

S 933 IS

101st CONGRESS

1st Session

**S. 933**

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

**IN THE SENATE OF THE UNITED STATES**

**May 9 (legislative day, JANUARY 3), 1989**

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. CRANSTON, Mr. MCCAIN, Mr. MITCHELL, Mr. CHAFEE, Mr. LEAHY, Mr. STEVENS, Mr. INOUE, Mr. COHEN, Mr. GORE, Mr. PACKWOOD, Mr. RIEGLE, Mr. GRAHAM, Mr. PELL, Mr. DODD, Mr. ADAMS, Ms. MIKULSKI, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. WIRTH, Mr. BINGAMAN, Mr. CONRAD, Mr. BURDICK, Mr. LEVIN, Mr. LIEBERMAN, Mr. MOYNIHAN, Mr. KERRY, Mr. SARBANES, Mr. BOSCHWITZ, and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

**A BILL**

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

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE- This Act may be cited as the 'Americans with Disabilities Act of 1989'.

(b) TABLE OF CONTENTS- The table of contents is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

**TITLE I--GENERAL PROHIBITION AGAINST DISCRIMINATION**

Sec. 101. Forms of discrimination prohibited.

**TITLE II--EMPLOYMENT**

Sec. 201. Definitions.

Sec. 202. Discrimination.

Sec. 203. Posting notices.

Sec. 204. Regulations.

Sec. 205. Enforcement.

**TITLE III--PUBLIC SERVICES**

Sec. 301. Definition of qualified individual with a disability.

Sec. 302. Discrimination.

Sec. 303. Actions applicable to public transportation considered discriminatory.

Sec. 304. Regulations.

Sec. 305. Enforcement.

**TITLE IV--PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES**

Sec. 401. Definitions.

Sec. 402. Prohibition of discrimination by public accommodations.

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**TITLE V--TELECOMMUNICATIONS RELAY SERVICES**

Sec. 501. Definitions.

Sec. 502. Telecommunications relay services.

Sec. 503. Regulations.

Sec. 504. Enforcement.

## **TITLE VI--MISCELLANEOUS PROVISIONS**

Sec. 601. Construction.

Sec. 602. Prohibition against retaliation.

Sec. 603. State immunity.

Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.

Sec. 605. Attorney's fees.

Sec. 606. Effective date.

## **SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS- Congress finds that--

(1) some 43,000,000 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 individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

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

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory

effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure 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;

(6) 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;

(7) individuals with disabilities are a discrete and insular minority who have been faced 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 individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

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

(9) 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 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 individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce in order to address the major areas of discrimination faced day-to-day by people with disabilities.

## **SEC. 3. DEFINITIONS.**

As used in this Act:

(1) **AUXILIARY AIDS AND SERVICES**- The term `auxiliary aids and services' shall include--

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) **DISABILITY**- The term `disability' means, with respect to an individual--

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) **REASONABLE ACCOMMODATION**- The term `reasonable accommodation' shall include--

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

(4) **STATE**- The term `State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

### **TITLE I--GENERAL PROHIBITION AGAINST DISCRIMINATION**

## **SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.**

### **(a) IN GENERAL-**

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES- Subject to the standards and procedures established in titles II through V, it shall be discriminatory to subject an individual or class of individuals, directly or through contractual, licensing, or other arrangements, on the basis of disability, to any of the following:

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

(B) Affording 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.

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

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

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

(F) Denying the opportunity to participate as a member of boards or commissions.

(G) Otherwise limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

(2) EQUAL OPPORTUNITY- For purposes of this Act, aids, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the individual's needs.

(3) OPPORTUNITY TO PARTICIPATE- Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(4) ADMINISTRATIVE METHODS- An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration--

(A) that have the effect of discrimination on the basis of disability;

(B) 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 an individual with a disability; or

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

(5) RELATIONSHIPS OR ASSOCIATIONS- It shall be discriminatory to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other opportunities to an individual or entity because of the relationship to, or association of, that individual or entity with another individual with a disability.

(b) DEFENSES-

(1) IN GENERAL- It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(2) QUALIFICATION STANDARDS- The term 'qualification standards' may include--

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

## **TITLE II--EMPLOYMENT**

## SEC. 201. DEFINITIONS.

As used in this title:

(1) COMMISSION- The term `Commission' means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) EMPLOYEE-

(A) IN GENERAL- The term `employee' means an individual employed by an employer.

(B) EXCEPTION- The term `employee' shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) LIMITATION ON EXCEPTION- The exception contained in subparagraph (B) shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.

(3) EMPLOYER-

(A) IN GENERAL- The term `employer' means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(B) EXCEPTIONS- The term `employer' does not include--

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(4) PERSON, ETC- The terms `person', `labor organization', `employment agency', `commerce', and `industry affecting commerce', shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) QUALIFIED INDIVIDUAL WITH A DISABILITY- The term 'qualified individual with a disability' means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

## **SEC. 202. DISCRIMINATION.**

(a) GENERAL RULE- No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION- As used in subsection (a), the term 'discrimination' includes--

(1) the failure by an employer, employment agency, labor organization, or joint labor-management committee to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;

(2) the denial of employment opportunities by a covered employer, employment agency, labor organization, or joint labor-management committee to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation; and

(3) the imposition or application by a covered employer, employment agency, labor organization or joint labor-management committee of qualification standards, tests, selection criteria or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability, or any class of qualified individuals with disabilities, unless such standards, tests or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

## **SEC. 203. POSTING NOTICES.**

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights

Act of 1964 (42 U.S.C. 2000e-10).

## **SEC. 204. REGULATIONS.**

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

## **SEC. 205. ENFORCEMENT.**

The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-8, and 2000e-9), and the remedies and procedures available under section 1981 of the Revised Statutes (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning employment.

### **TITLE III--PUBLIC SERVICES**

## **SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABILITY.**

As used in this title, the term 'qualified individual with a disability' means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, commission or other instrumentality of a State and political subdivision.

## **SEC. 302. DISCRIMINATION.**

No qualified individual with a disability shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a State, or agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision.

## **SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.**

(a) DEFINITION- As used in this title, the term 'public transportation' means

transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES-

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES- It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES- If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES- If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM- If an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC- If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of

1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) NEW FACILITIES- For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(f) ALTERATIONS OF EXISTING FACILITIES- With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of an individual or entity later than 1 year after the date of enactment of this Act, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS-

(1) EXISTING FACILITIES- Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS- With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable

but in any event in no less than 5 years.

(3) KEY STATIONS- For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

## **SEC. 304. REGULATIONS.**

(a) ATTORNEY GENERAL- Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as in existence on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) SECRETARY OF TRANSPORTATION-

(1) IN GENERAL- Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 303.

(2) CONFORMANCE OF STANDARDS- Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

## **SEC. 305. ENFORCEMENT.**

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 304, concerning public services.

## **TITLE IV--PUBLIC ACCOMMODATIONS AND SERVICES OPER- ATED BY PRIVATE ENTITIES**

## **SEC. 401. DEFINITIONS.**

As used in this title:

(1) **COMMERCE**- The term `commerce' means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State or between any foreign country or any territory or possession and any State or the District of Columbia or between points in the same State but through another State or the District of Columbia or foreign country.

(2) **PUBLIC ACCOMMODATION**-

(A) **IN GENERAL**- The term `public accommodation' means privately operated establishments--

(i)(I) that are used by the general public as customers, clients, or visitors; or

(II) that are potential places of employment; and

(ii) whose operations affect commerce.

(B) **INCLUSIONS**- Public accommodations referred to in clause (i)(I) include auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels, and motels (other than inns, hotels, and motels exempt under section 201(b)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(b)(1))), terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

(3) **PUBLIC TRANSPORTATION**- The term `public transportation' means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

## **SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.**

(a) **GENERAL RULE**- No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

(b) **CONSTRUCTION**- As used in subsection (a), the term `discriminated against' includes--

- (1) the imposition or application of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations;
- (2) a failure to make reasonable modifications in rules, policies, practices, procedures, protocols, or services when such modifications may be necessary to afford such privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages, and accommodations;
- (3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in undue burden;
- (4)(A) a failure to remove architectural and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable; and  
(B) where an entity can demonstrate that removal of a barrier under subparagraph (A) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;
- (5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of this Act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;
- (6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403--

(A) a failure to provide a level of transportation services to individuals with disabilities, including individuals who use wheelchairs, equivalent to that provided for the general public; and

(B) purchasing or leasing a new bus, or vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

## **SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.**

(a) GENERAL RULE- No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION- As used in subsection (a), the term `discrimination against' includes--

(1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to--

(A) make reasonable modifications consistent with those required under section 402(b)(2);

(B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and

(C) remove barriers consistent with the requirements of section 402(b)(4); and

(3) the purchase or lease of a new vehicle (other than an automobile) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

## **SEC. 404. REGULATIONS.**

(a) ACCESSIBILITY STANDARDS- Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 403.

(b) OTHER PROVISIONS- Not later than 240 days after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 402.

(c) STANDARDS- Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

## **SEC. 405. ENFORCEMENT.**

Sections 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that--

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) of section 813 shall not apply.

### **TITLE V--TELECOMMUNICATIONS RELAY SERVICES**

## **SEC. 501. DEFINITIONS.**

As used in this title:

(1) COMMISSION- The term `Commission' means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES- The term `telecommunications relay services' means services that enable simultaneous communication to take place between individuals who use TDDs or other nonvoice terminal

devices and individuals who do not use such devices.

(3) TDD- The term `TDD' means a Telecommunication Device for the Deaf, a machine that employs graphic communications in the transmission of coded signals through the nationwide telecommunications system.

## **SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.**

(a) GENERAL RULE- It shall be considered discrimination for purposes of this Act for any common carrier, as defined in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)), that offers telephone services to the general public, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services, except that it shall not be considered discrimination for such a common carrier to fail to provide such services in any State to which subsection (b) applies if such services are provided under subsection (b).

(b) STATE DISCRIMINATION- It shall be considered discrimination by a State, that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations issued by the Commission, for purposes of this Act, for such State, through the designated entity, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) CONSTRUCTION- Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

## **SEC. 503. REGULATIONS.**

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations to carry out this title, and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

## **SEC. 504. ENFORCEMENT.**

(a) CIVIL ACTIONS- Section 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with

respect to any aggrieved individual, except that--

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) and subsection (d) of section 813 shall not apply.

(b) ADMINISTRATIVE ENFORCEMENT-

(1) IN GENERAL- The Commission shall enforce the provisions of this title.

(2) APPLICABLE ENFORCEMENT PROVISIONS- The remedies, procedures, and rights set forth in sections 206, 207, 208, and 209 of the Communications Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and in title IV of the Communications Act of 1934 (47 U.S.C. 401 et seq.) shall apply with respect to the enforcement of this title, except that nothing in this subsection shall be construed to limit or restrict in any manner the remedies, procedures, or rights set forth in subsection (a).

(3) CEASE AND DESIST ORDERS- Whenever, after full opportunity for hearing, on a complaint or under an order for investigation and hearing made by the Commission on the initiative of the Commission, the Commission shall be of the opinion that any carrier, or any State as described in section 502(b), is or will be in violation of this title or of any regulation issued under this title, the Commission shall--

(A) order that the carrier or State cease and desist from such violation to the extent that the Commission finds that such violation exists or will exist; and

(B) take other actions as it finds appropriate and necessary.

(4) PENALTIES-

(A) IN GENERAL- Any carrier or State to which section 502(b) applies that knowingly fails or neglects to comply with this title or of any regulation or order made by the Commission in carrying out this title shall forfeit to the United States the sum of \$10,000 for each such offense.

(B) SEPARATE OFFENSES- Each distinct violation of the provisions of this title shall be a separate offense under subparagraph (A). In case of a continuing violation, each day shall be considered a separate offense.

(C) RECOVERING FORFEITURES- Such forfeitures shall be payable and recoverable in the same manner as prescribed in section 504 of the Communications Act of 1934 (47 U.S.C. 504).

## **TITLE VI--MISCELLANEOUS PROVISIONS**

### **SEC. 601. CONSTRUCTION.**

(a) REHABILITATION ACT OF 1973- Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS- Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities than are afforded by this Act.

(c) RELATIONSHIP AMONG TITLES- The requirements contained in titles I through V shall be construed in a manner that is consistent with the other provisions of this Act, and any apparent conflict between provisions of this Act shall be resolved by reference to the title that specifically covers the type of action in question.

### **SEC. 602. PROHIBITION AGAINST RETALIATION.**

No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

### **SEC. 603. STATE IMMUNITY.**

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action 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 an action against any public or private entity other than a State.

### **SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.**

(a) ISSUANCE OF GUIDELINES- Not later than 6 months after the date of

enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of sections 304 and 404.

(b) CONTENTS OF GUIDELINES- The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

## **SEC. 605. ATTORNEY'S FEES.**

In any action or administrative proceeding commenced pursuant to this Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

## **SEC. 606. EFFECTIVE DATE.**

This Act shall become effective on the date of enactment.

*END*