IN THE SENATE OF THE UNITED STATES

Mr. WEICKER 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.

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

4 SECTION 1. SHORT TITLE.

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

7 SEC. 2. FINDINGS AND PURPOSES.

8 (a) FINDINGS.—Congress finds that—

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

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

(6) persons with disabilities are a discrete and insular minority who have been saddled with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such persons and resulting from stereotypic assumptions not truly indicative of the individual ability of such persons to participate in, and contribute to, society;

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

(8) the continuing existence of unfair and unnecessary 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 (1) to provide a clear and comprehensive Na-
2 tional mandate for the elimination of discrimination
3 against persons with disabilities;
4 (2) to provide a prohibition of discrimination
5 against persons with disabilities parallel in scope of
6 coverage with that afforded in statutes prohibiting
7 discrimination on the basis of race, sex, national
8 origin, and religion;
9 (3) to provide clear, strong, consistent, enforcea-
10 ble standards addressing discrimination against per-
11 sons with disabilities; and
12 (4) to invoke the sweep of congressional author-
13 ity, including its power to enforce the fourteenth
14 amendment, to regulate commerce, and to regulate
15 interstate transportation, in order to address the
16 major areas of discrimination faced day-to-day by
17 people with disabilities.
18 SEC. 3. DEFINITIONS
19 For purposes of this Act:
20 (1) ON THE BASIS OF HANDICAP.—The term "on
21 the basis of handicap" means because of a physical
22 or mental impairment, perceived impairment, or
23 record of impairment.
24 (2) PHYSICAL OR MENTAL IMPAIRMENT.—The
25 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.

(3) PERCEIVED IMPAIRMENT.—The term “perceived impairment” means not having a physical or mental impairment as defined in paragraph (2), but being regarded as having or treated as having a physical or mental impairment.
(4) **RECORD OF IMPAIRMENT.**—The term "record of impairment" means having a history of, or having been misclassified as having, a physical or mental impairment.

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

**SEC. 4. SCOPE OF DISCRIMINATION PROHIBITED.**

(a) **IN GENERAL.**—No person shall be subjected to discrimination on the basis of handicap in regard to—

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

(2) the sale or rental of housing covered by title VIII of the Civil Rights Act of 1968;

(3) any public accommodation covered by title II of the Civil Rights Act of 1964;
(4) transportation services rendered by a person, company, or agency engaged in the principal business of interstate transportation of persons, goods, documents, or data; and

(5) the actions, practices, and operations of a State, or agency or political subdivision of a State.

(b) CONSTRUCTION.—

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

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

SEC. 5. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—Subject to the standards and procedures established in sections 6 through 9 of this Act, the actions or omissions described in this subsection constitute discrimination on the basis of handicap.
(1) Services, programs, activities, benefits, jobs, or other opportunities.—

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

(i) 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, activity, benefit, job, or other opportunity that is less effective than that provided to others.

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

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

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

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

(B) LEVELS OF ACHIEVEMENT.—For purposes of this section, services, programs, activities, benefits, jobs, or other opportunities to be equally effective, are not required to produce the identical result or level of achievement for persons with physical and mental impairments, perceived impairments, or records of impairment, and persons without such impairments, but such services, programs, activities, benefits, jobs, or other opportunities shall afford persons with such impairments an equal opportunity to obtain the same result, to gain the same benefits, or to reach the same level of achievement.
in the most integrated setting appropriate to the needs of the person.

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

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

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

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

(iii) that perpetuate the discrimination of others who are subject to common ad-
ministrative 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.

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

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

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

(B) disproportionately screens out or disadvantages persons with particular types of physi-
(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.

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

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

(2) based on a legitimate application of qualification standards, selection criteria, performance standards, or eligibility criteria that are both neces-
sary and substantially related to the ability to per-
form or participate in the essential components of
the particular job, program, activity, or opportunity,
and such performance or participation cannot be ac-
complished by a reasonable accommodation; or

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

SEC. 6. DISCRIMINATION IN HOUSING.

(a) In General.—Notwithstanding the requirements
of section 5(a), it shall be an act of discrimination in
regard to housing—

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

(A) such buyer or renter;

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

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

(A) such person;

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

(C) any person associated with such person.

(b) REMOVAL OF BARRIERS IN HOUSING.—For purposes of subsection (a), discrimination includes—

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

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

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

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

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

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

(c) DEFINITION.—As used in this section the term "qualified multifamily dwellings" means—

(1) buildings consisting of two or more units if such buildings have one or more elevators; and

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

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

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

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

**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...
1. 5(a), such modifications shall, unless required earlier
2. by other law or regulation, be made within a reason-
3. able period of time, not to exceed 2 years from the
date of enactment of this Act.

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

(c) MASS TRANSPORTATION.—

(1) IN GENERAL.—If substantial modifications to
9. existing platforms and stations of mass transportation
10. systems are necessary in order to remove architectur-
11. al, transportation, and communication barriers, as re-
12. quired under section 5(a), regulations promulgated
13. pursuant to section 8 of this Act may, unless re-
14. quired earlier by other law or regulation, allow a rea-
15. sonable period of time, in no event to exceed 10
16. years from the date of enactment of this Act, for
17. such modifications to be made.

(2) AFFECT.—Paragraph (1) shall not affect the
18. duty of providers of transportation services to con-
19. form to other requirements of this Act, including the
20. requirement of removing other types of architectural,
transportation, and communication barriers, and the application of such requirements to vehicles and rolling stock.

SEC. 8. REGULATIONS.

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

(b) ATTORNEY GENERAL.—

(1) IN GENERAL.—Within 1 year of the date of enactment of this Act, the Attorney General shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to States and agencies and political subdivisions of States.

(2) MINIMUM GUIDELINES.—The Attorney General of the United States shall coordinate the timely development of regulations required under this section and shall issue, within six months of the effec-
(c) **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.** —

(1) **EMPLOYER PRACTICES.** —

(A) In general.—Within 1 year of the date of enactment of this Act, the Equal Employment Opportunity Commission shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to employer practices.

(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.

(2) **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, or records of impairments, and shall establish a process and timeliness for the development, implementation, and peri-
(3) PREEMLOYMENT INQUIRIES.—

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

(B) PERMITTED INQUIRIES.—An employer—

(i) may make a 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—

(I) all entering applicants are subjected to such an examination regard-
less of physical or mental impairment, perceived impairment, or record of impairment; and

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

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

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

(III) 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 to any adverse treatment, and that such information will be used only in accordance with the requirements of this section.

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

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

(ii) first aid and safety personnel may be informed, where appropriate, if such a condition may require emergency treatment; and
(iii) government officials investigating compliance with this Act shall be provided with relevant information on request.

(d) **SECRETARY OF HOUSING AND URBAN DEVELOPMENT.**—Within 1 year of the date of enactment of this Act, the Secretary of Housing and Urban Development shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to sellers, landlords, and other providers of housing.

(e) **SECRETARY OF TRANSPORTATION.**—

(1) **IN GENERAL.**—Within 1 year of the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to State and local transit systems and to those engaged in the business of interstate transportation.

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

(3) **REQUIREMENTS.**—With respect to State and local transit systems, rail and light rail services, and bus companies, the standards issued under paragraph (2) shall—
(A) insure 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 of such operators has at least 50 percent of the vehicles and rolling stock that are accessible to and usable by persons with physical or mental impairments, including wheelchair users; and

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

(f) SECRETARY OF COMMERCE.—Within 1 year of the date of enactment of this Act, the Secretary of Commerce
1 shall promulgate regulations for the implementation and
2 enforcement of the requirements of this Act as it applies to
3 places of public accommodation.

4 SEC. 9. ENFORCEMENT.

5 (a) ADMINISTRATIVE ACTIONS.—
6
7 (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 this Act, shall have a right, by himself or herself, or by a representative, to pursue such administrative enforcement procedures and remedies as are available in connection with the regulations issued pursuant to section 8 of this Act.

8 (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.

9 (b) CIVIL ACTIONS.—
10
11 (1) RIGHT TO FILE.—Any person who believes that he or she or any specific class of individuals is being or is about to be subjected to discrimination on the basis of handicap in violation of this Act, shall have a right, by himself or herself, or by a rep-
resentative, to file a civil action for injunctive relief, monetary damages, or both in a district court of the United States.

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

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

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

(c) **ADDITIONAL EVIDENCE.**—In any action brought under this section, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.
(d) JURISDICTION.—The district courts of the United States shall have jurisdiction of actions brought under this Act without regard to the amount in controversy.

(e) IMMUNITY.—A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

In a suit against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State.

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

(g) BURDEN OF PROOF.—In any administrative proceeding or civil action brought under this Act, the burden of proving the legitimacy of any 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
t entity alleged to have committed an act of discrimination,
and shall not be on the complainant.

SEC. 10. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.