

Redraft  
10/29/87

THE AMERICANS WITH DISABILITIES ACT OF 1987

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Americans with Disabilities Act of 1987".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that --

(1) some thirty-six million Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

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

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

(4) every day, people with disabilities encounter various forms of discrimination, including outright, intentional exclusion; architectural, transportation, and communication barriers; overprotective rules and policies; refusal to make modifications to existing facilities and practices; exclusionary qualification standards and criteria; segregation; and relegation to lesser services, benefits, and opportunities;

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

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

(7) the continuing existence of unfair and unnecessary barriers, discrimination, and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs our Nation billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

(b) The purposes of this Act are --

(1) to provide a clear and comprehensive National mandate for the elimination of discrimination against persons with disabilities;

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

(3) to provide clear, strong, consistent, enforceable standards addressing discrimination against persons with disabilities; and

(4) to invoke the sweep of Congressional authority, including its power to enforce the Fourteenth Amendment, to regulate commerce, and to regulate interstate transportation, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

#### DEFINITIONS

SEC. 3. For purposes of this Act:

(1) "On the basis of handicap" means because of a physical or mental impairment, perceived impairment, or record of impairment.

(2) "Physical or mental impairment" means --

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine: or

(b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic,

visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(3) " Perceived impairment" means being regarded as having or treated as having a physical or mental impairment because of:  
(A) a mistaken belief that the person has a physical or mental impairment; or  
(B) any manifestation or effect of having an impairment.

(4) "Record of impairment" means having a history of, or having been misclassified as having, a mental or physical impairment.

(5) "Reasonable accommodation" means providing or modifying devices, services, or facilities, or changing practices or procedures in response to the specific functional abilities of a particular person with a physical or mental impairment in order to provide an equal opportunity to participate effectively in a particular program, activity, job, or other opportunity.

#### SCOPE OF DISCRIMINATION PROHIBITED

SEC. 4. (a) No person shall be subjected to discrimination on the basis of handicap in regard to:

(1) Employer practices, employment agency practices, labor organization practices, and training programs covered by title VII of the Civil Rights Act of 1964;

(2) The sale or rental of housing covered by Title VIII of the civil Rights Act of 1968;

(3) Any public accommodation covered by Title II of the civil Rights Act of 1964;

(4) Any person, company, or agency in the principal business of interstate transportation of persons, goods, documents, or data;

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

(b) Nothing in this Act shall be construed as affecting or changing the application or interpretation of the nondiscrimination provisions contained in Title V of the Rehabilitation Act of 1973, as amended. Regulations issued by Federal agencies pursuant to Title V shall remain in full force and effect.

## FORMS OF DISCRIMINATION PROHIBITED

SEC. S.(a) Subject to the standards and procedures established in sections 6, 7, 8, and 9 of this Act, the following actions or omissions constitute discrimination on the basis of handicap:

(1) It shall be discriminatory to subject a person, directly or through contractual, licensing, or other arrangements, on the basis of handicap, to any of the following:

(A) denial of the opportunity to participate in or benefit from a program, activity, job, or other opportunity;

(B) affording a person an opportunity to participate in or benefit from a program, activity, job, or other opportunity that is not equal to that afforded others;

(C) providing a person with a service, benefit, or activity that is less effective than that provided to others;

(D) providing a person with a service, benefit, or activity that is different or separate, unless such action is necessary to provide the person with a service, benefit, or activity that is as effective as that provided to others;

(E) aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or person that discriminates;

(F) denying a person the opportunity to participate as a member of planning or advisory boards; or

(G) otherwise limiting a person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others;

(2) Establishing or imposing architectural, transportation, and communication barriers that prevent or limit the access or participation of persons with physical or mental impairments, or failing or refusing to remove such barriers;

(3) Failing or refusing to make a reasonable accommodation to permit an individual with a mental or physical impairment to apply, have access to, or participate in a program, activity, job, or other opportunity; or

(4) Imposing or applying qualifications standards, selection criteria, and eligibility criteria that screen out or disadvantage an individual because of a physical or mental impairment, perceived impairment, or record of impairment; or that disproportionately screen out or disadvantage persons with particular types of physical or mental impairments, perceived impairments, or record of impairments; unless such criteria or standards can be shown to be related to ability to perform or participate in essential components of the particular job, program, activity, or opportunity.

(b) The following actions or omissions do not constitute discrimination on the basis of handicap:

(1) Exclusion of or other denial of services, benefits, activities, or opportunities to a person for reasons wholly

unrelated to the existence of or consequences of a physical or mental impairment, perceived impairment, or record of impairment: or

(2) Exclusion of or other denial of services, benefits, activities, or opportunities to a person based upon a legitimate application of qualifications standards, selection criteria, performance standards, or eligibility criteria that are both reasonably necessary and related to the ability to perform or participate in the essential components of the particular job, program, activity, or opportunity; or

(3) The operation of a program or activity that provides jobs, services, benefits, and other opportunities designed for and rendered to persons with particular physical or mental impairments or types of impairments.

#### DISCRIMINATION IN HOUSING.

Sec. 6.

(a) In regard to the sale or rental of housing, discrimination includes --

(I) a refusal to permit, at the expense of a person with a physical or mental impairment, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;

(2) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(3) a failure to design and construct qualified multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of this Act in such a manner that -

(A) the public use and common use portions of such dwelling are readily accessible to and usable by persons with physical and mental impairments;

(B) all the doors into and within all premises within such dwellings are sufficiently wide to allow passage by persons in wheelchairs; and

"(e) all premises within such dwellings contain basic universal features of adaptive design.

(b) As used herein, "qualified multifamily dwellings" means- (1) buildings consisting of two or more units if such buildings have one or more elevators; and

(2) those units in other buildings consisting of two or more units that are on the ground floor.

(c) Nothing in this section shall be construed to invalidate or limit any law of a State or political subdivision of a State, or jurisdiction that requires dwellings to be designed and constructed in a manner that affords persons with physical or mental impairments greater access than is required by this Act.

## LIMITATIONS ON THE DUTIES OF ACCOMMODATION AND BARRIER REMOVAL

SEC. 7. (a) (1) The failure or refusal to remove architectural, transportation, and communication barriers as required under subsection 5(a) (2) and to make reasonable accommodations required under subsection 5(a) (3) shall not constitute an unlawful act of discrimination on the basis of handicap if such modifications or barrier removal would fundamentally alter the essential nature or threaten the existence of the program, activity, business, or facility in question.

(2) In the event that barrier removal is not required because it would result in a fundamental alteration or threaten the existence of a program, activity, business, or facility, there shall still be a duty to take such other actions as are necessary to make a program, activity, or service, when viewed in its entirety, readily accessible to and usable by persons with physical and mental impairments.

(b) Where substantial modifications to existing buildings and facilities are necessary in order to remove architectural, transportation, and communication barriers, as required under subsection 5(a) (2), such modifications shall, unless required earlier by other law or regulation, be made within a reasonable period of time, not to exceed two years from the effective date of this Act; except that regulations promulgated pursuant to section 8 of this Act may allow up to five years from the effective date of this Act where reasonably necessary for the completion of such modifications to particular classes of buildings and facilities.

(c) Where substantial modifications to existing platforms and stations of mass transportation systems are necessary in order to remove architectural, transportation, and communication barriers, as required under subsection 5(a) (2) of this Act, regulations promulgated pursuant to section 8 of this Act may, unless required earlier by other law or regulation, allow a reasonable period of time, in no event to exceed fifteen years from the effective date of this Act, for such modifications to be made.

## REGULATIONS

SEC. 8. (a) (1) within six months of the effective date of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines, supplementing its existing Minimum Guidelines and Requirements for Accessible Design, to establish standards for the architectural, transportation, and communication accessibility of buildings, facilities, vehicles, and rolling stock subject to the requirements of this Act.

(2) The Attorney General of the United States shall coordinate the timely development of regulations required under this section and shall issue, within six months of the effective date of this Act, minimum guidelines for the development of such regulations.

(3) Within one year of the effective date of this Act, the Equal Employment Opportunity Commission shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to employer practices. 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. Such regulations shall include a requirement of outreach and recruitment efforts to increase the workforce representation of individuals with physical or mental impairments, and shall establish a process and timelines for the development, implementation, and periodic revision of such outreach and recruitment efforts.

(4) Within one year of the effective date of this Act, the U.S. Secretary of Housing and Urban Development shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to sellers, landlords, and other providers of housing.

(5) Within one year of the effective date of this Act, the U.S. Secretary of Transportation shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to state and local transit systems and to those engaged in the business of interstate transportation.

(6) Within one year of the effective date of this Act, the U.S. Secretary of Commerce shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to places of public accommodation.

(7) Within one year of the effective date of this Act, the Attorney General of the United States shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to states and agencies and political subdivisions of states.

#### ENFORCEMENT

SEC. 9. (a) Any person who has been, or is about to be, subjected to discrimination on the basis of handicap in violation of this Act shall have the right to pursue such administrative enforcement procedures and remedies as are available in connection with the regulations issued pursuant to section 8 of this Act. Agencies enforcing such regulations shall have the authority to order all appropriate remedial relief, including compliance orders, cutoff of Federal funds, rescission of Federal licenses, monetary damages, and back pay.

(b) In the event that (i) administrative enforcement procedures as contemplated in Sec. 8(a) are not available, (ii) that such enforcement procedures are not concluded within 180 days after the filing of a complaint of discrimination prohibited under this Act, or (iii) that the complainant is not satisfied with the resolution reached at the conclusion of such enforcement procedures, then any person who has been, or is about to be, subjected to discrimination on the basis of handicap in violation of this Act shall have the right to file a civil action for injunctive relief, monetary damages, or both in a district court of the United States.

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

(d) A state shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal Court for a violation of this Act.

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

(f) In any administrative proceeding or civil action brought under this Act, the burden of proving the legitimacy of any qualifications standard, selection criteria, or eligibility criteria at issue in a case, and of a defense that a particular reasonable accommodation or removal of an architectural, transportation, or communication barrier would fundamentally alter or threaten the existence of the program, activity, business, or facility in question shall be upon the person, agency, or entity alleged to have committed an act of discrimination, and shall not be upon the complainant.

#### EFFECTIVE DATE

SEC. 10. This Act shall take effect upon the date of its enactment.