

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

[Based upon draft developed by the National Council on the Handicapped, with attachment presenting suggested changes about which input and discussion are being sought.]

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.

PROVISION IN DRAFT BILL

SECTION 1. – SHORT TITLE.

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

Explanation: Self-explanatory.

SECTION 2. – FINDINGS AND PURPOSES.

(a) Findings. – Congress finds that –

Explanation: Subsection (a) presents Congressional findings about people with disabilities, their disadvantaged status in our society, the seriousness of discrimination against them, and the costliness of such discrimination to our country.

- (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;

Explanation: This finding and the figure of 36 million are based on the “Population with Disabilities” section of Toward Independence.

- (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;

Explanation: Finding of historical isolation and discrimination.

- (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;

Explanation: Finding regarding major areas of persisting discrimination.

- (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, programs, activities, benefits, jobs, or other opportunities;

Explanation: Forms of discrimination people with disabilities encounter.

- (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;

Explanation: Finding regarding disadvantaged status in society.

- (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 upon 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;

Explanation: This finding recites the factors announced in court decisions for a group to be a “suspect class” under the Equal Protection Clause. The finding could assist persons with disabilities in future lawsuits to demonstrate that they are members of a suspect class and that unequal treatment of them should be strictly scrutinized by the courts.

- (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,

Explanation: Overall national goals regarding disabilities.

- (8) 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 States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

Explanation: Unfairness and costliness of discrimination.

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

Explanation: Subsection (b) provides a statement of the overall purposes of the Act centering on the establishment of a clear and comprehensive National mandate for the elimination of discrimination against persons with disabilities. Purposes (1), (2), and (3) are major goals of a comprehensive equal opportunity law as outlined in Toward Independence.

- (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 statues 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.

Explanation: This statement describes the bases of Congressional authority exercised by enacting the Bill. It provides the basis for supporting the right of Congress to regulate the areas covered by the Act.

SECTION 3. – DEFINITIONS.

Explanation: This section provides definitions of key terms used in the Act.

For the 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.

Explanation: Provides a short-hand expression “on the basis of handicap” to be used in the Act in place of the recurring phrase “because of a physical or mental impairment, perceived impairment, or record of impairment,” which is the type of discrimination prohibited by the Act.

- (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 of the following body systems:

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

Explanation: The definition of these important terms is drawn from the language of existing Section 504 regulations, which is widely accepted and has a long history of application and interpretation administratively and in the courts.

- (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.

Explanation: Definition based upon concept of “regarded as having an impairment” under existing Section 504 regulations.

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

Explanation: Definition based upon existing Section 504 regulations.

- (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 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 effectively in a particular program, activity, job, or other opportunity.

Explanation: The definition of “reasonable accommodation” is drawn from *Accommodating the Spectrum of Individual Abilities*, a report issued by the U.S. Commission on Civil Rights. It requires the making of individualized adjustments and modifications to permit a particular person with a disability to enjoy a particular opportunity.

SECTION 4. – SCOPE OF DISCRIMINATION PROHIBITED.

Explanation: Tells what persons and agencies are prohibited from discriminating against persons with disabilities. Provides broad scope of coverage in line with other types of civil rights laws. Includes, among others, the Federal Government, Federal grant recipients, Federal contractors and licensees, employers engaged in interstate commerce having fifteen or more employees, housing providers covered by Federal Fair Housing laws, public accommodations, interstate transportation companies, insurance companies, and State and local governments. The areas covered are drawn from the scope of coverage for such a law as outlined in Toward Independence.

- (a) IN GENERAL. – No person shall be subjected to discrimination on the basis of handicap in regard to –
- (1) actions, practices, and policies of the Federal Government, any of the agencies and departments of the Federal Government, or the United States Postal Service;
 - (2) actions, practices, and policies of a recipient of Federal financial assistance;
 - (3) actions, practices, and policies of a Federal contractor, subcontractor, or licensee;
 - (4) employer practices, employment agency practices, labor organization practices, and training programs covered by Title VII of the Civil Rights Act of 1964;
 - (5) the sale or rental of house 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) transportation services rendered by a person, company, or agency engaged in the principal business of interstate transportation of persons, goods, documents, or data;
 - (8) actions, practices, and policies of 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; and
 - (9) actions, practices, and policies of a State, or agency or political subdivision of a State.
- (b) CONSTRUCTION. – 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 or rights for persons with physical or mental impairments, perceived impairments, or records of impairments than are afforded in this Act.

Explanation: This provision makes clear that this Act is not intended to undermine other laws, whether Federal, State, or local, that provide stronger protection or more stringent requirements to prohibit discrimination on the basis of handicap.

SECTION 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:

Explanation: Subsection (a) tells what actions constitute discrimination prohibited by the law.

- (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:

Explanation: Paragraph (A) describes various types of conduct that are discriminatory. These forms of discrimination are drawn from existing regulations under Section 504 that outline the types of discrimination prohibited under that law.

- (i) Denial of 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, 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, or opportunity enjoyed by others.

(B) LEVELS OF ACHIEVEMENT. – For the 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 and mental impairments, perceived impairments, or records of impairment, and persons without such impairment, 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.

Explanation: Establishes that equality of opportunity and equality of effectiveness, not identical results, are the goal. This language is drawn from existing regulations under Section 504.

(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.

Explanation: Establishes that person with a disability shall not be precluded from participating in the regular program or activity, even though there may be a “special” program or activity for persons with disabilities. This language is drawn from existing regulations under Section 504.

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

Explanation: Prohibits indirect and secondary discrimination, including unintentional discrimination. The language is drawn from existing regulations under Section 504.

- (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 impairments; 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 or limit the access or participation of persons on the basis of handicap.

Explanation: Makes the creation of or failure to remove barriers a prohibited type of discrimination.

(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 service, program, activity, benefit, job, or other opportunity.

Explanation: Requires the making of reasonable accommodations.

(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 screens out or disadvantages persons with particular types of physical or mental impairments, perceived impairments, or records of impairments;

unless such criteria 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.

Explanation: Prohibits discriminatory standards and criteria that screen out persons with disabilities, unless they can be appropriately justified.

(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 that has a physical or mental impairment, perceived impairment, or record of impairment.

Explanation: Prohibits discrimination against a person because of a relationship, friendship, or association with a person who has a disability.

(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 –

Explanation: Subsection (b) specifies that certain actions do not constitute discrimination. These include unequal treatment that is wholly unrelated to a person’s disability, or is the result of the legitimate application of qualifications and performance standards that are necessary and related to the ability to perform or participate in the essential components of the job or activity involved.

- (1) for reasons wholly unrelated to the existence of or consequences of a physical or mental impairment, perceived impairment, or record of impairment;
- (2) based on a legitimate application of qualifications 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.

SECTION 6. – LIMITATIONS ON THE DUTIES OF ACCOMMODATION AND BARRIER REMOVAL

(a) EXISTENCE THREATENING ALTERATIONS. –

Explanation: Subsection (a) provides that barrier removal or reasonable accommodations are not required to be made if to do so would fundamentally alter or threaten the existence of the program, business, activity, or facility in question.

- (1) IN GENERAL. – The failure or refusal to remove architectural, transportation, and communication barriers, and to make reasonable accommodations required under subsection 5(a) shall not constitute an unlawful act of discrimination on the basis of handicap if such barrier removal 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 a 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 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 impairments.

Explanation: Subsection (a)(2) makes other requirements of the Act applicable even though barrier removal may not be required.

(b) TIME FOR ALTERATIONS. –

Explanation: Subsection (b) permits a reasonable period of time, not to exceed two years, for making substantial modifications to existing buildings and facilities in order to remove barriers. This period may be extended up to five years through regulations governing particular classes of buildings and facilities.

- (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 subsection 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 effective date of this Act where reasonably necessary for the completion of such modifications to particular classes of buildings and facilities.

(c) MASS TRANSPORTATION. —

Explanation: Subsection (c) provides that regulations may permit a reasonable period of time, not to exceed ten years, for making substantial modifications to existing platforms and stations of mass transportation systems.

- (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 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 ten years from the effective date of this Act, for such modifications to be made.

- (2) EXCEPTION. – This subsection shall not affect the duty of providers of transportation services to conform to the 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.

Explanation: Subsection (c)(2) makes other requirements of the Act applicable even though the barrier removal may not be required.

SECTION 7. – 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 standards for the architectural, transportation, and communication accessibility of buildings, facilities, vehicles, and rolling stock subject to the requirements of this Act.

Explanation: Subsection (a) calls for the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines for accessibility of buildings, facilities, vehicles, and rolling stock.

- (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 this Act as it applies to insurance practices, and to States and agencies and political divisions of States.

Explanation: Provides that the Attorney General issue regulations for insurance companies, and for States, 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.

Explanation: Provides for the Attorney General to assume a coordination function for all of the regulations issued under this Act.

- (c) EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. –

- (1) EMPLOYER PRACTICES. –

- (A) IN GENERAL. – Within 1 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.

Explanation: The Equal Employment Opportunity Commission is responsible for issuing regulations relating to employer practices.

- (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, job training, and other terms, conditions, and privileges of employment.

Explanation: Prohibits discrimination in specific areas.

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

Explanation: Requires outreach and recruitment efforts.

- (d) SECRETARY OF HOUSING AND URBAN DEVELOPMENT. – Within 1 year of the effective date 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.

Explanation: The Secretary of Housing and Urban Development will issue regulations relating to housing.

- (e) SECRETARY OF TRANSPORTATION. – Within 1 year of the effective date 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.

Explanation: The Secretary of Transportation will issue regulations for state and local transit systems and for those engaged in interstate transportation.

- (f) SECRETARY OF COMMERCE. – Within 1 year of the effective date 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.

Explanation: Provides for the Secretary of Commerce to issue regulations relating to public accommodations.

- (g) SECRETARY OF LABOR. – Within 1 year of the effective date of this Act, the U.S. 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.

Explanation: Provides for the Secretary of Labor to issue regulations covering Federal contractors and subcontractors.

- (h) FEDERAL AGENCIES. – In addition to the regulations required pursuant to paragraphs (a) through (g), 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 to which such agencies provide Federal financial assistance.

Explanation: Directs Federal agencies that provide grants to issue regulations regarding the grant-funded programs and activities.

- (i) REHABILITATION ACT OF 1973. – Regulations of Federal agencies issued under section 504 of the Rehabilitation Act of 1973 shall remain in effect unless and until they are superseded by regulations promulgated under this Act.

Explanation: Subsection (i) provides that regulations issued under Section 504 of the Rehabilitation Act of 1973 shall remain in effect unless and until superseded by regulations under this Act.

- (j) 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.

Explanation: Subsection (j) provides that regulations under this Act cannot provide less protection to persons with physical or mental impairments, perceived impairments, or records of impairments, than under existing Section 504 regulations.

SECTION 8. – ENFORCEMENT

(a) ADMINISTRATIVE ACTIONS. –

- (1) IN GENERAL. – 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 the Act, shall have the 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.

Explanation: Describes who may bring an administrative action.

- (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.

Explanation: Lists remedies available under the Act.

(b) CIVIL ACTIONS.

- (1) RIGHT TO FILE. – Any person who believes that he or she or any specific class of individuals is being or 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

Explanation: Describes who may bring a civil action.

- (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 paragraph 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.

Explanation: Describes when it is or is not necessary to complete administrative proceedings before filing a court action. Paralleling Section 504 and other civil rights legislation, exhaustion of administrative remedies is generally required in regard to employment discrimination, but not for other types of discrimination.

- (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 deems appropriate.

Explanation: Allows a court to hear evidence not presented at the administrative proceeding.

- (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.

Explanation: Actions to be brought in U.S. district courts.

- (e) IMMUNITY. – A State shall not be immune under the Eleventh Amendment of the Constitution of the United State from suit in Federal Court for violation of this Act. In a suit against a State for 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.

Explanation: States may be sued for discrimination under this Act,

- (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.

Explanation: Provides for reasonable attorney's fees.

- (g) BURDEN OF PROOF. – 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 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.

Explanation: The burden of proving the legitimacy of standards used to exclude and of reasons for not removing barriers or providing reasonable accommodations is on the agency or provider, not on the person with a disability.

SECTION 9. – EFFECTIVE DATE.

This act shall become effective on the date of enactment.

Explanation: self-explanatory.

ATTACHMENT:

PROPOSED CHANGES SUBMITTED TO THE COUNCIL FOR CONSIDERATION

SUGGESTED CHANGE

I.	REMOVAL OF SECTION 503 AND 504 OVERLAP	Page 13
II.	REMOVAL OF INSURANCE FROM COVERAGE OF THE BILL	Page 14
III.	ADDITION OF PROVISION REGARDING DISABILITY-SPECIFIC SERVICES AND PROGRAMS	Page 14
IV.	ADDITION OF SECTION WITH SPECIFIC PROVISIONS REGARDING HOUSING DISCRIMINATION	Page 15
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SUGGESTED CHANGE:

I. REMOVAL OF SECTION 503 AND 504 OVERLAP

DESCRIPTION

This change would remove from the bill coverage of programs and activities already covered by Sections 503 and 504 of the Rehabilitation Act of 1973. It would involve: A) removing sections regarding discrimination by the Federal government, Federal grantees, and Federal contractors from the section on Scope of Discrimination Prohibited; B) adding a provision that the bill will not affect Sections 503 and 504 and their regulations; and C) removing provisions regarding regulations covering the Federal Government, Federal grantees, and Federal contractors.

PROVISION

A. On page 4, in subsection 4 (a), delete the following provisions:

- (1) actions, practices, and policies of the Federal Government, any of the agencies and departments of the Federal Government, or the United States Postal Service;
- (2) actions, practices, and policies of a recipient of Federal financial assistance;
- (3) actions, practices, and policies of a Federal contractor, subcontractor, or licensee;

Explanation: Removes from this bill coverage of the Federal Government and Federal grant recipients, both of which are already covered by Section 504, and Federal contractors, which are already covered by Section 503.

B. On page 4, in subsection 4 (b), add a new paragraph:

- (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.

Explanation: Clarifies that Sections 504 and 503 are unchanged and their regulations are not affected by this bill.

C. On page 9, in Section 7, delete the following subsections:

- (n) FEDERAL AGENCIES. – In addition to the regulations required pursuant to paragraphs (a) through (g), 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 to which such agencies provide Federal financial assistance.
- (o) REHABILITATION ACT OF 1973. – Regulations of Federal agencies issued under section 504 of the Rehabilitation Act of 1973 shall remain in effect unless and until they are superseded by regulations promulgated under this Act.
- (p) 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.

Explanation: With the removal of the overlap with Sections 503 and 504, the provisions regarding regulations are no longer needed.

SUGGESTED CHANGE:

II. REMOVAL OF INSURANCE FROM COVERAGE OF THE BILL

DESCRIPTION

This change would remove the issue of insurance from the coverage of the bill.

PROVISION

On page 4, in subsection 4 (a), delete the following paragraph:

- (8) actions, practices, and policies of 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;

Explanation: Removes insurance companies from the coverage of the Act.

SUGGESTED CHANGE:

III. ADDITION OF PROVISION REGARDING DISABILITY-SPECIFIC SERVICES AND PROGRAMS

DESCRIPTION

Would add language clarifying that it is not discriminatory to operate activities, services, or programs that are designed for people with a particular disability or a class of disabilities.

PROVISION

On page 7, in subsection 5 (b), add the following paragraph:

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

Explanation: makes clear that special programs for people with specific disabilities or types of disabilities are not prohibited under the Act.

SUGGESTED CHANGE:

IV. ADDITION OF SECTION WITH SPECIFIC PROVISIONS REGARDING HOUSING DISCRIMINATION

DESCRIPTION

Adds a new housing section with more detailed requirements.

PROVISION

On page 7, at the end of Section 5, insert a new section as follows:

SECTION 6 – DISCRIMINATION IN HOUSING.

Explanation: This section provides standards regarding the application of nondiscrimination requirements in housing. The standards are drawn from the current version of the disability portions of the Federal Fair Housing Amendments bill in the Senate Judiciary Committee. Their primary focus is upon accessibility in future design and construction of housing.

Subsection (a) sets out the general provisions governing 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 that buyer or renter.
 - (2) to discriminate against any person in the terms, conditions, or privileges of 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 –

Explanation: Sets out a duty to remove barriers in housing, including the obligation to permit tenants to make reasonable modifications, to make reasonable accommodations in rules, policies, practices, or services, and to design and construct new buildings so that they have certain accessibility features.

- (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 a 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 the 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 –
- Explanation:** Defines what types of housing units are subject to accessibility requirements.
- (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.

SUGGESTED CHANGE:

V. ADDITION OF PROVISIONS REGARDING PREEMPLOYMENT INQUIRIES

DESCRIPTION

Adds to the section on regulations regarding employment some new provisions regarding preemployment inquiries.

PROVISION

On page 9, after subsection (c)(2), add the following paragraph:

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

Explanation: Generally prohibits preemployment medical examinations or inquiries. These sections are drawn directly from the employment portion of Section 504.
 - (B) PERMITTED INQUIRIES. – AN EMPLOYER
 - (i) may make a preemployment inquiry into the ability of an applicant to satisfy legitimate qualifications 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 –

Explanation: Provides exceptions that allow preemployment inquiries in certain specified situations.

- (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 applicants for employment to indicate whether and to what extent they 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 its 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 only be used 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 medical records, except that –

Explanation: Sets standards for maintaining confidentiality of information relating to medical condition or history.

- (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.

SUGGESTED CHANGE:

VI. ADDITION OF PROVISIONS REGARDING TRANSPORTATION REQUIREMENTS

DESCRIPTION

Adds more detailed requirements in regard to transportation to the section on regulations for transportation.

PROVISION

On page 9, at the end of paragraph (e), insert the following subparagraphs:

- (2) STANDARDS. – The regulations promulgated under paragraph (1) shall include standards regarding the accessibility of vehicles and rolling stock 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 –

Explanation: These provisions regarding standards for vehicles and rolling stock were inserted to provide more specificity as to the requirements of the Act in regard to transit systems, bus companies, and railroads. The standards imposed are based upon the recommendations of the Council in the Transportation section of Toward Independence. These principles were previously advocated by the Council in the attempt to amend the Urban Mass Transportation Act last year. They represent a moderate approach that focuses primarily upon future purchases of accessible vehicles rather than massive and expensive retrofitting.

- (A) ensure that all vehicles or rolling stock that are purchased, leased, renovated, or otherwise placed into service after 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 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.