

NATIONAL COUNCIL ON THE HANDICAPPED

**THE AMERICANS WITH DISABILITIES ACT OF 1988
A DRAFT 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,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Americans with Disabilities Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.--Congress finds that--

(1) some 36,000,000 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, such forms of discrimination against persons with disabilities continue 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, communications, 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 and the discriminatory effects of 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, programs, activities, benefits, jobs, or other 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) persons with disabilities are a discrete and insular minority who have been saddled with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such persons and resulting from stereotypic assumptions not truly indicative of the individual ability of such persons to participate in, and contribute to, society;

(7) 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

(8) the continuing existence of unfair and unnecessary 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 the united states billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

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

(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 to persons 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.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ON THE BASIS OF HANDICAP.-- The term "on the basis of handicap" means because of a physical or mental impairment, perceived impairment, or record of impairment. (2) PHYSICAL OR MENTAL IMPAIRMENT.--The term "physical or mental impairment" means --

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more systems of the body including the following:

- (i) the neurological system;
- (ii) the musculoskeletal system;
- (iii) the special sense organs, and respiratory organs, including speech organs;

- (iv) the cardiovascular system;
- (v) the reproductive system;
- (vi) the digestive and genitourinary systems;
- (vii) the hemic and lymphatic systems;
- (viii) the skin; and
- (ix) the endocrine system; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (3) PERCEIVED IMPAIRMENT.--The term "perceived

impairment" means not having a physical or mental impairment as defined in paragraph (2), but being regarded as having or treated as having a physical or mental impairment.

(4) RECORD OF IMPAIRMENT.--The term "record of impairment" means having a history of, or having been misclassified as having, a physical or mental impairment.

(5) REASONABLE ACCOMMODATION.--The term "reasonable accommodation" means providing or modifying devices, services, or facilities, or changing standards, criteria, practices, or procedures, for the purpose of providing to a particular person with a physical or mental impairment, perceived impairment, or record of impairment the equal opportunity to participate effectively in a particular program, activity, job, or other opportunity.

SEC. 4. SCOPE OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.--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) transportation services rendered by a person, company, or agency engaged in the principal business of transportation of persons, goods, documents, or data:

(5) the actions, practices, and operations of a state, or agency or political subdivision of a state: and

(6) broadcasts, communications, or telecommunications services provided by a person, company, or agency engaged in the principal business of broadcasting or of communication by wire, as defined in Section 153 of the Communications Act of 1934, as amended (47 U.S.C. 153 (a) and (0)).

(b) CONSTRUCTION.--

(1) REHABILITATION ACT.--Nothing in this Act shall be construed to affect or change the nondiscrimination provisions contained in Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.), or to affect or change regulations issued by Federal agencies pursuant to Title V of such Act.

(2) OTHER LAWS.--Nothing in this Act shall be construed to invalidate or limit any other Federal law or any law of a state or political subdivision of a state or jurisdiction that provides greater protection of rights for persons with physical or mental impairments, perceived impairments, or records of impairment than are afforded by this Act.

SEC. 5. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.--Subject to the standards and procedures established in sections 6 through 9 of this Act, the actions or omissions described in this subsection constitute discrimination on the basis of handicap.

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES.--

(A) IN GENERAL.--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:

(i) Denying the opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity.

(ii) Affording a person an opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity that is not equal to that afforded others.

(iii) Providing a person with a service, program, activity, benefit, job, or other opportunity that is less effective than that provided to others.

(iv) Providing a person with a service, program, activity, benefit, job, or other opportunity that is different or separate, unless such action is necessary to provide the person with a service, program, activity, benefit, job, or other opportunity that is as effective as that provided to others.

(v) Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or person that discriminates.

(vi) Denying a person the opportunity to participate as a member of planning or advisory boards.

(vii) Otherwise limiting a person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

(B) LEVELS OF ACHIEVEMENT.--For purposes of this section, services, programs, activities, benefits, jobs, or other opportunities, to be equally effective, are not required to produce the identical result or level of achievement for persons with physical or mental impairments, perceived impairments, or records of impairment, and persons without such impairments, but such services, programs, activities, benefits, jobs, or other opportunities shall afford persons with

such impairments an equal opportunity to obtain the same result, to gain the same benefits, or to reach the same level of achievement, in the most integrated setting appropriate to the needs of the person.

(C) OPPORTUNITY TO PARTICIPATE.--Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, a person with a physical or mental impairment, perceived impairment, or record of impairment shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.--A person, company, or agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration--

(i) that have the effect of discrimination on the basis of handicap;

(ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the services, programs, activities, benefits, jobs, or other opportunities provided with respect to persons with physical or mental impairments, or records of impairment; or

(iii) that perpetuate the discrimination of others who are subject to common administrative control or are agencies of the same state.

(2) BARRIERS.--It shall be discriminatory--

(A) to establish or impose; or

(B) to fail or refuse to remove;

any architectural, transportation, or communication barriers that prevent the access or limit the participation of persons on the basis of handicap.

(3) ACCOMMODATION.--It shall be discriminatory to fail or refuse to make a reasonable accommodation to permit an individual with a physical or mental impairment, perceived impairment, or record of impairment to apply, have access to, or participate in a program, activity, job, or other opportunity.

(4) STANDARDS AND CRITERIA.--It shall be discriminatory to impose or apply any qualification standards, selection criteria, or eligibility criteria that--

(A) screen out or disadvantage an individual because of a physical or mental impairment, perceived impairment, or record of impairment; or

(B) disproportionately screen out or disadvantage persons with particular types of physical or mental impairments, perceived impairments, or records of impairment;

unless such criteria or standards can be shown to be necessary and substantially related to ability to perform or participate in essential components of the particular service, program, activity, benefit, job, or other opportunity.

(5) RELATIONSHIPS OR ASSOCIATIONS.--It shall be discriminatory to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other opportunities to a person because of the relationship to, or association of, that person with another person who has a physical or mental impairment, perceived impairment, or record of impairment.

(b) ACTIONS NOT DISCRIMINATORY.--It shall not be considered to be discrimination on the basis of handicap to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other opportunities to a person--

(1) for reasons wholly unrelated to the existence of or consequences of a physical or mental impairment, perceived impairment, or record of impairment; or

(2) based on a legitimate application of qualification standards, selection criteria, performance standards, or eligibility criteria that are both necessary and substantially related to the ability to perform or participate in the essential components of the particular job, program, activity, or opportunity, and such performance or participation cannot be accomplished by a reasonable accommodation.

SEC. 6. DISCRIMINATION IN HOUSING.

(a) IN GENERAL.--Notwithstanding the requirements of section 5(a), it shall be an act of discrimination in regard to housing--

(1) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a physical or mental impairment, perceived impairment, or record of impairment of--

(A) such buyer or renter;

(B) a person residing in or intending to reside in such dwelling after it is so sold, rented, or made available; or

(C) any person associated with such buyer or renter; or

(2) to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a physical or mental impairment, perceived impairment, or record of impairment of--

(A) such person;

(B) a person residing in or intending to reside in such dwelling after it is so sold, rented, or made available; or

(C) any person associated with such person. (b) REMOVAL OF BARRIERS IN HOUSING.--For purposes of subsection (a), discrimination includes--

(1) a refusal to permit, at the expense of a person with a physical or mental impairment, perceived impairment, or record of 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 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

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

(c) DEFINITION.--As used in this section the term "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.

SEC. 7. LIMITATIONS ON THE DUTIES OF ACCOMMODATION AND BARRIER REMOVAL.

(a) EXISTENCE THREATENING ALTERATIONS.--

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

(2) OTHER ACTION.--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 continue to be a duty to conform to other requirements of this Act and 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, perceived impairments, or records of impairment.

(b) TIME FOR ALTERATIONS.--

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

(2) EXCEPTION.--Regulations promulgated pursuant to section 8 of this Act may allow up to 5 years from the date of enactment of this Act where reasonably necessary for the completion of such modifications to particular classes of buildings and facilities.

(c) MASS TRANSPORTATION.--

(1) IN GENERAL.--If 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 section 5(a) 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 10 years from the date of enactment of this Act, for such modifications to be made.

(2) EFFECT.--Paragraph (1) shall not affect the duty of providers of transportation services to conform to other requirements of this Act, including the requirement of removing other types of architectural, transportation, and communication barriers, and the application of such requirements to vehicles and rolling stock.

SEC. 8. REGULATIONS.

(a) ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.--Within 6 months of the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines, to supplement the existing Minimum Guidelines and Requirements for Accessible Design, to establish requirements for the architectural, transportation, and communication accessibility of buildings, facilities, vehicles, and rolling stock subject to the requirements of this Act.

(b) ATTORNEY GENERAL.--

(1) IN GENERAL.--Within 1 year of the date of enactment of this Act, the Attorney General 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.

(2) MINIMUM GUIDELINES.--The Attorney General of the United States shall coordinate the timely development of regulations required under this section and shall issue, within 6 months of the date of enactment of this Act, minimum guidelines for the development of such regulations. (c) EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.--

(1) EMPLOYER PRACTICES.--

(A) IN GENERAL.--Within 1 year of the date of enactment 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, employment agency practices, labor organization practices, and job training programs.

(B) PROHIBITIONS.--The regulations promulgated under subparagraph (A) shall prohibit discrimination in regard to job application procedures, the hiring and discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(2) REQUIREMENTS.--The regulations promulgated under subparagraph (A) shall include a requirement of outreach and recruitment efforts to increase the workforce representation of individuals with physical or mental impairments, or records of impairment, and shall establish a process and timelines for the development, implementation, and periodic revision of such outreach and recruitment efforts.

(3) PREEMPLOYMENT INQUIRIES.--

(A) IN GENERAL.-- The regulations promulgated under paragraph (1) (A) shall include a requirement that employers may not conduct a pre-employment medical examination and may not make a pre-employment inquiry of an applicant as to whether such applicant has a physical or mental impairment, perceived impairment, or record of impairment, or as to the nature or severity of such impairment.

(B) PERMITTED INQUIRIES.--An employer--

(i) may make a pre-employment inquiry into the ability of an applicant to satisfy legitimate qualification standards, selection criteria, performance standards, or eligibility criteria as permitted under section 5(b) (2);

(ii) may condition an offer of employment on the results of a medical examination conducted prior to the entrance to duty of the applicant, if--

(I) all entering employees are subjected to such an examination regardless of physical or mental impairment, perceived impairment, or record of impairment; and

(II) the results of such an examination are used only in accordance with the requirements of this section;

(iii) taking remedial action to correct the effects of past discrimination, or engaged in outreach and recruitment efforts to increase the participation of persons with physical or mental impairments, may invite employment applicants to indicate whether, and to what extent, such applicants have a physical or mental impairment, if--

(I) the employer states clearly on any written questionnaire used for employment purposes, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with such remedial action or outreach and recruitment activities; and

(II) the employer states clearly that the information is being requested on a voluntary basis, that such information will be kept confidential as provided in subparagraph (C), that refusal to provide such information will not subject the applicant or employee to any adverse treatment, and that such information will be used only in accordance with the requirements of this section.

(C) CONFIDENTIALITY.--Information, as to the medical condition or history of the applicant, obtained in accordance with this paragraph shall be collected and maintained on separate forms that shall be accorded the same confidentiality as are medical records, except that--

(i) supervisors and managers may be informed of restrictions on the work or duties of persons with physical or mental impairments and of necessary accommodations for such persons;

(ii) first aid and safety personnel may be informed, where appropriate, if such a condition may require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request.

(d) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.--within 1 year of the date of enactment of this Act, the 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.

(e) SECRETARY OF TRANSPORTATION.--

(1) IN GENERAL.--within 1 year of the date of enactment of this Act, the 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 transportation.

(2) STANDARDS.--The regulations promulgated under paragraph (1) shall include standards regarding the accessibility of vehicles and rolling stock that are consistent with the requirements of paragraph (3).

(3) REQUIREMENTS.--with respect to State and local transit systems, rail and light rail services, and bus companies, the standards issued under paragraph (2) shall--

(A) ensure that all vehicles or rolling stock that are purchased, leased, renovated, or otherwise placed into service after one year from the date of enactment of this Act shall be accessible to and usable by persons with physical or mental impairments, including wheelchair users;

(B) permit a reasonable period of time, not to exceed 7 years, for such transportation operators to purchase, acquire, or modify sufficient vehicles and rolling stock so that the peak fleet of such operators has at least 50 percent of vehicles and rolling stock that are accessible to and usable by persons with physical or mental impairments, including wheelchair users; and

(C) ensure that the use of paratransit and other specialized transportation services for persons with physical or mental impairments shall be used as a supplement to other forms of transportation, but shall not affect the requirement that transportation systems and services available to members of the public shall be accessible to and usable by persons with physical or mental impairments, including wheelchair users.

(f) SECRETARY OF COMMERCE.--within 1 year of the date of enactment of this Act, the 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.

(g) FEDERAL COMMUNICATIONS COMMISSION.--Within 1 year of the date of enactment of this Act, the Federal Communications Commission shall promulgate regulations for the implementation and enforcement of this Act as it applies to those engaged in the business of broadcasting or of communication by wire. In regard to television broadcast stations, such regulations shall include requirements for progressively increasing the proportion of programs, advertisements, and announcements that are captioned.

(h) EFFECTIVE COMMUNICATION.-- Regulations promulgated under this section shall include requirements for the prohibition or removal of communication barriers, and for making reasonable accommodations to assure effective communication with a particular person with a physical or mental impairment, consistent with the following:

(1) COMMUNICATION BARRIERS.--The term "communication barriers" means:

the absence of devices, services, systems, or signage and information media, or modifications of devices, services, systems, or signage and information media that are necessary to achieve effective communication with persons with a physical or mental impairment in regard to a service, program, activity, benefit, job, or other opportunity.

(2) EXAMPLES OF REQUIREMENTS.--In appropriate circumstances, prohibition or removal of communication barriers or making a reasonable accommodation may require: (A) the provision and maintenance of such devices as Telecommunications Devices for the Deaf (TDDs), visual aids such as flashing alarms and indicators, decoders, and augmentative communication devices for non-vocal persons such as language symbol or alphabet boards;

(B) the provision of such services as interpreting, reading, audio or video taping, and notetaking, by qualified personnel;

(C) the development and effective operation of such systems as captioning; assistive listening systems, including audio induction loops, and infrared, FM, or AM communications; and telephone relay services systems;

(D) the development and effective use of alternative signage and information media, such as brailled or audio information, and visual alerts for audio announcements and other information; and

(E) the modification of devices, services, systems, and signage and information media, such as audio input/output on a computer terminal, adapted software, flashing lights as an attachment to a telephone, and amplifiers on telephone handsets.

SEC. 9. ENFORCEMENT.

(a) ADMINISTRATIVE ACTIONS.--

(1) Any person who believes that he or she or any specific class of individuals is being or is about to be subjected to discrimination on the basis of handicap in violation of this Act, shall have a right, by himself or herself, or by a representative, to pursue such administrative enforcement procedures and remedies as are available in connection with the regulations issued pursuant to Section 8 of this Act.

(2) REMEDY.--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) CIVIL ACTIONS.--

(1) RIGHT TO FILE.-- Any person who believes that he or she or any specific class of individuals is being or is about to be subjected to discrimination on the basis of handicap in violation of this Act, shall have a right, by himself or herself, or by a representative, to file a civil action for injunctive relief, monetary damages, or both in a district court of the united States.

(2) ADMINISTRATIVE ENFORCEMENT.--The exhaustion of administrative enforcement procedures and remedies as contemplated in section 9(a) shall not be a prerequisite to the filing of a civil action under this subsection, except in regard to employer practices, employment agency practices, labor organization practices, and training programs, covered by section 4(a) (1) of this Act, for which such exhaustion shall be required unless

(A) administrative enforcement procedures and remedies as contemplated in section 9(a) are not available; or

(B) such enforcement procedures are not concluded within 180 days after the filing of a complaint of discrimination prohibited under this Act.

(c) ADDITIONAL EVIDENCE.--In any action brought under this section, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(d) JURISDICTION.--The district courts of the United states shall have jurisdiction of actions brought under this Act without regard to the amount in controversy.

(e) IMMUNITY.--A state shall not be immune under the eleventh amendment to the Constitution of the United states from suit in Federal court for a violation of this Act. In a suit against a state for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a state.

(f) ATTORNEY'S FEES.--In any action or administrative proceeding commenced pursuant to this section, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee in addition to costs, and the United states shall be liable for costs the same as a private person.

(g) BURDEN OF PROOF.--In any administrative proceeding or civil action brought under this Act, the burden of proving the legitimacy of any qualification standard, selection criteria, or eligibility criteria at issue in a case, and of proving the 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 on the person, agency, or entity alleged to have committed an act of discrimination, and shall not be on the complainant.

SEC. 10. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.