

# CRS Report for Congress

## The Americans With Disabilities Act: An Overview of Major Provisions

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**THE AMERICANS WITH DISABILITIES ACT:  
AN OVERVIEW OF MAJOR PROVISIONS**

**SUMMARY**

The Americans With Disabilities Act (ADA), enacted on July 26, 1990, would provide broad non-discrimination protection for individuals with disabilities in employment, public services, public accommodations, and services operated by private entities, transportation, and telecommunications.

## THE AMERICANS WITH DISABILITIES ACT (ADA): AN OVERVIEW OF MAJOR PROVISIONS

### BACKGROUND OF THE LEGISLATION

The Americans with Disabilities Act, ADA, P.L. 101-336, has often been described as the most sweeping nondiscrimination legislation since the Civil Rights Act of 1964. It would provide broad based nondiscrimination protection for individuals with disabilities in employment, public services, public accommodations and services operated by private entities, transportation, and telecommunications. On July 13, 1990, the final conference report was approved by the Senate.<sup>1</sup> House approval had come on July 12<sup>2</sup> and President Bush signed the legislation on July 26.<sup>3</sup>

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<sup>1</sup> 136 Cong. Rec. S 9695 (daily ed. July 13, 1990).

<sup>2</sup> 136 Cong. Rec. H 4629 (daily ed. July 12, 1990).

<sup>3</sup> The legislative course of the ADA can only be described as tortuous. Although legislative attempts to implement various concepts in the ADA have been longstanding, the ADA originated in a proposal from the National Council on Disabilities. The National Council is an independent federal agency whose statutory functions include providing recommendations to the Congress regarding individuals with disabilities. 29 U.S.C. sec. 781. The National Council proposal followed two reports by the National Council, *Toward Independence* (1986), and *On the Threshold of Independence* (1988). Legislation of this type was also recommended in the 1988 report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic. Legislation was introduced in the 100th Congress, S. 2345 and H.R. 4498, and a hearing was held but further action was not taken. A substantially revised version of the ADA, S. 933 and H.R. 2273, was introduced in both the House and Senate on May 9, 1989. S. 933 passed the Senate with substantial amendments on September 7, 1989. In the House, the legislation was referred to four committees, House Education and Labor, Energy and Commerce, Transportation and Public Works, and Judiciary. After numerous hearings, and markups, the ADA passed the House on May 22, 1990. Conferees were appointed and a conference report was agreed to by the conferees but the Senate on July 11, 1990 voted to recommit the legislation to conference. A compromise was agreed to. On July 12, the House voted to pass the ADA and on July 13 the Senate followed suit.



An existing **federal statutory** provision, section 504 of the Rehabilitation Act of 1973, 29 U.S.C. sec. 794, prohibits discrimination against an otherwise qualified individual **with** handicaps, solely on the basis of handicap, in any program or activity **that** receives federal financial assistance, the executive agencies or the U.S. Postal Service. Many of the concepts used in the ADA originated in section 504 jurisprudence although section 504 differs from the ADA in several ways. The most significant difference is that section 504's prohibition against **discrimination** is generally tied to the receipt of federal funds while the ADA would cover entities not receiving such funds. The ADA contains a specific **provision** stating that except as otherwise provided in the act, nothing in the act shall be construed to apply a lesser standard than 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.<sup>4</sup>

## OVERVIEW OF THE ADA

### *Short Title and Definitions*

Section 1 contains the short title and the table of contents of the act. Section 2 contains **statements** concerning congressional findings and purpose while section 3 contains **definitions** of auxiliary aids and services, disability, and state. The term **disability** is defined as meaning 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." This definition is drawn from the definitional section applicable to section 504 of the Rehabilitation Act.<sup>5</sup> Although AIDS and HIV infection are not specifically mentioned in the Act, the prior interpretation of section 504 and the legislative history of the ADA indicate that such coverage is intended.<sup>6</sup>

### *Title I -- Employment*

Title I provided that no covered entity shall discriminate against a qualified individual with a disability because of the disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. The term employer is defined as a person engaged in an industry affecting commerce who has 15 or more employees; however, for the two years following the effective date of the title, an employer means a person engaged in an industry affecting commerce who has 25 or more

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<sup>4</sup> ADA, sec. 501.

<sup>5</sup> 29 U.S.C. sec. 706(8).

<sup>6</sup> See e.g., S. Rep. No. 116, 101st Cong., 1st Sess. (1989).



employees. The term qualified individual with a disability is defined as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such person holds or desires."<sup>7</sup>

Title I incorporates many of the concepts set forth in the regulations promulgated pursuant to section 504, including the requirement to provide reasonable accommodation unless such accommodation would pose an undue hardship on the operation of the business.<sup>8</sup> There is a section which specifically lists some defenses to a charge of discrimination including (1) that the alleged application of qualification standards has been shown to be job related and consistent with business necessity and such performance cannot be accomplished by reasonable accommodation, (2) the term qualification standards can include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace, and (3) religious entities may give a preference in employment to individuals of a particular religion to perform work connected with carrying on the entities' activities. In addition, religious entities may require that all applicants and employees conform to the religious tenets of the organization. The Secretary of Health and Human Services is required to list infectious and communicable diseases transmitted through the handling of food and if the risk cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign an individual with such a disease to a job involving food handling.<sup>9</sup>

Another controversial issue which arose regarding employment concerned the application of the ADA to drug addicts and alcoholics. The act provides that, with regard to employment, an employee or applicant who is currently engaging in the illegal use of drugs is not considered to be a qualified individual with a disability. Also, title I provides that a covered entity may prohibit the illegal use of drugs and the use of alcohol at the workplace.

The remedies and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964,<sup>10</sup> are incorporated by reference. This would provide for certain administrative enforcement as well as allowing for individual suits. Presently, these remedies would include injunctive relief and

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<sup>7</sup> ADA, sec. 101(8).

<sup>8</sup> See 45 C.F.R. Part 84.

<sup>9</sup> This provision reflects the compromise reached concerning the "Chapman" or food handlers amendment added to the ADA during House debate. For a discussion of the original amendment see "The Americans with Disabilities Act: Major Distinctions Between the Senate and House Versions as Passed," CRS General Distribution Memorandum (June 5, 1990).

<sup>10</sup> 42 U.S.C. secs. 2000e-4, 2000e-5, 2000e-6, 2000e-8.



back pay but not **compensatory and punitive damages**.<sup>11</sup> The Equal Employment Opportunities Commission is to promulgate regulations no later than one year after the **date** of enactment. The agencies with enforcement authority for employment discrimination in the ADA and under the Rehabilitation Act of 1973 are to develop, within 18 months, coordination procedures to avoid a **duplication** of effort or varying enforcement standards. Title I will become **effective 24 months** after enactment.

### *Title II -- Public Services*

Title II provides **that** no qualified individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or subjected to discrimination by any such entity. Public entity is defined as state and local governments, any department or other instrumentality of a state or local government, and the National Railroad Passenger Corporation. This title also provides specific requirements for public transportation by intercity and commuter rail and for public transportation **other** than by aircraft or certain rail operations. All new vehicles purchased or leased by a public entity which operates a fixed route system are to be **accessible** and good faith efforts must be demonstrated with regard to the purchase or lease of accessible used vehicles. Retrofitting of existing buses is **not required**. Paratransit services would be required in most circumstances **other** than those involving commuter bus service. Generally, within five **years**, rail systems are to have at least one car per train that is accessible to individuals with disabilities.

The enforcement remedies of section 505 of the Rehabilitation Act of 1973, 29 U.S.C. sec. 794a, are incorporated by reference. These remedies would be similar to those of title VI of the Civil Rights Act of 1964 and would include damages and injunctive relief. The Attorney General is to promulgate regulations relating to subpart A of the title (Prohibition Against Discrimination and other Generally Applicable Provisions) although such regulations are not to include matters within the scope of the authority of the Secretary of Transportation. Subpart B provides that the Secretary of Transportation shall issue regulations. Generally, the effective date for title II is eighteen months, **but** the date varies for some sections such as that relating to Public entities operating fixed route systems.

### *Title III -- Public Accommodations and Services Operated by Private Entities*

Title III provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a

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<sup>11</sup> If the Civil Rights Act of 1990, S. 2104, is enacted, the remedies referred to may change.



place of public accommodation. Entities to be covered by the term public accommodation are listed and include, among others, hotels, restaurants, theaters, auditoriums, laundromats, museums, parks, zoos, private schools, day care centers, professional offices of health care providers, and gymnasiums. Religious institutions or entities controlled by religious institutions are not included on the list. There are some limitations on the nondiscrimination requirement and a failure to remove architectural barriers is not a violation unless such a removal is "readily achievable." "Readily achievable" is defined as meaning "easily accomplishable and able to be carried out without much difficulty or expense." The nondiscrimination mandate also does not require that an entity permit an individual to participate in or benefit from the services of a public accommodation where such an individual poses a direct threat to the health or safety of others.

Title III also contains provisions relating to the prohibition of discrimination in public transportation services provided by private entities. Purchases of over-the-road buses are to be made in accordance with regulations issued by the Secretary of Transportation. In issuing these regulations, the Secretary must take into account the recommendations of a study on the subject to be done by the Office of Technology Assessment.

The remedies and procedures of title II of the Civil Rights Act shall be the powers, remedies, and procedures title III of the ADA provides to any person who is being subjected to discrimination or any person who has reasonable grounds for believing that he or she is about to be subjected to discrimination with respect to the construction of new or the alteration of existing facilities in an inaccessible manner. Title II of the Civil Rights Act has generally been interpreted to include injunctive relief, not damages. In addition, state and local governments can apply to the Attorney General to certify that state or local building codes meet or exceed the minimum accessibility requirements of the ADA. The Attorney General may bring pattern or practice suits with a maximum civil penalty of \$50,000 for the first violation and \$100,000 for a violation in a subsequent case. The monetary damages sought by the Attorney General do not include punitive damages. Courts may also consider an entity's "good faith" efforts in considering the amount of the civil penalty. Factors to be considered in determining good faith include whether an entity could have reasonably anticipated the need for an appropriate type of auxiliary aid to accommodate the unique needs of a particular individual with a disability. Generally, the effective date of title III is 18 months after enactment although there are certain exceptions to this.

#### *Title IV -- Telecommunications*

Title IV amends title II of the Communications Act of 1934<sup>12</sup> by adding a section providing that the Federal Communications Commission shall ensure

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<sup>12</sup> 47 U.S.C. 201 et seq.



that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals. Any television public service announcement that is produced or funded in whole or part by any agency or instrumentality of the federal government shall include closed captioning of the verbal content of the announcement. The FCC is given enforcement authority with certain exceptions and the services shall be provided not later than 3 years after the date of enactment.

#### *Title V -- Miscellaneous Provisions*

Title V contains an amalgam of provisions, several of which generated considerable controversy during ADA debate. Section 501 concerns the relationship of the ADA to other statutes and bodies of law. Subpart (a) states that "except as otherwise provided in this act, nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act ... or the regulations issued by Federal agencies pursuant to such title." Subpart (b) provides that nothing in the Act shall be construed to invalidate or limit the remedies, rights and procedures of any federal, state or local law that provides greater or equal protection. Nothing in the act is to be construed to preclude the prohibition of or restrictions on smoking. Subpart (c) limits the application of the act with respect to the coverage of insurance; however, this subsection is not to be used as a subterfuge to evade the purposes of titles I and III. Finally, subsection (d) provides that the act does not require an individual with a disability to accept an accommodation which that individual chooses not to accept.

Section 502 abrogates the eleventh amendment state immunity from suit. Section 503 prohibits retaliation and coercion against an individual who has opposed an act or practice made unlawful by the ADA. Section 504 requires the Architectural and Transportation Barriers Compliance Board to issue guidelines regarding accessibility. These guidelines are to include procedures and requirements for alterations of historic buildings or facilities. Section 505 provides for attorneys' fees in "any action or administrative proceeding" under the act. Section 506 provides for technical assistance to assist entities covered by the act in understanding their responsibilities. Section 507 provides for a study by the National Council on Disability regarding wilderness designations and wilderness land management practices and "reaffirms" that nothing in the wilderness act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires the use of a wheelchair. Section 513 provides that "where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution ... is encouraged...." Section 514 provides for severability of any provision of the act that is found to be unconstitutional.

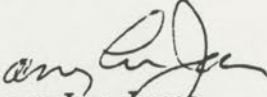
The coverage of Congress was a major controversy during the House-Senate conference on the ADA. The Senate passed version had provided that the ADA's requirements shall apply in their entirety to the Senate, the House and all the instrumentalities of the Congress. This language incorporated the



provisions in various titles providing for administrative enforcement of the ADA, thus raising constitutional issues regarding separation of powers and speech and debate clause immunity. The House took a different approach and applied the rights and protections of the ADA to the Congress but provided for the chief official of each instrumentality of Congress to establish remedies and procedures for these rights. After considerable debate, existing Senate and House procedures concerning discrimination were codified and the concept of a private right of action was dropped.

Two other controversial areas were also covered in title V -- sex and drugs. Section 510 provides that the term "individual with a disability" in the ADA does not include an individual who is currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use. An individual who has been rehabilitated would be covered. However, the conference report language clarifies that the provision does not permit individuals to invoke coverage simply by showing they are participating in a drug rehabilitation program; they must refrain from using drugs. The conference report also indicates that the limitation in coverage is not intended to be narrowly construed to only persons who use drugs "on the day of, or within a matter of weeks before, the action in question." The definitional section of the Rehabilitation Act which would be applicable to section 504 is also amended to create uniformity with this definition and to add some provisions relating to alcohol use.

Section 508 provides that an individual shall not be considered to have a disability solely because that individual is a transvestite. Section 511 similarly provides that homosexuality and bisexuality are not disabilities under the act and that the term disability does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders, compulsive gambling, kleptomania, or pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.

  
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