

100TH CONGRESS
1ST SESSION
DRAFT
OCT 15 1987

S. _____

IN THE SENATE OF THE UNITED STATES

introduced the following bill: which was read twice and referred
to the Committee on _____

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Americans with Dis-
abilities Act of 1987”.

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, 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, insurance, 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 the United State billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(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 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.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) 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 of the following body systems:

(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; and

(C) includes 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, drug addiction and alcoholism.

(2) PERCEIVED IMPAIRMENT. —The term “perceived impairment” means the mistaken belief, and the regarding of a person as having, or treating a person as if the person has, a physical or mental impairment.

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

(4) REASONABLE ACCOMMODATION. —The term “reasonable accommodation” means providing or modifying devices, services, or facilities, or changing practices or procedures for the purpose of responding to the specific functional abilities of a particular person with a physical or mental impairment in order

to provide an equal opportunity to participate in a particular program, activity, job, or other opportunity.

SEC. 4. SCOPE OF DISCRIMINATION PROHIBITED.

No person shall be subjected to discrimination on the basis of handicap in any of the programs, activities, or operations of—

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

(2) a recipient of Federal financial assistance;

(3) a Federal contractor, subcontractor, or licensee;

(4) an employer engaged in an industry affecting commerce and having 15 or more employees, any employment agency, or labor union;

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

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

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

(8) a person, company, or agency that makes use of the mails or interstate communications and telecommunications services for the business of selling, arranging, or providing insurance; or

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

SEC. 5. FORMS OF DISCRIMINATION PROHIBITED.

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

(1) EXCLUSION, SEGREGATION, OR UNEQUAL TREATMENT.—It shall be discriminatory to subject a person, because of the mental or physical impairment, perceived impairment, or record of impairment of that person, to any form of—

(A) intentional exclusion;

(B) unintentional exclusion;

(C) segregation;

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

(E) less effective services, benefits, or activities.

(2) BARRIERS —It shall be discriminatory—

(A) to establish or impose; or

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

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

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

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

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

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

(b) NONDISCRIMINATION.—It shall not be considered to be discrimination on the basis of handicap to exclude or otherwise deny equal services, benefits, activities, or 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 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.

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

(a) EXISTENCE THREATENING ALTERATIONS. —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 modifications or barrier removal would fundamentally alter the essential nature, or threaten the existence of the program, activity, business, or facility in question.

(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 7 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.—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), regulations promulgated pursuant to section 7 of this Act may, unless required earlier by other law or regulation, allow a reasonable period of time, in no event to exceed 15 years from the date of enactment of this Act, for such modifications to be made.

SEC. 7. REGULATIONS.

(a) IN GENERAL. —

(1) 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 standards for the architectural, transportation, and communication accessibility of buildings, facilities, vehicles, and rolling stock subject to the requirements of this Act.

(2) EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.—

(A) EMPLOYMENT PRACTICES. —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 employment practices. {Handwritten note appears in document, inserting the following: “Such regulations shall prohibit discrimination in regard to job application, job training, and other terms, conditions, and privileges of employment.”}

(B) REQUIREMENTS. —The regulations promulgated under subparagraph (A) shall include, for all covered employers having 15 or more employees, a requirement of outreach and recruitment efforts to increase the work force representation of individuals with physical or mental impairments, and shall establish a proc-

ess and timelines for the development, implementation, and periodic revision of such outreach and recruitment efforts.

(3) 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.

(4) SECRETARY OF TRANSPORTATION. —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 interstate transportation.

(5) 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.

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

shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to recipients of Federal contracts and subcontracts.

(7) ATTORNEY 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, and to those in the business of selling, arranging, or providing insurance.

(8) FEDERAL AGENCIES. —In addition to the regulations required pursuant to paragraphs (1) through (7), Federal executive agencies shall issue, within 1 year of the date of enactment of this Act, such additional regulations as shall be necessary to implement and enforce the requirements of this Act as such requirements apply to programs and activities that such agencies conduct, and in regard to agencies and persons which such agencies license or provide Federal financial assistance to.

(b) REHABILITATION ACT OF 1973. —Regulations of Federal agencies issued under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall remain in effect

unless and until such regulations are superseded by regulations promulgated under this Act.

(c) LEVEL OF PROTECTION. —In no event shall regulations promulgated under this Act provide less protection against discrimination to persons with a physical or mental impairment, perceived impairment, or record of impairment than under existing regulations for the implementation of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

SEC. 8. ENFORCEMENT.

(a) ADMINISTRATIVE ACTIONS. —

(1) IN GENERAL —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 7 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. —A 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, if—

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

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

(3) the complainant is not satisfied with the resolution reached at the conclusion of such enforcement procedures.

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

(d) 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.

(e) ATTORNEY'S FEES. —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.

SEC. 9. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.