered include the nature and cost of the accommodation, and the financial resources and overall size of the business in terms of the number of workers, the number of facilities, and the structure

ADA bars discrimination in employment and requires most employers to make reasonable accommodations for qualified employees with disabilities beginning in 1992. It also bars discrimination in any activity or service operated or funded by state or local government — similar to a 1973 requirement for services operated or funded by the Federal Government.

ADA prohibits discrimination in commercial facilities and public accommodations — hotels, restaurants, stores, theaters and museums, among others. New buses, trains, subway cars and rail stations will have to be made accessible in the next few years. Accessible paratransit services must be provided that are comparable to fixed-route transportation services. Phone companies must provide relay services so that people with speech or hearing impairments can converse with people or businesses that use conventional voice phones.

While many states have laws banning discrimination against people with disabilities, the National Council on Disability felt that the lack of a consistent standard across the nation left people with disabilities living as second-class citizens — unable to move about as freely as people without disabilities and viewed as dependent people unable to work. Unemployment among people with disabilities is higher than in any other group.

and functions of the workforce.

A “qualified individual with a disability” in the employment portion of ADA does not include anyone who is currently engaging in the illegal use of drugs. Protection is provided, however, to someone who is incorrectly regarded as using drugs. Also protected from discrimination are individuals who have completed or are participating in supervised drug rehabilitation programs and who are no longer using drugs.

An employer may prohibit the use of alcohol and the illegal use of drugs at the workplace and require that employees not be under the influence of either while on the job. Drug testing is permitted and is not considered to be a medical examination.

Pre-employment medical exams can be required if they apply to all entering employees, without regard to disability. Exams cannot be used to determine whether a person has a disability or to evaluate its nature or severity. The employer may, however, ask whether the applicant can perform job-related functions.

While ADA was being considered in Congress, an effort was made to amend it so that anyone who had AIDS, was HIV-positive or was regarded as having AIDS could be transferred out of a food-handling job. That requirement was dropped and a substitute inserted that required the Secretary of Health and Human Services to publish a list of infectious diseases that are transmitted through handling food. The list was issued in August 1991. If transmission cannot be eliminated through reasonable accommodations, an employer may refuse to assign an affected individual to a job involving food handling.

A year after ADA was signed, the Equal Employment Opportunity Commission (EEOC) issued regulations implementing employment provisions. Most of the enforcement aspects of Title I will be handled by the EEOC and the Attorney General and through individual lawsuits.



## Title II — Public Service and Public Transportation

Title II of ADA is devoted to prohibiting discrimination in services, programs, or activities of a "public entity" — any state or local government (any department, agency, special-purpose district, or instrumentality of state or local government, including public transportation services), the National Railroad Passenger Corporation (Amtrak), and intercity and commuter rail services generally.

No qualified individual with a disability may be excluded by reasons of such disability from participation in or be denied the benefits, services, programs, or activities of a public entity beginning January 26, 1993, 18 months after ADA was signed. Access standards must be consistent with the minimum requirements issued by the federal Architectural and Transportation Barriers Compliance Board (ATBCB). Implementing regulations for public services were issued a year after ADA's signing.

Most of the Title II focuses on public transportation — bus, rail, taxi and limousines. Air travel is not covered, since the Air Carriers Access Act already established air travel nondiscrimination and access requirements. Staring 30 days after ADA was signed, public entities purchasing or leasing new buses, rail cars, or other passenger-transporting vehicles must make certain that those vehicles are accessible and usable by people with disabilities, including those in wheelchairs. Vehicles that have been remanufactured to extend their usable life for 5 years or more must also be accessible. Historic vehicles may be exempt if accessibility modification would significantly alter their historic character.

If a public entity runs a fixed-route system other than solely commuter bus service, it must provide paratransit or other special transportation that is comparable in service level and response time to services provided to individuals who do not have disabilities using the fixed-route system, unless doing so would impose an undue financial burden. In such a case, the service must still be provided to the extent that it does not impose a burden.

New public transportation facilities must be made accessible. While existing facilities — except key stations — need not be retrofitted, portions of existing facilities being altered must be made accessible. Key stations must be made accessible in 3 years, although they have up to 30 years if expensive structural changes are needed. Two-thirds of key stations must be made accessible within 20 years.

Commuter rail services must have at least one accessible car on each train as soon as possible, but not later than 5 years after ADA's signing. Exceptions may be made for historic trains.

Commuter rail service and Amtrak share these requirements — one accessible car per train within 5 years; cars purchased or leased 30 days or more after ADA's approval must be accessible; accessible rail coaches must have an accessible restroom; remanufactured cars, to the extent feasible, must be made accessible if the rebuilding extends the life of the car for 10 years or longer; new stations must be accessible, and all stations must be made accessible within 20 years.

The Secretary of Transportation issued regulations for the implementation of these requirements.



## Title III — Public Accommodations

Title III of ADA became effective 18 months after ADA's approval, on January 26, 1992. Title III prohibits discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation and services operated by private entities. The goods, services and accommodations must be offered in the most integrated setting appropriate to the needs of the individual.

A place of public accommodation specifically identified in ADA can be a hotel, motel, or inn (except one in which the proprietor lives that has five or fewer rooms for rent); an establishment serving food or drink; a theater, concert hall, stadium or other place of exhibition or entertainment; an auditorium, convention center or lecture hall; a bakery, grocery, clothing or hardware store, shopping center, or other sales or rental establishment; a service establishment such as a laundromat, bank, barber or beauty shop, funeral parlor, gas station, accountant or lawyer, hospital or health-care provider.

Also covered are: a transportation terminal or station; a museum, library, gallery, park, zoo, or amusement park; a nursery, private school (elementary through postgraduate), or other place of education; a day-care or senior citizen center; a homeless shelter; a food bank, adoption agency, or other social service center; and a

gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

New facilities to be occupied 2 1/2 years or later after ADA's enactment have to be accessible unless it is structurally impossible to make them so. Newly altered portions of facilities must also be accessible. Elevators are not required in buildings with fewer than three stories or less than 3,000 square feet per story except for shopping malls, or offices of professional health-care providers.

Under this portion of ADA, it is discriminatory to fail to remove architectural and communication barriers in existing facilities, if removal is "readily achievable" that is, if it can be accomplished without much difficulty or expense. Factors to be considered include the nature and cost of the structural modification as well as the size, financial resources and type of business. If the barrier cannot readily be removed, the goods or services must be made available through alternative methods.

It will be considered discriminatory to fail to make reasonable modifications in policies, practices and procedures that would enable a person with a disability to have the same opportunity as a person without a disability to obtain the goods, services or privileges. Regulations to implement the public accommodations requirements come from the Attorney General.



Private entities (other than airlines) that are primarily in the business of transporting people are required to purchase or lease only accessible fixed-route vehicles if they carry more than 16 passengers, starting 30 days after ADA was signed. Demand-response systems with vehicles seating eight or more (including the driver) must be accessible, and the services must be provided at a level equivalent to those provided to people without disabilities.

Over-the-road buses (those with baggage compartments below the passenger seating areas) must be accessible in 6 or 7 years,

depending on the size of the transportation company. These deadlines may be extended a year if the President determines, following review of a study due in 1993 from the Office of Technology Assessment, that there would be a reduction in service as the result of meeting the deadlines.

The Secretary of Transportation has issued regulations to implement ADA provisions affecting private transportation companies.

## Title IV — Telecommunications

Under Title IV of ADA, telecommunications relay services for people with speech and hearing impairments must be in place across the country by July 26, 1993. These services link users of telecommunications devices for the deaf (TDD) or other nonvoice devices and users of voice telephones.

The mandate calls for both intrastate relay services in all states and interstate services. New York, California and Alabama already provide intrastate relay services.

Title IV requires the relay services to operate 24 hours a day, 7 days a week. Relay operators may not alter conversations, limit the length of calls, or disclose to others the contents of relayed

conversations. Rates charged to relay users may not exceed those charged for functionally equivalent voice communications as regards to the duration of the call, time of day, and distance between the caller and the place called. Regulations for implementing these services were issued by the Federal Communications Commission.

Title IV also requires that television public service announcements produced or funded in whole or in part by any federal agency be closed-captioned.

## Title V — Miscellaneous

Title V of ADA is a potpourri of clarifications, exclusions and add-ons, many of which were inserted to clarify questions or concerns of some Members of Congress as the measure was debated.

Among the provisions are the following:

- Nothing in ADA, except as specifically provided, shall be construed to apply a lesser standard than one already required under Title V of the Rehabilitation Act of 1973 or the regulations issued as a result of that law.
- States are subject to ADA, and ADA does not limit or invalidate state or local laws that provide protection equal to or greater than that of ADA.
- Insurers may continue to underwrite and classify risks consistent with state law and entities covered may provide benefit plans based on risk classifications.
- No person can be discriminated against because he or she has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under ADA.
- The winning party in an ADA action — other than the U.S. Government — may be awarded a reasonable attorney's fee, including litigation expenses and costs.

— The Attorney General — in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chairman of the Architectural and Transportation Barriers Compliance Board and the Chairman of the Federal Communications Commission — developed a plan to assist entities covered by ADA.

— The term "disabled" or "disability" does not apply to an individual solely because the person is a transvestite.

— Homosexuality and bisexuality are not considered as impairments under ADA.

— The term "disability" does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from current illegal use of drugs.



ADA/ TITLE	EFFECTIVE DATES/REGULATIONS	ENFORCEMENT JURISDICTION
<b>TITLE I</b> <b>Employment</b>	Two years after the bill was signed, July 26, 1992, for employers with 25 or more employees; 4 years after it was signed for employers with 15 or more employees. Regulations were issued by the EEOC 1 year after the bill was signed. 29 C.F.R. Part 1630.	EEOC, Attorney General. Private right of action, remedies and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended.
<b>TITLE II</b> <b>Public Service</b>		
All activities of local and state governments	Eighteen months after the bill was signed. Regulations were issued by the Attorney General 1 year after bill was signed.	Private right of action; remedies and procedures set forth in Section 505 of the Rehabilitation Act of 1973.
(Part I), Public transportation (buses, light and rapid rail including fixed-route systems, paratransit, demand-response systems and transportation facilities).	After August 25, 1990, all orders for new vehicles must be for accessible vehicles; one car per train must be accessible as soon as practicable, but no later than after 5 years; paratransit services must be provided after 18 months; new stations must be retrofitted in 3 years, with some extensions allowed for up to 30 years.	Same as above.
(Part II), Public transportation by intercity Amtrak and commuter rail (including transportation facilities).	Within 10 years after the bill was signed, Amtrak passenger coaches must have the same number of accessible seats as would have been available if every car were built accessible; half of such seats must be available within 5 years. Same one-car-per-train rule and new stations rule as above. All existing Amtrak stations must be retrofitted within 20 years; key commuter stations must be retrofitted in 3 years, with some extensions allowed for up to 20 years. Regulations were issued by the Secretary of Transportation. 49 C.F.R. Parts 37 and 38.	Same as above.
<b>TITLE III</b> <b>Public Accommodations</b>		
A. Public accommodations (all business and service providers).	Eighteen months after the bill was signed; 24 months for businesses with 25 or fewer employees and certain level of revenues; 30 months for businesses with 10 or fewer employees and certain level of revenues. Regulations based on standards issued by the ATBCB were issued by the Attorney General 1 year after bill was signed. 28 C.F.R. Part 36.	Private right of action; remedies of Title II of the Civil Rights Act of 1964; Attorney General enforcement in pattern or practice cases.
B. New construction/alterations to public accommodations and commercial facilities.	Eighteen months after the bill was signed for alterations. Thirty months after the bill was signed for new construction. Same as above.	Same as above.
C. Public transportation provided by private entities.	In general, after August 25, 1990, for all new purchases or leases of accessible vehicles. Calls for a 3 year study of over-the-road buses to determine access needs, with requirements effective in 6 to 7 years. Standards to be issued by the ATBCB. Regulations were issued by the Secretary of Transportation. 49 C.F.R. Parts 37 and 38.	Same as above.
<b>TITLE IV</b> <b>Telecommunications</b>	Three years after the bill was signed, by July 26, 1993, telecommunications relay services to operate 24 hours per day. Regulations were issued by the Federal Communications Commission. 47 C.F.R. Parts 0 and 64.	Private right of action and Federal Communications Commission.
<b>TITLE V</b> <b>Miscellaneous Provisions</b>	In general, this title describes the ADA's relationship to other laws, explains insurance issues, prohibits state immunity, provides congressional inclusion, sets regulations by the ATBCB, explains implementation of each Title and notes amendments to the Rehabilitation Act of 1973. It also provides that state and local laws that afford persons with disabilities greater protection than ADA remain in effect.	

# National Council on Disability Members

Sandra Swift Parrino  
Chairperson  
New York

A. Kent Waldrep, Jr.  
Vice Chairperson  
Texas

Linda Allison  
Texas

Larry Brown, Jr.  
Maryland

Ellis B. Bodron  
Mississippi

Mary Ann Mobley Collins  
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Anthony H. Flack  
Connecticut

John A. Gannon  
Ohio and Washington, DC

John Leopold  
Maryland

Robert S. Muller  
Michigan

George H. Oberle, P.E.D.  
Oklahoma

Mary Matthews Raether  
Virginia

Anne C. Seggerman  
Connecticut

Michael B. Unhjem  
North Dakota

Helen Wilshire Walsh  
Connecticut

Ethel D. Briggs  
Executive Director

For additional information, contact:

National Council on Disability  
800 Independence Avenue, SW  
Suite 814  
Washington, DC 20591

(202) 267-3846 Voice  
(202) 267-3232 TDD  
(202) 453-4240 Fax



June 3, 1992

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Photo Op

The President of the Council for Exceptional Children, Alba Ortiz is planning to come to Washington, D.C. for a conference and wanted to stop by to talk with me about disability issues. She has asked to meet you and have her photo taken with you. If you are in town on June, 30 may I set up a photo op for her?

Yes \_\_\_\_\_ No \_\_\_\_\_

contact: Donna 703-264-9409

*You meet  
see my list*

7 10<sup>00</sup>  
7 12<sup>00</sup>  
2 p.m.



May 14, 1992

TO: Senator Dole

FROM: Mo West

SUBJECT: Assistance for Disability-Related Expenditures

The recently enacted Americans with Disabilities Act (ADA) will require businesses and other public facilities to make "reasonable accommodations" for persons with disabilities. In some cases this could mean that a business will be required to make expenditures to adapt a job or service to a person with a disability.

A number of legislative initiatives designed to ease the financial burden placed on businesses by ADA were passed by Congress after passage of the ADA. Outlined below are four programs you sponsored that provide financial and/or technical assistance to businesses for disability-expenditures: EEOC technical assistance, targeted jobs tax credit (TJTC), Disability Access Tax Credit, and Section 190 deductions.

#### Technical Assistance

You authorized a technical assistance amendment to ADA that would assist with its implementation. Section 506 of the ADA directs the Equal Employment Opportunity Commission (EEOC) and the Department of Justice to clarify and answer questions regarding the rights of persons with disabilities and the obligations of businesses under ADA. You are requesting an increase in technical assistance funding in this year's Commerce, Justice, State, and Judiciary Appropriations Bill.

#### Targeted Jobs Tax Credit

The targeted jobs tax credit, which aims to increase the employability of disadvantaged youth and persons with disabilities, has been extended for another 15 months. Many businesses in Kansas have successfully utilized this program to employ people with disabilities. The extension will further ease the burden faced by businesses in accommodating persons with disabilities as required by the ADA.

#### Disability Access Tax Credit

The tax credit is designed to assist the small business community with the cost of ADA compliance. The credit applies to any ADA-related expenditures for the accommodation of persons with disabilities. ADA-related expenditures include the following: removal of architectural, transportation, physical, or communications barriers; procurement or modification of equipment



and/or services; translation of materials for the visually or hearing impaired; personal assistant services; technical support and training for business and employee compliance; auxiliary aids and services. The variety of eligible disability related expenditures will enable businesses to more easily accommodate persons with disabilities.

Small businesses are responsible for the first \$250 of expense to accommodate the disabled. Costs above \$250 are eligible for a 50% non-refundable credit, up to \$10,250. Any ADA-disability related expenditure above \$10,250 is eligible for a more restricted deduction of \$15,000. If the entire access tax credit is not used in one year, it can be accumulated and carried forward to subsequent years or carried back to previous tax years.

Only small businesses are eligible to receive tax credit. A small business is defined as any business with less than \$1 million gross receipts or fewer than 30 full time employees qualify for the credit. Eligibility for the tax credit is narrowly defined for several reasons. Small businesses will be called on most often to accommodate and employee persons with disabilities. Small businesses have limited resources and, therefore, require the most technical and financial assistance to comply with ADA. In addition, all other businesses qualify for the \$15,000 deduction.

### Section 190

Section 190 of the Internal Revenue Code, which you authored, provides a \$35,000 deduction for disability related expenditures. A disability related expenditure is defined as the removal of architectural and transportation barriers to the disabled and elderly. Given a number of assumptions related to company size and income, large businesses have tended to benefit more from the Section 190 deduction.

The Disability Access Tax Credit (as described above) lowers the deduction to \$15,000. Justification for this change to the Section 190 deduction is based upon two arguments. First, Section 190 does not focus assistance effectively to small businesses. Small businesses, however, will bare the burden of ADA and will most need help. And second, Section 190 deductions for disability related expenditures apply to only a limited class of expenditures. Consequently, Section 190 provides a \$15,000 deduction for disability related expenditures.



September 10, 1991

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Disability Prevention Agenda

According to a special committee of the Institute of Medicine, a national coordinated program is needed to prevent or curtail the progress of disabilities. In a study titled "Disability in America: Toward a National Agenda for Prevention," the committee states that efforts to stem disabilities have been too dispersed to be effective.

The report notes that while "there are a number of disability-related programs in the federal government. . . no one agency has been charged with leadership responsibilities that focus on prevention." It proposes that these disparate programs be melded into a single effort, managed by the national Centers for Disease Control (CDC), to constitute a national disability prevention program.

The program would work to expand "surveillance" of disabling conditions, research and identify risk factors associated with disability, and study the relationship between disability and socioeconomic factors. Other goals of the prevention agenda include: greater access to health care, expanded access to family planning, and education for professionals, attendants and family members.

Senator Harkin has introduced legislation (S. 509) that would permanently authorize a demonstration program on disability prevention at the CDC. The bill would authorize \$15 million in fiscal year 1992 for the program, which would fund grants to prevent disabilities, conduct studies and demonstration projects on disability prevention, and sponsor education programs. Senator Harkin also introduced several other bills to promote prevention of disabilities.

BOB DOLE  
KANSAS

# United States Senate

OFFICE OF THE REPUBLICAN LEADER

WASHINGTON, DC 20510-7020

Jim,

do you want  
copies of all my  
memos to the Senator?

No

Yes. Thanks.

JKW 1/18



July 17, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Update on ADA Negotiations

Sheila

FYI

Mo

Dennis has  
copies of alternative  
language

I have been attending all the ADA negotiation meetings between the Administration and Committee on Labor & Human Resources staff. The meetings have been long and progress is being made in bringing this legislation in line with the appropriate regulations.

Both the Administration and Senate staff have agreed on minor technical changes during the meetings in addition to both parties circulating alternative language after lengthy discussions on problem areas. However, no final agreement has been made on any of the areas of conflict.

The areas that will be difficult in reaching compromise continue to be -- scope of public accommodations -- remedies -- and transportation issues.

The Administration asked that Title I which sets out the general prohibitions against discrimination be deleted and pertinent sections be folded into the remaining five titles. Senators Harkin and Kennedy were amenable to this request and circulated alternative language to accomplish this goal.

Technical changes made pertain to bringing the ADA in line with current 504 regulations and definitions. As you know the ADA has added new definitions (i.e. "readily achievable" & "auxiliary aids") which need further clarification. The term reasonable accommodation and its relationship to undue hardship (i.e. how much does one have to pay in making accommodations and who bears the cost?) needs to be further defined..

#### TIMETABLES & EXEMPTION PHASE-IN:

Timetables regarding regulations and the effective date of implementation have not yet been agreed upon. The Administration suggested that the regulations be issued one year after passage and the effective date start two years after enactment. Senators Harkin and Kennedy would not agree to this offer.

The timetables and the effective date will have an impact on the phase-in requirement for small businesses. The Administration has suggested that a small business exemption of 25 or less be phased-in starting at the effective date. The exemption would then return to 15 as is currently in the bill giving small businesses four years to prepare for ADA's mandates.



The Department of Justice is bringing alternative language on the "about to be discriminated" language under the employment title to our next meeting.

#### SCOPE OF PUBLIC ACCOMMODATIONS:

Title II of the 1964 Civil Rights Act bans discrimination on the basis of race, color, religion, and national origin in public accommodations. The ADA covers the entire private sector, except for private homes and places of lodging of five rooms or less. Coverage includes private schools, including religious schools; churches, synagogues and other religious institutions. The Administration favors coverage of public accommodations as defined in Title II of the 1964 Civil Rights Act. Senators Harkin and Kennedy insist that this legislation retain its mandate in requiring that all new construction be accessible to public accommodations. They will explore various adjustments in requiring renovations to public accommodations. The Administration would like religious entities to be excluded from the scope of public accommodation under Title IV of this bill as this is too much of an intrusion from the Feds and the National Council of Churches is opposed to its inclusion under this bill.

#### PUBLIC TRANSPORTATION:

Under the ADA all new buses must be 100% accessible. Paratransit or other special transportation services must be provided as a supplement to mainline accessibility for those who can't use the fixed route system. The Administration has agreed to provide 100% new accessible buses but insist on a limited waiver to exempt localities who cannot carry out this mandate for financial reasons or other mitigating circumstances. In addition, the Administration feels that with the provision of 100% new accessible buses the current 3% cap that transportation authorities must spend on disability transportation should be decreased to 2% in light of the costs being spent on 100% accessibility. Senators Harkin and Kennedy want the cap lifted until the transition to 100% accessibility occurs returning to the 3% cap thereafter.

#### PRIVATE TRANSPORTATION:

Private companies provide the intercity private bus transportation in the country and are generally not subsidized by the federal government. Their services include: regular route, scheduled services between cities, and charter and tour services.



ADA would require that all new private buses and demand responsive vehicles (i.e. airport & hotel vans) be lift equipped. The private transportation companies argue that the cost and need in meeting this mandate need further study. The Administration agrees that a study would be prudent in addition to DOT flexibility in determining when all new buses be made accessible -- this would also include the accessibility of bathrooms on buses if feasible. Senators Harkin and Kennedy want to begin phasing in accessible buses in three years while a study is underway. No agreement has been reached on this issue yet.

#### REMEDIES:

Remedies were not further discussed at last week's meeting but will resurface. There is some room for negotiation in deleting the controversial 1981 remedy, however, no final agreement was reached.

We all will meet again on Tuesday and discuss alternative language to be disseminated. Staff will also be briefed on Title VI which includes Telecommunications. Senators McCain and Harkin's staff have worked out alternative language with the Administration and the deaf and hearing impaired community.

July 17, 1989

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September 2, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Definitions

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The term "**readily achievable**" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

the overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of the budget;

the type of operation of the covered entity, including the composition and structure of the entity; and

the nature and cost of the action needed.

The term "**undue hardship**" means an action requiring significant difficulty or expense i.e. an action that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program. In determining whether a particular accommodation would impose an undue hardship on the operation of the covered entity's business i.e., require significant difficulty or expense, factors to be considered include:

the overall size of the business of the covered entity with respect to number of employees, number and type of facilities and size of the budget;

the type of operation maintained by the covered entity, including the composition and structure of the entity's workforce;

the nature and cost of the accommodation needed.

The term "**reasonable accommodation**" includes illustrations of accommodations that may be required in appropriate circumstances in making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and in assuring job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

The term **"auxiliary aids and services"** includes:

qualified interpreters or other effective methods of making  
aurally delivered materials available to individuals with hearing  
impairments;

qualified readers, taped texts, or other effective methods of  
making visually delivered materials available to individuals with  
visual impairments;

acquisition or modification of equipment or devices; and

other similar devices and actions.

The term **"readily accessible"** means the ability of  
individuals with disabilities, including individuals with  
wheelchairs, to enter into and exit and safely and effectively  
use a vehicle utilized for public transportation.



September 2, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Meeting with Fred Curry

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Fred Curry, CEO of Greyhound, Inc. has asked to meet with you this Thursday at 3:00 to discuss transportation provisions in the ADA that will affect the private bus industry.

The ADA requires that all small bus companies must purchase or lease all NEW over-the-road buses with lifts after the bill's enactment; large companies must do so beginning five years after enactment.

The bill also calls for a three year study to determine whether this requirement is feasible. The requirement is not contingent on the results of the study -- it remains in place under this bill even if the study shows that the requirement is excessive.

Unlike state and local government mass transit, which is heavily subsidized by the federal government, private transportation companies receive virtually no federal aid. Private companies provide the intercity bus transportation in the country which include approximately 1000 companies such as Greyhound, Gold Line, East Coast and Peter Pan. These companies may provide over-the-road regular route service or charter and tour service.

The private bus industry contend that the requirement that all buses have wheelchair lifts would accelerate the loss of private, intercity bus service. Representatives from the bus industry state that their lowest annual cost estimate for the bill's requirement which lifts (and if feasible accessible bathrooms), loss of revenue seats for lifts and restroom accessibility, maintenance costs and training costs will threaten the private bus industry's viability.

Arguments as to what the actual costs are regarding lifts, loss of revenue seats and the utility of particular lifts is what will be assessed within the study. Therefore, the private bus industry would rather wait until the results of the study indicate what is reasonable with respect to accessibility requirements.

Senator Hatch will offer an amendment that will delete the 5-6 year requirement of lift equipping all new private bus and shorten the study requirement from three years to 18 months. In addition, his amendment will require that private bus companies make reasonable accommodations to the needs of persons with disabilities.



July 27, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: ADA Meeting Today

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I thought you might be interested in some further information.

Bill Roper has been the moderator for negotiations from the Office of Domestic Policy. John Wodasch from the Office of Civil Rights at the Department of Justice is by far the most knowledgeable about these issues. He wrote all the 504 Regulations and has been with the Department for years. He will assist me in putting together a technical assistance section for the bill. He is well respected by all parties impacted by this legislation.

EMPLOYMENT:

As you know the small business exemption of 25 for the first four years of this Act is necessary to prepare and educate all parties impacted by this bill with regard to compliance and understanding fundamental definitions such as reasonable accommodation; undue hardship and of extreme importance "readily achievable". This term is the foundation as to how far an entity must go in terms of accommodating and making accessible. I believe a more stringent definition is needed in the statute rather than in report language.

Key to the effectiveness of implementation and compliance will be a **strong technical assistance component** to the bill. Attorney General Thornburgh mentioned this in his letter, and I have been in touch with Sandy Parrino and Senate staff that this is an area you will spearhead. It is key to the success of this bill and you were first to mention this in your testimony before the Committee. Given that this was not included in the bill -- you would have to introduce it as a floor amendment. I have started to work with the disability and business communities on what it should include. Senator Harkin is aware that you will be doing this and I will consult with John Wodasch and other Administration officials for assistance on this.

Insurance is an issue under employment because many employers have not included people with disabilities in their insurance plans due to the complexity and possible high risk nature of their disability. Clarification is underway to assure that insurance be given to disabled employees with the understanding that the "preexisting condition" be covered only if the policy stipulated so and was available to non-disabled employees.



#### REMEDIES:

As you will note from the Attorney General's letter the Administration has asked for removal of 1981 remedies -- instead giving the A.G. the power to award civil penalties -- no cap has been set ~~for~~ for penalties for suits won, however, they may parallel the recent Fair Housing Act penalties. Hatch will go after this area.

#### PUBLIC ACCOMMODATIONS:

The two-tier system that the Administration is proposing is an attempt to develop an option in expanding the scope of public accommodations under the Act. The disability community wants to be able to utilize all services open to the public (i.e. pharmacies, dry cleaners etc.). Such establishments would not be included as they are private and not covered under Title VII law. I would recommend supporting this two-tier approach access to all segments of society will end segregation.

#### PUBLIC TRANSPORTATION:

Public transportation is a sticky issue. The Department of Transportation wants a study to be done to assess the needs and costs associated with making public transportation 100% accessible. This is wise -- however, there may be alternative ways to look at providing access in the interim. The private transportation industry has asked for utilization of existing federal resources (i.e. lift equipped buses and vans) to assist them in their reach to accommodate people with disabilities. Perhaps Secretary Skinner would consider this until recommendations from the study are completed?

People with disabilities do not want to be lifted on or off buses nor do they want to be dependent on a personal care attendant in order to travel privately. In addition, people with disabilities are generally poorer and would utilize private transportation more -- should it be accessible. The study would prove prudent in measuring such cost and utilization needs.

#### PUBLIC TRANSPORTATION:

You ought to be aware of the Administration's request to decrease the required 3% cap to 2% that transit authorities must spend on providing accessible transportation. Currently, the cap remains at 3%. A decrease could jeopardize paratransit services which supplement mainline transportation. This could hurt those served by this system (i.e. frail elderly & the severely disabled) who need such services because they cannot walk to the bus stop. Many rural areas rely on paratransit to assist those most vulnerable -- to cut back on it may prove to be a disservice.

Tier 1:

PUBLIC ACCOMMODATIONS--The following entities are considered public accommodations for purposes of this Act:

(a) inns, hotels or motels or other similar places of lodging, except for an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence;

(b) restaurants, bars or other establishments serving food or drink;

(c) motion picture houses, theatres, concert halls, stadiums, or other places of exhibition or entertainment;

(d) auditoriums, convention centers or lecture halls;

*you  
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(e) bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other similar retail sales establishments;

(f) laundromats, dry-cleaners, banks, barbers or beauty shops, travel services, shoe repair services, funeral parlors, gas stations, accountants' offices, lawyers' offices, pharmacists, insurance offices, professional offices of health care providers, hospitals, or other similar service establishments;

(g) terminals used for public transportation;

(h) museums, libraries, galleries and other similar places of public displays or collections;

(i) parks and zoos;

(j) nursery, elementary, secondary, undergraduate or post-graduate private schools;

(k) day care centers, senior citizen centers or other similar social service centers;

(l) gymnasiums, health spas, bowling alleys, golf courses or other similar places of exercise or recreation.

[NOTE: (a)-(c) are currently covered under Title II of the Civil Rights Act of 1964)]



Tier 2:

The following entities are covered solely with regard to requirements of new construction:

(1) Places of potential employment, such as office buildings and factories;

("Places of potential employment" means facilities that are intended for nonresidential use, whose operations affect commerce. Such term does not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.)).

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(2) Places of worship; and

(3) Private club establishments exempted from coverage under 42 U.S.C. §2000a(e).

September 6, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Hatch Amendments to ADA

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Senator Hatch is prepared to offer three amendments to the ADA. The concerns that his amendments will address are those that he has held since ADA was introduced and which he reserved the right at Committee mark up to bring to the Floor.

The three problem areas he holds are:

1. The Administration supported compromise on remedies using the pattern and practice authority given to the Attorney General in the Fair Housing Act Amendments of 1988. The ADA will give the Attorney General discretionary authority to seek civil penalties in cases involving egregious and willful violations of discrimination. Penalties of up to \$50,000 for a first violation and up to \$100,000 for subsequent violations may be awarded.

Senator Hatch feels this remedy scheme is too burdensome and will offer an amendment to lessen the amount of civil penalty remedies -- he has not yet confirmed a dollar amount.

I would recommend you backing the current language which represents the Administration compromise -- as the civil penalty remedies in the ADA and Fair Housing will provide a strong fiscal incentive for covered entities to avoid discriminatory practices.

2. The scope of coverage of "public accommodations" which includes much of the private sector concerns Senator Hatch and others because not only are these entities subject to accessibility requirements concerning new facilities but a wide variety of obligations with respect to existing facilities and general policies and incurred costs in providing access and nondiscriminatory practices.

Title III of ADA includes a small business exemption of 15 for public accommodations in providing nondiscrimination treatment (i.e. putting in a ramp, or providing auxiliary aids & services) and the undertaking of an accommodation which can be costly and represent a fundamental alteration in the covered entity's program. Therefore, Senator Hatch will offer an amendment to institute a small business exemption of 25 employers or less with respect to responsibilities under public accommodations.



During the course of negotiations on the ADA a three tiered approach was examined as a way to deal with retreat from costly responsibilities to small entities in providing nondiscrimination treatment -- a small business exemption of 25 was also examined. However, the issue will remain the same -- that being -- people with disabilities will be excluded from participation in and access to activities of daily living that everyone else take for granted if public accommodations and more important access are not available to them. If the independent living movement is to be a reality people with disabilities need access to all aspects of society (i.e. grocery stores, dry cleaners, movie theaters and the like).

I would recommend keeping the small business exemption of 15 currently in the ADA and consistent with other civil rights statutes, thus showing your support for the independent living movement and the Administration's compromise in this area in assuring a fully accessible society.

The technical assistance amendment you will offer will strengthen the bill and justify the small business exemption of 15 under the public accommodation section. Its goal of providing education to all covered entities of their responsibilities and how to meet such obligations in implementing nondiscrimination treatment and undertaking accommodations will prevent needless litigation and civil penalties.

There will be costs incurred to small businesses in meeting their nondiscriminatory treatment requirements under this Act. While this should be no reason not to afford disabled citizens their rights -- there should be incentives and assistance for those newly covered entities to facilitate their responsibilities.

A tax exemption for those small entities to include expenditures for accommodations and auxiliary aids and services would take away any punitive sanction the business community may encounter. Expanding Section 190 of the Tax Code to include expenditures for accommodations applicable on an establishment rather than an entire enterprise basis would be a palatable solution appeasing the business community while ensuring a fully accessible society and strong independent living movement.

3. Senator Hatch will offer an amendment addressing the concerns the private transportation industry have held all along with regards to their responsibilities under ADA. The requirement that all small bus companies must purchase or lease all new over-the-road buses with lifts six years after the bill's enactment; and large bus companies must do so beginning five years after enactment remains an unresolved issue.

The ADA requires a three year study to determine whether this requirement, is in effect, feasible. The requirement, however, is not contingent on the results of the study -- it remains in place under this bill even if the study shows that the requirement is excessive.

Senator Hatch's amendment will delete the lift requirements currently in the bill until the study results become available. In addition, he will ask for the study to be completed in eighteen months rather than the three years required in the ADA.

The Administration compromised on the private bus industry's requirement to lift equip their fleet in 5-6 years from the original requirement of mandated lifts after only three years. The Administration supports the ADA private transportation requirements as is. Of the three amendments his transportation concerns have merit. Though the Administration made a compromise on the current language with regard to the private bus industry you may want to strike a compromise between the Administration and Senator Hatch's concerns.



September 6, 1989

TO: Senator Dole  
FROM: Mo West  
SUBJECT: Domenici amendment to ADA

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Senator Domenici has indicated that he is prepared with an amendment to the ADA that would clarify that an individual with a disability would be afforded the choice to participate in a service, program or activity.

In addition, he has asked that the Attorney General set forth guidelines to help assure that modifications to accommodate the individual will be appropriate to such individual's disability rather than a separate accommodation which is not appropriate.

This is a rather minor amendment. Directing the Attorney General to set forth guidelines in assuring appropriate accommodations may be served by your technical assistance amendment which will inform newly covered entities of their legal responsibilities.

Domenici

POSSIBLE REVISION TO ADA BILL  
SECTION 312

On page 35, paragraph (C) of subsection 302(b)(1) is revised to read as follows:

(c) OPPORTUNITY TO PARTICIPATE.--Notwithstanding the existence of separate or different services, programs, or activities provided in accordance with this section, qualified individuals with disabilities shall be afforded the choice of participating in such services, programs, or activities that are not separate or different. Modifications to accommodate the participation of such individuals shall not impair an individual's choice to participate in an unmodified manner. The Attorney General shall set forth guidelines to help assure that modifications made pursuant to this section to accommodate the participation of individuals with disabilities will be appropriate to such individuals' disabilities and not require such individuals to use a separate accommodation which is not appropriate.



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(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

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

(i) that have the effect of discriminating on the basis or disability; or

(ii) that perpetuate the discrimination against others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

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