

**DRAFT**100TH CONGRESS  
1ST SESSION**S.** \_\_\_\_\_

OCT 15 1987

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IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice and referred  
to the Committee on \_\_\_\_\_

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**A BILL**

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

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

4 **SECTION 1. SHORT TITLE.**

5 This Act may be cited as the "Americans with Dis-  
6 abilities Act of 1987".

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) **FINDINGS.**—Congress finds that—

9 (1) some 36,000,000 Americans have one or  
10 more physical or mental disabilities, and this number

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

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

8 (3) discrimination against persons with disabili-  
9 ties persists in such critical areas as employment,  
10 housing, public accommodations, education, trans-  
11 portation, recreation, institutionalization, health serv-  
12 ices, insurance, voting, and access to public services;

13 (4) every day, people with disabilities encounter  
14 various forms of discrimination, including outright,  
15 intentional exclusion, architectural, transportation,  
16 and communication barriers, overprotective rules and  
17 policies, refusal to make modifications to existing fa-  
18 cilities and practices, exclusionary qualification  
19 standards and criteria, segregation, and relegation to  
20 lesser services, benefits, and opportunities;

21 (5) census data, national polls, and other studies  
22 have documented that people with disabilities, as a  
23 group, occupy an inferior status in our society, and  
24 are severely disadvantaged socially, vocationally,  
25 economically, and educationally;

1           (6) the Nation's proper goals regarding persons  
2           with disabilities are to assure equality of opportunity,  
3           full participation, independent living, and, wherever  
4           possible, economic self-sufficiency for such citizens;  
5           and

6           (7) the continuing existence of unfair and un-  
7           necessary barriers, discrimination, and prejudice  
8           denies people with disabilities the opportunity to  
9           compete on an equal basis and to pursue those op-  
10          portunities for which our free society is justifiably  
11          famous, and costs the United State billions of dollars  
12          in unnecessary expenses resulting from dependency  
13          and nonproductivity.

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

15           (1) to provide a clear and comprehensive Na-  
16           tional mandate for the elimination of discrimination  
17           against persons with disabilities;

18           (2) to provide a prohibition of discrimination  
19           against persons with disabilities parallel in scope of  
20           coverage with that afforded in statutes prohibiting  
21           discrimination on the basis of race, sex, national  
22           origin, and religion;

23           (3) to provide clear, strong, consistent, enforcea-  
24           ble standards addressing discrimination against per-  
25           sons with disabilities; and

1           (4) to invoke the sweep of congressional author-  
2           ity, including its power to enforce the fourteenth  
3           amendment, to regulate commerce, and to regulate  
4           interstate transportation, in order to address the  
5           major areas of discrimination faced day-to-day by  
6           people with disabilities.

7   SEC. 3. DEFINITIONS

8           For purposes of this Act:

9           (1) PHYSICAL OR MENTAL IMPAIRMENT.—The  
10          term “physical or mental impairment” means—

11               (A) any physiological disorder or condi-  
12               tion, cosmetic disfigurement, or anatomical loss  
13               affecting one or more of the following body  
14               systems:

15                       (i) the neurological system;

16                       (ii) the musculoskeletal system;

17                       (iii) the special sense organs, and res-  
18               piratory organs, including speech organs;

19                       (iv) the cardiovascular system;

20                       (v) the reproductive system;

21                       (vi) the digestive and genitourinary  
22               systems;

23                       (vii) the hemic and lymphatic systems;

24                       (viii) the skin; and

25                       (ix) the endocrine system; or



1 (B) any mental or psychological disorder,  
2 such as mental retardation, organic brain syn-  
3 drome, emotional or mental illness, and specific  
4 learning disabilities; and

5 (C) includes such diseases and conditions  
6 as orthopedic, visual, speech, and hearing im-  
7 pairments, cerebral palsy, epilepsy, muscular  
8 dystrophy, multiple sclerosis, cancer, heart dis-  
9 ease, diabetes, mental retardation, emotional ill-  
10 ness, drug addiction and alcoholism.

11 (2) PERCEIVED IMPAIRMENT.—The term “per-  
12 ceived impairment” means the mistaken belief, and  
13 the regarding of a person as having, or treating a  
14 person as if the person has, a physical or mental im-  
15 pairment.

16 (3) RECORD OF IMPAIRMENT.—The term “record  
17 of impairment” means having a history of, or having  
18 been misclassified as having, a mental or physical  
19 impairment.

20 (4) REASONABLE ACCOMODATION.<sup>M</sup>—The term  
21 “reasonable accommodation” means providing or  
22 modifying devices, services, or facilities, or changing  
23 practices or procedures for the purpose of responding  
24 to the specific functional abilities of a particular  
25 person with a physical or mental impairment in order

1 to provide an equal opportunity to participate in a  
2 particular program, activity, job, or other opportuni-  
3 ty.

4 SEC. 4. SCOPE OF DISCRIMINATION PROHIBITED.

5 No person shall be subjected to discrimination on the  
6 basis of handicap in any of the programs, activities, or op-  
7 erations of—

8 (1) the Federal Government, any of the agencies  
9 and departments of the Federal government, or the  
10 United States Postal Service;

11 (2) a recipient of Federal financial assistance;

12 (3) a Federal contractor, subcontractor, or li-  
13 censee;

14 (4) an employer engaged in an industry affect-  
15 ing commerce and having 15 or more employees,  
16 any employment agency, or labor union;

17 (5) any seller, landlord, or other provider of  
18 housing covered by title VIII of the Civil Rights Act  
19 of 1968;

20 (6) any public accommodation covered by title  
21 II of the Civil Rights Act of 1964;

22 (7) a person, company, or agency that engages  
23 in the business of interstate transportation of persons,  
24 goods, documents, or data;

1           (8) a person, company, or agency that makes  
2           use of the mails or interstate communications and  
3           telecommunications services for the business of sell-  
4           ing, arranging, or providing insurance; or

5           (9) a State, or agency or political subdivision of  
6           a State.

7       SEC. 5. FORMS OF DISCRIMINATION PROHIBITED.

8           (a) IN GENERAL.—Subject to the standards and proce-  
9           dures established in section 6, the actions or omissions de-  
10          scribed in this subsection constitute discrimination on the  
11          basis of handicap.

12          (1) EXCLUSION, SEGREGATION, OR UNEQUAL  
13          TREATMENT.—It shall be discriminatory to subject a  
14          person, because of the mental or physical impair-  
15          ment, perceived impairment, or record of impairment  
16          of that person, to any form of—

17                  (A) intentional exclusion;

18                  (B) unintentional exclusion;

19                  (C) segregation;

20                  (D) unequal or inferior services, benefits,  
21          or activities; or

22                  (E) less effective services, benefits, or ac-  
23          tivities.

24          (2) BARRIERS.—It shall be discriminatory—

25                  (A) to establish or impose; or

1 (B) to fail or refusing to remove;  
2 any architectural, transportive, or communicative  
3 barriers that prevent or limit the access or participa-  
4 tion of persons with physical or mental impairments.

5 (3) ACCESS.—It shall be discriminatory to fail or  
6 refuse to make a reasonable accommodation to  
7 permit an individual with a mental or physical im-  
8 pairment to apply, have access to, or participate in a  
9 program, activity, job, or other opportunity.

10 (4) IT SHALL BE DISCRIMINATORY TO IMPOSE OR  
11 APPLY ANY QUALIFICATIONS STANDARDS, SELECTION  
12 CRITERIA, OR ELIGIBILITY CRITERIA THAT—

13 (A) screen out or disadvantage an individ-  
14 ual because of a physical or mental impairment,  
15 perceived impairment, or record of impairment;  
16 or

17 (B) disproportionately screens out or disad-  
18 vantages persons with particular types of physi-  
19 cal or mental impairments, perceived impair-  
20 ments, or record of impairments;

21 unless such criteria or standards can be shown to be  
22 related to ability to perform or participate in essen-  
23 tial components of the particular job, program, activ-  
24 ity, or opportunity.



1 (b) <sup>S</sup>NONDISCRIMINATION.—It shall not be considered to  
2 be discrimination on the basis of handicap to exclude or  
3 otherwise deny equal services, benefits, activities, or op-  
4 portunities to a person—

5 (1) for reasons wholly unrelated to the existence  
6 of or consequences of a physical or mental impair-  
7 ment, perceived impairment, or record of impair-  
8 ment; or

9 (2) based on a legitimate application of qualifi-  
10 cations standards, selection criteria, performance  
11 standards, or eligibility criteria that are both reason-  
12 ably necessary and related to the ability to perform  
13 or participate in the essential components of the par-  
14 ticular job, program, activity, or opportunity.

15 SEC. 6. LIMITATIONS ON THE DUTIES OF ACCOMMODATION AND  
16 BARRIER REMOVAL.

17 (a) <sup>E</sup>EXISTENCE THREATENING ALTERATIONS.—The fail-  
18 ure or refusal to remove architectural, transportation, and  
19 communication barriers, and to make reasonable accom-  
20 modations, required under section 5(a) shall not constitute  
21 an unlawful act of discrimination on the basis of handicap  
22 if such modifications or barrier removal would fundamen-  
23 tally alter the essential nature, or threaten the existence of  
24 the program, activity, business, or facility in question.

25 (b) TIME FOR ALTERATIONS.—

1           (1) IN GENERAL.—If substantial modifications to  
2 existing buildings and facilities are necessary in  
3 order to remove architectural, transportation, and  
4 communication barriers, as required under section  
5 5(a), such modifications shall, unless required earlier  
6 by other law or regulation, be made within a reason-  
7 able period of time, not to exceed 2 years from the  
8 date of enactment of this Act.

9           (2) EXCEPTION.—Regulations promulgated pur-  
10 suant to section 7 of this Act may allow up to 5  
11 years from the date of enactment of this Act where  
12 reasonably necessary for the completion of such  
13 modifications to particular classes of buildings and  
14 facilities.

15       (c) MASS TRANSPORTATION.—If substantial modifica-  
16 tions to existing platforms and stations of mass transporta-  
17 tion systems are necessary in order to remove architectural,  
18 transportation, and communication barriers, as required  
19 under section 5(a), regulations promulgated pursuant to  
20 section 7 of this Act may, unless required earlier by other  
21 law or regulation, allow a reasonable period of time, in no  
22 event to exceed 15 years from the date of enactment of this  
23 Act, for such modifications to be made.

24 **SEC. 7. REGULATIONS.**

25       (a) IN GENERAL.—

1 (1) ARCHITECTURAL AND TRANSPORTATION BAR-  
2 RIERS COMPLIANCE BOARD.—Within 6 months of the  
3 date of enactment of this Act, the Architectural and  
4 Transportation Barriers Compliance Board shall issue  
5 minimum guidelines, to supplement the existing  
6 Minimum Guidelines and Requirements for Accessi-  
7 ble Design, to establish standards for the architectur-  
8 al, transportation, and communication accessibility of  
9 buildings, facilities, vehicles, and rolling stock sub-  
10 ject to the requirements of this Act.

11 (2) EQUAL EMPLOYMENT OPPORTUNITY COMMIS-  
12 SION.—

13 (A) EMPLOYMENT PRACTICES.—Within 1  
14 year of the date of enactment of this Act, the  
15 Equal Employment Opportunity Commission  
16 shall promulgate regulations for the implemen-  
17 tation and enforcement of the requirements of  
18 this Act as it applies to employment practices.\*

19 (B) REQUIREMENTS.—The regulations pro-  
20 mulgated under subparagraph (A) shall include,  
21 for all covered employers having 15 or more  
22 employees, a requirement of outreach and re-  
23 cruitment efforts to increase the work force rep-  
24 resentation of individuals with physical or  
25 mental impairments, and shall establish a proc-

\* Such regulations shall prohibit discrimination in regard to job application procedures, the hiring and discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.



1           ess and timelines for the development, imple-  
2           mentation, and periodic revision of such out-  
3           reach and recruitment efforts.

4           (3) SECRETARY OF HOUSING AND URBAN DEVEL-  
5           OPMENT.—Within 1 year of the date of enactment of  
6           this Act, the Secretary of Housing and Urban Devel-  
7           opment shall promulgate regulations for the imple-  
8           mentation and enforcement of the requirements of  
9           this Act as it applies to sellers, landlords, and other  
10          providers of housing.

11          (4) SECRETARY OF TRANSPORTATION.—Within 1  
12          year of the date of enactment of this Act, the Secre-  
13          tary of Transportation shall promulgate regulations  
14          for the implementation and enforcement of the re-  
15          quirements of this Act as it applies to State and local  
16          transit systems and to those engaged in the business  
17          of interstate transportation.

18          (5) SECRETARY OF COMMERCE.—Within 1 year  
19          of the date of enactment of this Act, the Secretary of  
20          Commerce shall promulgate regulations for the im-  
21          plementation and enforcement of the requirements of  
22          this Act as it applies to places of public accommoda-  
23          tion.

24          (6) SECRETARY OF LABOR.—Within 1 year of the  
25          date of enactment of this Act, the Secretary of Labor



1 shall promulgate regulations for the implementation  
2 and enforcement of the requirements of this Act as it  
3 applies to recipients of Federal contracts and subcon-  
4 tracts.

5 (7) ATTORNEY GENERAL.—Within 1 year of the  
6 date of enactment of this Act, the Attorney General  
7 shall promulgate regulations for the implementation  
8 and enforcement of the requirements of this Act as it  
9 applies to States and agencies and political subdivi-  
10 sions of States, and to those in the business of sell-  
11 ing, arranging, or providing insurance.

12 (8) FEDERAL AGENCIES.—In addition to the regu-  
13 lations required pursuant to paragraphs (1) through  
14 (7), Federal executive agencies shall issue, within 1  
15 year of the date of enactment of this Act, such addi-  
16 tional regulations as shall be necessary to implement  
17 and enforce the requirements of this Act as such re-  
18 quirements apply to programs and activities that such  
19 agencies conduct, and in regard to agencies and per-  
20 sons which such agencies license or provide Federal  
21 financial assistance to.

22 (b) REHABILITATION ACT OF 1973.—Regulations of Fed-  
23 eral agencies issued under section 504 of the Rehabilita-  
24 tion Act of 1973 (29 U.S.C. 794) shall remain in effect

1 unless and until such regulations are superseded by regula-  
2 tions promulgated under this Act.

3 (c) LEVEL OF PROTECTION.—In no event shall regula-  
4 tions promulgated under this Act provide less protection  
5 against discrimination to persons with a physical or mental  
6 impairment, perceived impairment, or record of impair-  
7 ment than under existing regulations for the implementa-  
8 tion of section 504 of the Rehabilitation Act of 1973 (29  
9 U.S.C. 794).

10 SEC. 8. ENFORCEMENT.

11 (a) ADMINISTRATIVE ACTIONS.—

12 (1) IN GENERAL.—Any person who has been, or  
13 is about to be, subjected to discrimination on the  
14 basis of handicap in violation of this Act shall have  
15 the right to pursue such administrative enforcement  
16 procedures and remedies as are available in connec-  
17 tion with the regulations issued pursuant to section 7  
18 of this Act.

19 (2) REMEDY.—Agencies enforcing such regula-  
20 tions shall have the authority to order all appropriate  
21 remedial relief, including compliance orders, cutoff  
22 of Federal funds, rescission of Federal licenses, mon-  
23 etary damages, and back pay.

24 (b) CIVIL ACTIONS.—A person who has been, or is  
25 about to be, subjected to discrimination on the basis of

1 handicap in violation of this Act shall have the right to file  
2 a civil action for injunctive relief, monetary damages, or  
3 both in a district court of the United States, if—

4 (1) administrative enforcement procedures as  
5 contemplated in section 8(a) are not available;

6 (2) such enforcement procedures are not con-  
7 cluded within 180 days after the filing of a com-  
8 plaint of discrimination prohibited under this Act; or

9 (3) the complainant is not satisfied with the res-  
10 olution reached at the conclusion of such enforce-  
11 ment procedures.

12 (c) JURISDICTION.—The district courts of the United  
13 States shall have jurisdiction of actions brought under this  
14 Act without regard to the amount in controversy.

15 (d) IMMUNITY.—A State shall not be immune under  
16 the eleventh amendment to the Constitution of the Unites  
17 States from suit in Federal court for a violation of this Act.

18 (e) ATTORNEY'S FEES.—In any action commenced  
19 pursuant to this section, the court, in its discretion, may  
20 allow the prevailing party, other than the United States, a  
21 reasonable attorney's fee as part of the costs, and the  
22 United States shall be liable for costs the same as a private  
23 person.

1 SEC. 9. EFFECTIVE DATE.

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