

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. KERBY, 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.  
 Sec. 403. Prohibition of discrimination in public transportation services provided by private entities.  
 Sec. 404. Regulations.  
 Sec. 405. Enforcement.

#### 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.

### 1 SEC. 2. FINDINGS AND PURPOSES.

#### 2 (a) FINDINGS.—Congress finds that—

- 1 (1) some 43,000,000 Americans have one or more  
 2 physical or mental disabilities, and this number is in-  
 3 creasing as the population as a whole is growing older;  
 4 (2) historically, society has tended to isolate and  
 5 segregate individuals with disabilities, and, despite  
 6 some improvements, such forms of discrimination  
 7 against individuals with disabilities continue to be a se-  
 8 rious and pervasive social problem;  
 9 (3) discrimination against individuals with disabil-  
 10 ities persists in such critical areas as employment,  
 11 housing, public accommodations, education, transporta-  
 12 tion, communication, recreation, institutionalization,  
 13 health services, voting, and access to public services;  
 14 (4) unlike individuals who have experienced dis-  
 15 crimination on the basis of race, sex, national origin,  
 16 religion, or age, individuals who have experienced dis-  
 17 crimination on the basis of disability have often had no  
 18 legal recourse to redress such discrimination;  
 19 (5) individuals with disabilities continually encoun-  
 20 ter various forms of discrimination, including outright  
 21 intentional exclusion, the discriminatory effects of  
 22 architectural, transportation, and communication bar-  
 23 riers, overprotective rules and policies, failure to make  
 24 modifications to existing facilities and practices, exclu-  
 25 sionary qualification standards and criteria, segrega-



tion, 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 pro-

cedures 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, bene-



1 fit, job, or other opportunity that is not equal to  
2 that afforded others.

3 (C) Providing a service, program, activity,  
4 benefit, job, or other opportunity that is less effec-  
5 tive than that provided to others.

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

13 (E) Aiding or perpetuating discrimination by  
14 providing significant assistance to an agency, or-  
15 ganization, or individual that discriminates.

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

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

21 (2) EQUAL OPPORTUNITY.—For purposes of this  
22 Act, aids, benefits, and services to be equally effective,  
23 must afford an individual with a disability an equal op-  
24 portunity to obtain the same result, to gain the same  
25 benefit, or to reach the same level of achievement, in

1 the most integrated setting appropriate to the individ-  
2 ual's needs.

3 (3) OPPORTUNITY TO PARTICIPATE.—Notwith-  
4 standing the existence of separate or different programs  
5 or activities provided in accordance with this section,  
6 an individual with a disability shall not be denied the  
7 opportunity to participate in such programs or activi-  
8 ties that are not separate or different.

9 (4) ADMINISTRATIVE METHODS.—An individual  
10 or entity shall not, directly or through contractual or  
11 other arrangements, utilize standards or criteria or  
12 methods of administration—

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

15 (B) that have the purpose or effect of defeat-  
16 ing or substantially impairing the accomplishment  
17 of the objectives of the services, programs, activi-  
18 ties, benefits, jobs, or other opportunities provided  
19 with respect to an individual with a disability; or

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

23 (5) RELATIONSHIPS OR ASSOCIATIONS.—It shall  
24 be discriminatory to exclude or otherwise deny equal  
25 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



1 State or board, commission or other instrumentality of a  
2 State and political subdivision.

### 3 SEC. 302. DISCRIMINATION.

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

### 10 SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION 11 CONSIDERED DISCRIMINATORY.

12 (a) DEFINITION.—As used in this title, the term “public  
13 transportation” means transportation by bus or rail, or by  
14 any other conveyance (other than air travel) that provides the  
15 general public with general or special service (including char-  
16 ter service) on a regular and continuing basis.

#### 17 (b) VEHICLES.—

18 (1) NEW BUSES, RAIL VEHICLES, AND OTHER  
19 FIXED ROUTE VEHICLES.—It shall be considered dis-  
20 crimination for purposes of this Act and section 504 of  
21 the Rehabilitation Act of 1973 (29 U.S.C. 794) for an  
22 individual or entity to purchase or lease a new fixed  
23 route bus of any size, a new intercity rail vehicle, a  
24 new commuter rail vehicle, a new rapid rail vehicle, a  
25 new light rail vehicle to be used for public transporta-

1 tion, or any other new fixed route vehicle to be used  
2 for public transportation and for which a solicitation by  
3 such individual or entity is made later than 30 days  
4 after the date of enactment of this Act, if such bus,  
5 rail, or other vehicle is not readily accessible to and  
6 usable by individuals with disabilities, including individ-  
7 uals who use wheelchairs.

8 (2) USED VEHICLES.—If an individual or entity  
9 purchases or leases a used vehicle after the date of en-  
10 actment of this Act, such individual or entity shall  
11 make demonstrated good faith efforts to purchase or  
12 lease a used vehicle that is readily accessible to and  
13 usable by individuals with disabilities, including individ-  
14 uals who use wheelchairs.

15 (3) REMANUFACTURED VEHICLES.—If an individ-  
16 ual or entity remanufactures a vehicle, or purchases or  
17 leases a remanufactured vehicle, so as to extend its  
18 usable life for 5 years or more, the vehicle shall, to the  
19 maximum extent feasible, be readily accessible to and  
20 usable by individuals with disabilities, including individ-  
21 uals who use wheelchairs.

22 (c) PARATRANSIT AS A SUPPLEMENT TO FIXED  
23 ROUTE PUBLIC TRANSPORTATION SYSTEM.—If an individ-  
24 ual or entity operates a fixed route public transportation  
25 system to provide public transportation, it shall be considered



1 discrimination, for purposes of this Act and section 504 of the  
 2 Rehabilitation Act of 1973 (29 U.S.C. 794), for such individ-  
 3 ual or entity to fail to provide paratransit or other special  
 4 transportation services sufficient to provide a comparable  
 5 level of services as is provided to individuals using fixed route  
 6 public transportation to individuals with disabilities, including  
 7 individuals who use wheelchairs, who cannot otherwise use  
 8 fixed route public transportation and to other individuals as-  
 9 sociated with such individuals with disabilities in accordance  
 10 with service criteria established under regulations promulgat-  
 11 ed by the Secretary of Transportation.

12 (d) COMMUNITY OPERATING DEMAND RESPONSIVE  
 13 SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or  
 14 entity operates a demand responsive system that is used to  
 15 provide public transportation for the general public, it shall  
 16 be considered discrimination, for purposes of this Act and  
 17 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.  
 18 794), for such individual or entity to purchase or lease a new  
 19 vehicle, for which a solicitation is made later than 30 days  
 20 after the date of enactment of this Act, that is not readily  
 21 accessible to and usable by individuals with disabilities, in-  
 22 cluding individuals who use wheelchairs unless the entity can  
 23 demonstrate that such system, when viewed in its entirety,  
 24 provides a level of service to individuals with disabilities  
 25 equivalent to that provided to the general public.

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

10 (f) ALTERATIONS OF EXISTING FACILITIES.—With re-  
 11 spect to a facility or any part thereof that is used for public  
 12 transportation and that is altered by, on behalf of, or for the  
 13 use of an individual or entity later than 1 year after the date  
 14 of enactment of this Act, in a manner that affects or could  
 15 affect the usability of the facility or part thereof, it shall be  
 16 considered discrimination, for purposes of this Act and sec-  
 17 tion 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),  
 18 for such individual or entity to fail to make the alterations in  
 19 such a manner that, to the maximum extent feasible, the al-  
 20 tered portion of the facility, the path of travel to the altered  
 21 area, and the bathrooms, telephones, and drinking fountains  
 22 serving the remodeled area are readily accessible to and  
 23 usable by individuals with disabilities, including individuals  
 24 who use wheelchairs.



1 (g) EXISTING FACILITIES, INTERCITY RAIL, RAPID  
2 RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND  
3 KEY STATIONS.—

4 (1) EXISTING FACILITIES.—Except as provided  
5 in paragraph (3), with respect to existing facilities used  
6 for public transportation, it shall be considered discrim-  
7 ination, for purposes of this Act and section 504 of the  
8 Rehabilitation Act of 1973 (29 U.S.C. 794), for an in-  
9 dividual or entity to fail to operate such public trans-  
10 portation program or activity conducted in such facili-  
11 ties so that, when viewed in the entirety, it is readily  
12 accessible to and usable by individuals with disabilities,  
13 including individuals who use wheelchairs.

14 (2) INTERCITY, RAPID, LIGHT, AND COMMUTER  
15 RAIL SYSTEMS.—With respect to vehicles operated by  
16 intercity, light, rapid and commuter rail systems, for  
17 purposes of this Act and section 504 of the Rehabilita-  
18 tion Act of 1973 (29 U.S.C. 794), it shall be consid-  
19 ered discrimination for an individual or entity to fail to  
20 have at least one car per train that is accessible to in-  
21 dividuals with disabilities, including individuals who use  
22 wheelchairs, as soon as practicable but in any event in  
23 no less than 5 years.

24 (3) KEY STATIONS.—For purposes of this Act  
25 and section 504 of the Rehabilitation Act of 1973 (29

1 U.S.C. 794), it shall be considered discrimination for  
2 an individual or entity to fail to make stations in inter-  
3 city rail systems and key stations in rapid rail, com-  
4 muter rail and light rail systems readily accessible to  
5 and usable by individuals with disabilities, including in-  
6 dividuals who use wheelchairs, as soon as practicable  
7 but in no event later than 3 years after the date of en-  
8 actment of this Act, except that the time limit may be  
9 extended by the Secretary of Transportation up to 20  
10 years for extraordinarily expensive structural changes  
11 to, or replacement of, existing facilities necessary to  
12 achieve accessibility.

13 SEC. 304. REGULATIONS.

14 (a) ATTORNEY GENERAL.—Not later than 180 days  
15 after the date of enactment of this Act, the Attorney General  
16 shall promulgate regulations in an accessible format that im-  
17 plement this title (other than section 303), and such regula-  
18 tions shall be consistent with this title and with the coordina-  
19 tion regulations under part 41 of title 28, Code of Federal  
20 Regulations (as in existence on January 13, 1978), applicable  
21 to recipients of Federal financial assistance under section 504  
22 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

23 (b) SECRETARY OF TRANSPORTATION.—

24 (1) IN GENERAL.—Not later than 240 days after  
25 the date of enactment of this Act, the Secretary of



1 Transportation shall promulgate regulations in an ac-  
2 cessible format that include standards applicable to fa-  
3 cilities and vehicles covered under section 303.

4 (2) CONFORMANCE OF STANDARDS.—Such stand-  
5 ards shall be consistent with the minimum guidelines  
6 and requirements issued by the Architectural and  
7 Transportation Barriers Compliance Board in accord-  
8 ance with section 604(b).

#### 9 SEC. 305. ENFORCEMENT.

10 The remedies, procedures, and rights set forth in section  
11 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall  
12 be available with respect to any individual who believes that  
13 he or she is being or about to be subjected to discrimination  
14 on the basis of disability in violation of any provisions of this  
15 Act, or regulations promulgated under section 304, concern-  
16 ing public services.

## 17 TITLE IV—PUBLIC ACCOMMODA- 18 TIONS AND SERVICES OPER- 19 ATED BY PRIVATE ENTITIES

#### 20 SEC. 401. DEFINITIONS.

21 As used in this title:

22 (1) COMMERCE.—The term “commerce” means  
23 travel, trade, traffic, commerce, transportation, or com-  
24 munication among the several States, or between the  
25 District of Columbia and any State or between any for-

1 eign country or any territory or possession and any  
2 State or the District of Columbia or between points in  
3 the same State but through another State or the Dis-  
4 trict of Columbia or foreign country.

#### 5 (2) PUBLIC ACCOMMODATION.—

6 (A) IN GENERAL.—The term “public accom-  
7 modation” means privately operated establish-  
8 ments—

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

11 (II) that are potential places of employ-  
12 ment; and

13 (ii) whose operations affect commerce.

14 (B) INCLUSIONS.—Public accommodations  
15 referred to in clause (i)(I) include auditoriums,  
16 convention centers, stadiums, theaters, restau-  
17 rants, shopping centers, inns, hotels, and motels  
18 (other than inns, hotels, and motels exempt under  
19 section 201(b)(1) of the Civil Rights Act of 1964  
20 (42 U.S.C. 2000a(b)(1))), terminals used for public  
21 transportation, passenger vehicle service stations,  
22 professional offices of health care providers, office  
23 buildings, sales establishments, personal and  
24 public service businesses, parks, private schools,  
25 and recreation facilities.



1 (3) PUBLIC TRANSPORTATION.—The term  
2 “public transportation” means transportation by bus or  
3 rail, or by any other conveyance (other than by air  
4 travel) that provides the general public with general or  
5 special service (including charter service) on a regular  
6 and continuing basis.

7 SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC  
8 ACCOMMODATIONS.

9 (a) GENERAL RULE.—No individual shall be discrimi-  
10 nated against in the full and equal enjoyment of the goods,  
11 services, facilities, privileges, advantages, and accommo-  
12 dations of any place of public accommodation, on the basis of  
13 disability.

14 (b) CONSTRUCTION.—As used in subsection (a), the  
15 term “discriminated against” includes—

16 (1) the imposition or application of eligibility crite-  
17 ria that identify or limit, or tend to identify or limit, an  
18 individual with a disability or any class of individuals  
19 with disabilities from fully and equally enjoying any  
20 goods, services, facilities, privileges, advantages, and  
21 accommodations;

22 (2) a failure to make reasonable modifications in  
23 rules, policies, practices, procedures, protocols, or serv-  
24 ices when such modifications may be necessary to  
25 afford such privileges, advantages, and accommodations

1 unless the entity can demonstrate that making such  
2 modifications would fundamentally alter the nature of  
3 such privileges, advantages, and accommodations;

4 (3) a failure to take such steps as may be neces-  
5 sary to ensure that no individual with a disability is ex-  
6 cluded, denied services, segregated or otherwise treat-  
7 ed differently than other individuals because of the ab-  
8 sence of auxiliary aids and services, unless the entity  
9 can demonstrate that taking such steps would result in  
10 undue burden;

11 (4)(A) a failure to remove architectural and com-  
12 munication barriers that are structural in nature in ex-  
13 isting facilities, and transportation barriers in existing  
14 vehicles used by an establishment for transporting indi-  
15 viduals (not including barriers that can only be re-  
16 moved through the retrofitting of vehicles by the instal-  
17 lation of a hydraulic or other lift), where such removal  
18 is readily achievable; and

19 (B) where an entity can demonstrate that removal  
20 of a barrier under subparagraph (A) is not readily  
21 achievable, a failure to make such goods, services, fa-  
22 cilities, privileges, advantages, and accommodations  
23 available through alternative methods if such methods  
24 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, in-

cluding 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 indi-

viduals 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.



## 1 SEC. 503. REGULATIONS.

2 Not later than 180 days after the date of enactment of  
3 this Act, the Commission shall issue regulations to carry out  
4 this title, and such regulations shall establish minimum stand-  
5 ards and guidelines for telecommunications relay services.

## 6 SEC. 504. ENFORCEMENT.

7 (a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a)  
8 and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613,  
9 and 3614 (a) and (d)) shall be available with respect to any  
10 aggrieved individual, except that—

11 (1) any reference to a discriminatory housing  
12 practice or breach of a conciliation agreement shall be  
13 considered to be a reference to a practice that is dis-  
14 criminatory under this title concerning the provision of  
15 an appropriate interstate or intrastate telecommunica-  
16 tion relay service; and

17 (2) subparagraph (B) of paragraph (1) and para-  
18 graphs (2) and (3) of subsection (a) and subsection (d)  
19 of section 813 shall not apply.

## 20 (b) ADMINISTRATIVE ENFORCEMENT.—

21 (1) IN GENERAL.—The Commission shall enforce  
22 the provisions of this title.

## 23 (2) APPLICABLE ENFORCEMENT PROVISIONS.—

24 The remedies, procedures, and rights set forth in sec-  
25 tions 206, 207, 208, and 209 of the Communications  
26 Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and

1 in title IV of the Communications Act of 1934 (47  
2 U.S.C. 401 et seq.) shall apply with respect to the en-  
3 forcement of this title, except that nothing in this sub-  
4 section shall be construed to limit or restrict in any  
5 manner the remedies, procedures, or rights set forth in  
6 subsection (a).

7 (3) CEASE AND DESIST ORDERS.—Whenever,  
8 after full opportunity for hearing, on a complaint or  
9 under an order for investigation and hearing made by  
10 the Commission on the initiative of the Commission,  
11 the Commission shall be of the opinion that any car-  
12 rier, or any State as described in section 502(b), is or  
13 will be in violation of this title or of any regulation  
14 issued under this title, the Commission shall—

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

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

## 21 (4) PENALTIES.—

22 (A) IN GENERAL.—Any carrier or State to  
23 which section 502(b) applies that knowingly fails  
24 or neglects to comply with this title or of any reg-  
25 ulation or order made by the Commission in car-



rying 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.



1 **SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANS-**  
 2 **PORTATION BARRIERS COMPLIANCE BOARD.**

3 (a) **ISSUANCE OF GUIDELINES.**—Not later than 6  
 4 months after the date of enactment of this Act, the Architec-  
 5 tural and Transportation Barriers Compliance Board shall  
 6 issue minimum guidelines that shall supplement the existing  
 7 Minimum Guidelines and Requirements for Accessible Design  
 8 for purposes of sections 304 and 404.

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

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

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

22 **SEC. 606. EFFECTIVE DATE.**

23 This Act shall become effective on the date of  
 24 enactment.

