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CONSUMER RIGHTS UNDER THE AMERICANS WITH DISABILITIES ACT

by Michael N. Petkovich*

I. Introduction

According to Congress, there are some 43 million disabled Americans, and this number is projected to increase as the population grows older.¹ Disabled persons are relegated to an inferior status in American society, and discrimination against disabled persons is exacerbated by architectural, transportation and communication barriers.² Recognizing the concerns of a growing portion of our society, Congress passed the Americans with Disabilities Act of 1990 ("ADA").³ The ADA has been called the most "comprehensive" anti-discrimination law since the Civil Rights Act of 1964.⁴

The ADA is designed to eradicate discrimination against physically and mentally disabled individuals. The ADA is comprised of four Titles: Titles I, II and III are to be codified at Title 42, Chapter 126 of the United States Code, entitled "Equal Opportunities for Individuals With Disabilities."⁵ Title IV of the ADA amends the Communications Act of 1934 by requiring that telecommunication systems do not discriminate against hearing and speech impaired persons.⁶ The ADA easily passed Congress and was signed into law on July 26, 1990. In July, 1991, regulations implementing the ADA were adopted by the Department of Justice ("DOJ")⁷ and the Equal Employment Opportunity Commission ("EEOC").⁸ Although titled the *Americans with Disabilities Act*, the ADA protects all qualified individuals regardless of citizenship or national origin.⁹

The ADA has been going into effect gradually, beginning in January 1992, to give employers and businesses a chance to bring themselves into compliance with the ADA through education and training. Long before the ADA, various state and federal laws prohibited employment discrimination against qualified individuals with disabili-

ties. However, many disability rights advocates considered the enforcement of pre-existing laws inadequate.¹⁰ The ADA neither supersedes nor limits the rights and remedies created under other federal, state and local laws protecting disabled individuals.¹¹ The ADA leaves intact the provisions of the Rehabilitation Act of 1973¹² which addresses disability rights on a more limited basis.¹³

The most significant news for consumers with disabilities is that the ADA has taken a substantial step further than any of the pre-existing state and federal laws. Title III of the ADA expressly requires certain businesses to design new construction and structural renovations so that consumers with disabilities may approach, enter and use these new and remodeled facilities.¹⁴ The ADA further prohibits public accommodations¹⁵ from discriminating against consumers with disabilities and requires public accommodations to make modifications to policies and facilities that are readily achievable.¹⁶ As defined by the ADA, the term "readily achievable" modifications are those which are "easily carried out without much difficulty or expense."¹⁷

While the ADA provides sweeping reforms designed to eradicate many forms of discrimination against disabled persons, this Article will only discuss Title II and Title III, which are more pertinent to consumer issues. The provisions of Title II,¹⁸ concerning public access of federal and local government will only be briefly discussed. This Article will primarily focus on Title III¹⁹ which was designed to eliminate barriers to public access and accommodation. The ADA's public access provisions apply to both governmental and private entities. Title II of the ADA includes all instrumentalities of state and local government, including public transit agencies. Title III of the

ADA addresses public access limitations in private entities.

II. The ADA Prohibits Discrimination By Both Public And Private Entities Providing Goods and Services

A. The ADA Prohibits Governmental Discrimination

Title II of the Act bars discrimination by any "public entity" which is defined by the ADA to include instrumentalities of state and local government.²⁰ The provisions of Title II govern accessibility of public facilities, including public transit agencies, and forbid a public entity from excluding disabled persons from participating, or from otherwise discriminating against the disabled, in any programs and services the public entity may offer.²¹ Regulations from the DOJ and the Architectural and Transportation Barriers Control Board ("ATBCB") implement these requirements.²²

B. The ADA Requires that Newly Constructed or Altered Commercial Facilities and Public Accommodations Be Accessible to Consumers

1. The ADA Distinguishes Between Commercial Facilities and Public Accommodations

The accessibility requirements of the ADA distinguish between facilities on two levels. The first distinction differentiates between "commercial facilities" and "public accommodations." Under Section 301(2) of the ADA, "commercial facilities" include all private places of business except residential facilities.²³ Some examples of commercial facilities would include privately operated airports, factories, warehouses and office

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buildings. Under Section 301(7) of the ADA, a "place of public accommodation" includes any individual or private entity which owns, operates, leases or leases to a facility that serves the public.²⁴ For instance, this definition would include all nonresidential hotels and motels, taverns and restaurants, stadiums, theaters, concert and lecture halls, convention centers, retail and rental stores, laundromats, dry cleaners, travel agencies, funeral parlors, museums, libraries, art galleries, zoos, parks, golf courses, health clubs, bowling alleys, hospitals and other health care providers, schools, day care centers, shelters and food banks.²⁵

2. The ADA Further Distinguishes Between New Construction and Structural Alterations of Existing Facilities

The ADA's requirements also distinguish between "newly constructed" facilities and "structural alterations" of existing commercial or public accommodation facilities. The general rule under the ADA is that all new construction and structural alterations undertaken by a commercial facility or public accommodation must be designed and constructed so they are accessible to and usable by

The general rule under the ADA is that all new construction and structural alterations undertaken by a commercial facility or public accommodation must be designed and constructed so they are accessible to and usable by consumers with disabilities.

consumers with disabilities.²⁶ The ADA further provides that all new construction must meet the ADA accessibility standards if the entity files for a building permit (or permit extension) after January 26, 1992 and the initial occupancy takes place after January 26, 1993.²⁷ Structural alterations must satisfy the ADA accessibility standards if the alteration requires a

permit and begins after January 26, 1992.²⁸

3. New Construction Must Be Readily Accessible

Section 303(a)(1) of the ADA requires all commercial facilities and public accommodations to design and construct new facilities that are readily accessible to individuals with disabilities.²⁹ This provision encompasses a wide variety of facilities due to the broad meaning accorded its terms. "Facility" not only includes buildings and normal structures, but also includes "rolling stock" such as mobile health units, floating restaurants, cruise ships, parking lots, and walks and passageways on the property.³⁰

The term "readily accessible" is defined broadly as well. With respect to a facility it means that it can be approached, entered, and used by individuals with disabilities (including mobility, cognitive, and sensory impairments) easily and conveniently.³¹ For instance, the covered entity is required to provide access from the street or the parking lot to the extent it has control over these areas. In this example, a business would be required to design curb cuts leading from the parking lot to the entry sidewalk and then provide entry ramps leading into the facility if the entity has control over these areas.

The ADA further prohibits a business from maintaining any policy or practice that would turn an accessible facility into an inaccessible facility for individuals with a disability.³² For example, a business may have an accessible entrance for wheelchair-bound individuals. However, the entity may still violate the ADA if it has a policy of keeping that entrance open only for a few hours per day.

The ADA does provide a limited exception for a business that can establish that it would be structurally impractical to make the facility accessible.³³ However, the ADA places the burden on the business to prove that the accessibility standards would actually destroy the physical integrity of the facility.³⁴ The example used by the DOJ Regulations describes a facility built in a marsh area that must be

constructed on stilts.³⁵ In that instance, it would be structurally impractical to provide a facility accessible for individuals who use wheelchairs. Nonetheless, the facility would still be required to make the facility accessible for as many disabilities as possible under the circumstances.³⁶

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4. Alterations Must Satisfy The ADA Accessibility Standards

The ADA requires that alterations to existing facilities be designed and constructed so that the altered portion is readily accessible to and usable by an individual with a disability "to the maximum extent feasible."³⁷ The DOJ Regulations broadly define the term "alterations" to include remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangements in the plan configuration of walls and full-height partitions.³⁸ However, normal maintenance, re-roofing, painting or wallpapering, asbestos removal or changes in mechanical and electrical systems are not normally considered alterations under the ADA unless they affect the usability of the building or the facility.³⁹

5. The Accessibility Requirements Are Not Necessarily Confined To The Portions Of The Facility Where the Alterations Were Made

If an alteration merely amounts to a superficial renovation to an incidental portion of a facility, there is no duty to make that part of the facility accessible.⁴⁰ For instance, if the entity makes a minor alteration to a facility, such as moving an electrical outlet, the entity would not have to make additional alterations that would

(continued on page 46)

A.D.A.

(continued from page 45)

make the approach or entry areas readily accessible to the area where the minor alteration took place.⁴¹ On the other hand, when the alteration affects the "usability of or access to an area of the facility containing a primary function" additional alterations must be made so that the "path of travel" to that area, as well as to the bathrooms, telephones and drinking fountains serving the area are readily accessible to and usable by disabled persons.⁴² The DOJ Regulations state that a "primary function" is any "major activity for which the facility is intended."⁴³

Section 303(a)(2) of the ADA places two limitations on the extent of the obligations to make "path of travel" modifications.⁴⁴ First, the business entity is only required to satisfy the accessibility standards in the secondary areas "to the maximum extent feasible."⁴⁵ Second, the entity is not required to meet the accessibility standards if the cost and the scope of doing so would be "disproportionate to the overall alterations."⁴⁶

6. The ADA Sets A Higher Accessibility Standard For New Construction and Alterations

Perhaps one of the most confusing aspects of Title III of the ADA is a requirement that a private entity must meet the accessibility standards "to the maximum extent feasible."⁴⁷ The DOJ Regulations⁴⁸ do not shed much light on the meaning of this term. It is clear, however, that the ADA imposes a stricter standard on new construction and alterations than it does for existing facilities.⁴⁹ The reasoning expressed in the DOJ Regulations is that it is easier to incorporate the accessibility features in the design of new construction and alterations than it is to incorporate these features into an existing facility.⁵⁰ The DOJ Regulations use the example of a bank with existing automatic teller machines versus the new construction of a bank.⁵¹ The existing facility would have to remove barriers to the use of the automatic teller machines under the ADA, if it is readily achievable

to do so. The DOJ Regulations indicate that the determination of whether the bank would be required to take additional actions such as ramping a few steps or raising or lowering the automatic teller machine is based on whether these actions can be accomplished easily and without much difficulty or expense. Conversely, if a bank is being constructed with automatic teller machines, it would be required to have at least one automatic teller machine that is "readily accessible to and usable by" individuals with disabilities.⁵²

The ADA imposes a stricter standard on new construction and alterations than it does for existing facilities.

7. Elevators May Be Required In Some Facilities

In general, an elevator provides individuals who use wheelchairs with "ready access" to floor levels above or below the ground floor of multi-story commercial facilities.⁵³ Section 303(b) of the ADA declares that an elevator need *not* be installed in a two-story facility having less than 3,000 square feet per story unless it is a shopping center or a professional office of a health care provider.⁵⁴ The DOJ Regulations state that if no shops are located above the ground floor of such a structure, the structure does

A public accommodation may not refuse to serve an individual with a disability merely because the public accommodation's insurance carrier refuses to cover any incident involving an individual with a disability.

not require an elevator.⁵⁵ Similarly, a two-story structure housing a health care provider on the ground floor only is not required to have an elevator.⁵⁶ The requirement for

installation of elevators in buildings not exempted under these rules applies to the alteration of existing structures as well as new construction.⁵⁷ The requirement is tempered by the provision waiving modifications which would be "disproportionate" to the triggering alterations.⁵⁸

III. The ADA Prohibits Public Accommodations From Discriminating And Requires Certain Modifications To Accommodate Consumers With Disabilities

A. Individuals May Not Be Discriminated Against On The Basis Of A Disability

The ADA imposes "general prohibitions" that restrict a public accommodation from discriminating against an individual with a disability by (1) refusing to provide goods or services; (2) providing unequal goods or services; or (3) providing separate goods or services to the individual without justification.⁵⁹ The ADA prohibits a public accommodation from discriminating against an individual on the basis of disability and preventing the individual from having full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations provided by the public accommodation.⁶⁰ For example, a public accommodation may not refuse to serve an individual with a disability merely because the public accommodation's insurance carrier refuses to cover any incident involving an individual with a disability.⁶¹

The ADA does not mandate that a consumer with a disability be allowed to experience an "identical" result or level of achievement from the goods or services as other consumers without disabilities.⁶² The DOJ Regulations explain, for example, that a health club may not exclude a wheelchair-bound consumer from its exercise classes merely because the consumer is not able to perform all the exercises and derive identical benefits as the other club members.⁶³ By the same token, the health club would not be required to eliminate all the exercises that the wheelchair-bound

consumer could not perform in order to accommodate the wheelchair-bound consumer by providing identical results.

A public accommodation is prohibited from providing unequal goods or services to a consumer because of that consumer's disability.⁶⁴ For example, a health club would not violate the ADA if it scheduled exercise classes exclusively for consumers with disabilities even if those classes offered a limited series of exercises that were tailored to accommodate individuals with disabilities.⁶⁵ However, the health club would violate the ADA if it restricted consumers with disabilities to those limited exercise classes.⁶⁶

The ADA prohibits a public accommodation from segregating consumers with a disability from other consumers when there is no sound justification for doing so.

One fundamental tenet of the ADA is to provide goods and services to individuals with disabilities in an integrated manner.⁶⁷ Therefore, the ADA prohibits a public accommodation from segregating consumers with a disability from other consumers when there is no sound justification for doing so.⁶⁸ Generally, the ADA requires the public accommodation to provide goods and services to consumers with disabilities in the most integrated setting appropriate.⁶⁹

Once again relying on the health club example, it would be an ADA violation for a health club to provide separate but equal exercise classes for consumers with disabilities based on the unfounded stereotypes about the individual's ability to participate. It would also be an ADA violation for a restaurant to require a consumer with a mental disability to eat in a backroom even though the restaurant may provide the same menu and service in the backroom.⁷⁰

A public accommodation may

provide additional benefits that are separated to assist a consumer with a disability. However, a public accommodation may not use the special accommodations to seg-

A public accommodation may not use the special accommodations to segregate consumers with disabilities if the consumer prefers to participate in the general integrated activities.

regate consumers with disabilities from other consumers if the consumer with a disability prefers to participate in the general integrated activities.⁷¹

In some limited instances, a public accommodation may be required to provide separate benefits for consumers with disabilities but only if a separate program or benefit is "necessary."⁷² For example, a public accommodation would not violate the ADA if it provides separate parking spaces for consumers with disabilities so that the consumer would be closer to the entrance.

B. Public Accommodations Must Make Reasonable Modifications

The ADA requires public accommodations to make reasonable modifications in policies, practices, facilities and procedures if necessary to provide goods, services and facilities for consumers with disabilities.⁷³ The entity would not be required to do so if it would fundamentally change the nature of these goods, services or facilities.⁷⁴ Moreover, the public accommodation may be required to remove architectural or structural barriers.⁷⁵

Under the ADA, a public accommodation must seek alternative methods to modify its facilities in accommodating a consumer with a disability.⁷⁶ For instance, a store would have to modify its check-out aisles so that at least one aisle is accessible to consumers with a disability. Also, that aisle must remain open during all store hours. The public accom-

modation may also have to modify its policies if the access check-out aisle is used as the express aisle.⁷⁷ If the policy limits the number of items purchased in the express aisle or requires a cash transaction, the entity may still comply with the ADA by providing that a consumer with a disability may use the express aisle regardless of the number of items or payment method. The ADA does not, however, require a business to provide additional products that it does not ordinarily provide.⁷⁸ For example, a book store would not be required to stock Braille books if it does not do so normally.

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The ADA specifically requires that a public accommodation modify its policies and practices by permitting the use of a service dog in all areas of public accommodation if it is needed by an individual with a disability.⁷⁹ Therefore, an individual with a disability must be allowed to bring a service dog into a movie theater, restaurant, hotel, retail store, hospital and nursing home, to cite a few examples.⁸⁰

The ADA recognizes that a consumer can only take advantage of the goods, services and facilities of a public accommodation if effective communication is provided. Therefore, the ADA requires a public accommodation to provide auxiliary aids and services for consumers with disabilities so they may communicate effectively with others.⁸¹ The ADA does not set forth any set rules regarding which aids must be provided and has adopted a flexible case-by-case approach in this regard.⁸² A public accommodation is not required to provide the best auxiliary aid possible, as long as the public accommodation provides an auxiliary aid or service that cultivates effective communication.⁸³ For example,

(continued on page 48)

A.D.A.

(continued from page 47)

the ADA does not require a restaurant to provide menus in Braille for customers who are blind, as long as the restaurant provides a waitress or waiter who can read the menu to the blind customer.⁸⁴ On the other hand, a public accommodation is not required to provide a customer with a disability with any personal devices such as wheelchairs, eye glasses or hearing aids.⁸⁵ The public accommodation also is not required to provide personal assistance in eating, toileting, or dressing.⁸⁶

A business would have to remove furniture display racks and equipment, if necessary, to provide access for a consumer with a disability.

The ADA requires a public accommodation to remove structural barriers as long as it can do so without much difficulty or expense.⁸⁷ For example, a business would have to remove furniture, display racks and equipment, if necessary, to provide access for a consumer with a disability. Similarly, a retail store may be required to widen the aisles if it would accommodate a customer in a wheelchair by making the aisle accessible. However, a retail store would not be required to widen its display aisles to accommodate a wheelchair-bound customer if it significantly reduced the selling or servicing areas.⁸⁸

The ADA applies a sliding scale standard for determining when a public accommodation must modify a structural barrier.⁸⁹ The ADA is more lenient on existing facilities than it is for new construction.⁹⁰ For example, an existing bank is only required to remove a structural barrier that makes an automatic teller machine inaccessible if it is readily achievable for the bank to do so.⁹¹ A bank that is not involved in making any structural alterations would have no affirma-

tive duty to remove any structural barrier if it could not do so without difficulty or expense. However, a newly constructed bank would have an affirmative duty to design and construct an automatic teller machine that is readily accessible

A newly constructed bank would have an affirmative duty to design and construct an automatic teller machine that is readily accessible to a consumer with a disability.

to a consumer with a disability even though it may involve some difficulty and expense.⁹²

In some instances, it may not be readily achievable for a public accommodation to remove all structural barriers. Nevertheless, a public accommodation would be required to remove those barriers that are readily achievable.⁹³ For instance, even though a multi-screen cinema could not remove all the structural barriers located in each of its theaters, the cinema may be required to remove the physical barriers in one of the theaters. Then the cinema would have to rotate available films into the modified theater and advise the public regarding the rotation schedule for the films.⁹⁴

Similarly, a cinema or auditorium may be required to modify or remove some of the seating in the auditorium to accommodate a wheelchair-bound consumer.⁹⁵ Alternatively, the cinema or auditorium may be required to provide portable chairs or provide seats with removable aisle-side armrests. Then the public accommodation must provide assistance by handling the wheelchair of the consumer who must transfer from the wheelchair to the existing seating.⁹⁶ Of course, the alternate seating provided for consumers with disabilities does not have to be identical but it should be "comparable" to the seating provided for other patrons.⁹⁷

V. Remedies Available To Consumers Who Have Been Subject To Discrimination

A. The ADA Allows Consumers Who Have Been Denied Public Services the Means To Seek Redress

Title II of the ADA, applicable to state and local governments, is enforced through complaints to federal funding agencies, the DOJ or private lawsuits. The remedial scheme for Title II of the ADA⁹⁸ adopts the provisions of the Rehabilitation Act of 1973⁹⁹ which in turn adopts the remedial provisions of Title VI of the Civil Rights Act of 1964.¹⁰⁰ Thus a consumer who is discriminated against may sue directly in federal court, without having to fulfill any administrative prerequisites, while the DOJ pursues the alleged offender as well.¹⁰¹ The DOJ Regulations further suggest that any federal funds involved may be withheld from a recipient as a sanction for violating Title II of the ADA.¹⁰²

A consumer who is discriminated against may sue directly in federal court, without having to fulfill any administrative prerequisites.

B. Under the ADA Consumers May Sue Private Entities Directly in Federal Court

Title III, Section 308(a)(1)¹⁰³ of the ADA, incorporates the remedial scheme of Title II of the Civil Rights Act of 1964.¹⁰⁴ The ADA provides that an aggrieved individual may sue for violation of provisions in Title III or for possible violations under the new construction or alterations provisions of Title III, if based on "reasonable grounds."¹⁰⁵ If a consumer elects to sue under Title III of the ADA, the consumer may recover injunctive relief, but not damages.¹⁰⁶ The U.S. Attorney General may sue on claims which involve a "pattern or practice" of discrimination or which raise "issues of general public importance."¹⁰⁷ However, the U.S. Attorney General may sue not

only for injunctive relief, but for damages and the assessment of specified civil penalties, not to exceed \$50,000 for the first offense and \$100,000 for each subsequent offense.¹⁰⁸

Small private entities are largely insulated from ADA lawsuits for initial violations. Section 310(b) of the ADA provides that, except with respect to actions involving the new construction or alteration of facilities, firms with 25 or fewer employees and less than \$1 million in gross receipts cannot be sued for violations occurring before July 26, 1992.¹⁰⁹ Firms with 10 or fewer employees and less than \$500,000 in gross receipts cannot be sued for violations occurring before July 26, 1993.¹¹⁰

C. Recent Cases Filed Under Title III of the ADA

Since Title III of the ADA went into effect January 26, 1992, the public access provisions have given rise to some high profile law suits and agency complaints. Among the cases which have been filed are four complaints filed by the Disability Law Center (DLC), part of the New York Lawyers for the Public Interest, Inc.¹¹¹ In four of the complaints filed with the Department of Justice, the DLC cited three New York buildings, the Empire State Building, the Hotel Inter-Continental and the Municipal Credit Union for failure to meet the ADA accessibility requirements.¹¹²

A lawsuit was recently filed against the Girl Scouts by a 12-year-old wheelchair-bound girl with cerebral palsy. Her suit, filed in a federal court in Philadelphia, alleges that due to her disability she was turned away from a Girl Scout camp last summer and expects to be denied access again this summer.¹¹³ Another lawsuit was filed by an attorney who was paralyzed in an auto accident. He filed suit against the American Multi-Cinema theaters because "he must sit in his wheelchair behind the last row, where there is no seating for a non-disabled companion."¹¹⁴

VI. Conclusion

Over 50 years ago the "New Deal" legislation implicitly recog-

nized that American workers should be allowed the opportunity to purchase the goods that they collectively produced. Today, the ADA expressly recognizes that individuals with disabilities should be allowed to enter the workplace without discrimination and be allowed to purchase, without discrimination, the goods that they or others produced.

Although the ADA has been widely publicized, it is highly probable that many of the public accommodations will not realize that the ADA applies to their business. Once again, it will be the unfortunate responsibility of the current generation of consumers with disabilities to educate each of those businesses on an individual basis and make them aware of how the ADA applies specifically to them. As is evidenced by the suits and complaints which have been filed, the framework is now in place—however, it may take years to wake the sleeping giant, American business.

ENDNOTES

- 1 42 U.S.C.A. § 12101(a)(1)(West Supp. 1991).
- 2 42 U.S.C.A. § 12101(a)(5)(West Supp. 1991).
- 3 Pub. L. 101-336, 104 Stat. 327 (1990).
- 4 See e.g., Arlene Mayerson, *The Americans With Disabilities Act - An Historic Overview*, 7 THE LABOR LAWYER 1, 1 (1991)("The ADA is the most comprehensive piece of...civil rights legislation since the 1964 Civil Rights Act. This legislation will transform the landscape of American society and will have a profound effect on what it means to be disabled.").
- 5 42 U.S.C.A. § 12101 (West Supp. 1991).
- 6 47 U.S.C. §§ 151-610 (1988).
- 7 Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 56 Fed. Reg. 35544-35691 (1991)(referring to 28 C.F.R. pt. 36).
- 8 Equal Employment Opportunities for Individuals With Disabilities, 56 Fed. Reg. 35726-35756 (1991) (referring to 29 C.F.R. pt. 1630).
- 9 *Id.* at 35740 (referring to 29 C.F.R. pt. 1630.1(a)).
- 10 See e.g., Bonnie P. Tucker, *The Americans With Disabilities Act: An Overview*, 1989 UNIV. ILL. L. REV. 923, 923 n.6.
- 11 42 U.S.C.A. § 12201(b) (West Supp. 1991).
- 12 29 U.S.C. §§ 701-96 (1988).
- 13 42 U.S.C.A. § 12201(a) (West Supp. 1991).
- 14 42 U.S.C.A. §§ 12181-89 (West Supp. 1991).

- 15 See *infra* note 24 and accompanying text discussing the term "public accommodation."
- 16 42 U.S.C.A. § 12182(b)(2)(A) (West Supp. 1991).
- 17 42 U.S.C.A. § 12181(9) (West Supp. 1991); 56 Fed. Reg. 35594 (1991).
- 18 42 U.S.C.A. §§ 12131-12165 (West Supp. 1991) (Chapter 126, Subchapter II-Public Services). A more detailed discussion of Title II issues can be found elsewhere. See, e.g., Paul S. Dempsey, *The Civil Rights of the Handicapped in Transportation: The Americans with Disabilities Act and Related Legislation*, 19 TRANSP. L.J. 309, 323-26 (1991)(focusing on public transportation concerns for the disabled).
- 19 42 U.S.C.A. §§ 12181-12189 (West Supp. 1991) (Chapter 126, Subchapter III-Public Accommodation and Services Operated by Private Entities).
- 20 42 U.S.C.A. § 12131(1) (West Supp. 1991).
- 21 42 U.S.C.A. § 12132 (West Supp. 1991).
- 22 42 U.S.C.A. § 12134 (West Supp. 1991).
- 23 42 U.S.C.A. § 12181(2) (West Supp. 1991).
- 24 42 U.S.C.A. § 12181(7) (West Supp. 1991).
- 25 *Id.*
- 26 42 U.S.C.A. § 12183(a) (West Supp. 1991).
- 27 56 Fed. Reg. 35599 (1991) (referring to 28 C.F.R. § 36.401(a)(2)).
- 28 56 Fed. Reg. 35600 (1991) (referring to 28 C.F.R. § 36.402(a)(2)).
- 29 42 U.S.C.A. § 12183(a)(1) (West Supp. 1991).
- 30 56 Fed. Reg. 35550 (1991) (explaining 28 C.F.R. § 36.104).
- 31 56 Fed. Reg. 35576 (1991) (explaining 28 C.F.R. § 36.401).
- 32 *Id.*
- 33 42 U.S.C.A. § 12183(a)(1) (West Supp. 1991).
- 34 56 Fed. Reg. 35577 (1991) (explaining 28 C.F.R. § 36.401(c)) (the requirement that new construction be accessible does not apply *where an entity can demonstrate* that it is structurally impracticable)(emphasis added).
- 35 *Id.*
- 36 *Id.* at 35578.
- 37 42 U.S.C.A. § 12183(a)(2) (West Supp. 1991).
- 38 56 Fed. Reg. 35600 (1991) (referring to 28 C.F.R. § 36.402(b)(1)).
- 39 *Id.*
- 40 56 Fed. Reg. 35580-81 (1991) (explaining 28 C.F.R. § 36.402).
- 41 *Id.* at 35581.
- 42 42 U.S.C.A. § 12183(a)(2) (West Supp. 1991).
- 43 56 Fed. Reg. 35600 (1991)(referring to 28 C.F.R. § 36.403(b)).
- 44 42 U.S.C.A. § 12183 (a)(2) (West Supp. 1991).
- 45 *Id.*
- 46 *Id.*
- 47 *Id.*
- 48 56 Fed. Reg. 35600 (1991) (referring to 28 C.F.R. § 36.402(c)).

(continued on page 50)

A.D.A.

(continued from page 49)

- 49 *Compare*, 56 Fed. Reg. 35597 (1991) (referring to 28 C.F.R. § 36.304) (readily achievable removal of barriers in existing facilities) with 56 Fed. Reg. 35600-602 (1991) (referring to 28 C.F.R. §§ 36.401-405) (readily accessible new construction unless structurally impracticable and readily accessible alterations to the maximum extent feasible).
- 50 56 Fed. Reg. 35568 (1991) (explaining 28 C.F.R. § 36.304).
- 51 *Id.*
- 52 *Id.*
- 53 56 Fed. Reg. 35578 (1991) (explaining 28 C.F.R. § 36.401(d)).
- 54 42 U.S.C.A. § 12183(b) (West Supp. 1991).
- 55 56 Fed. Reg. 35600 (1991) (referring to 28 C.F.R. § 36.401(d)(ii)(2)).
- 56 56 Fed. Reg. 35600 (1991) (referring to 28 C.F.R. § 36.401(d)(ii)(3)).
- 57 56 Fed. Reg. 35583 (1991) (explaining 28 C.F.R. § 36.404).
- 58 42 U.S.C.A. § 12183(a)(2) (West Supp. 1991).
- 59 42 U.S.C.A. § 12182(b)(1)(A)(i) - (iii) (West Supp. 1991).
- 60 42 U.S.C.A. § 12182(a) (West Supp. 1991).
- 61 56 Fed. Reg. 35596 (1991) (explaining 28 C.F.R. § 36.212(c)).
- 62 56 Fed. Reg. 35555 (1991) (explaining 28 C.F.R. § 36.201).
- 63 *Id.*
- 64 42 U.S.C.A. § 12182(b)(A)(i) - (iv) (West Supp. 1991).
- 65 56 Fed. Reg. 35557-58 (1991) (explaining 28 C.F.R. § 36.203).
- 66 *Id.*
- 67 56 Fed. Reg. 35557 (1991) (explaining 28 C.F.R. § 36.203).
- 68 *Id.* at 35557-58.
- 69 *Id.*
- 70 *Id.*
- 71 *Id.*
- 72 42 U.S.C.A. § 12182(b)(1)(A)(iii) (West Supp. 1991).
- 73 42 U.S.C.A. § 12182 (b)(2)(A)(ii) (West Supp. 1991).
- 74 *Id.*
- 75 42 U.S.C.A. § 12182(b)(2)(A)(iv) (West Supp. 1991).
- 76 42 U.S.C.A. § 12182(b)(2)(A)(v) (West Supp. 1991).
- 77 56 Fed. Reg. 35564-65 (1991) (explaining 28 C.F.R. § 36.302).
- 78 *Id.* at 35565.
- 79 *Id.*
- 80 *Id.*
- 81 56 Fed. Reg. 35597 (1991) (referring to 28 C.F.R. § 36.303).
- 82 56 Fed. Reg. 35567 (1991) (explaining 28 C.F.R. § 36.303 and referring to *Southeastern Community College v. Davis*, 442 U.S. 397 (1979)).
- 83 56 Fed. Reg. 35566-67 (1991) (explaining 28 C.F.R. § 36.303(b)).
- 84 *Id.* at 35566.
- 85 56 Fed. Reg. 35571 (1991) (explaining 28 C.F.R. § 36.306).
- 86 *Id.*
- 87 42 U.S.C.A. § 12182(b)(2)(A)(iv) (West Supp. 1991).
- 88 56 Fed. Reg. 35568 (1991) (explaining 28 C.F.R. § 36.304).
- 89 56 Fed. Reg. 35569-70 (1991) (discussing priorities in 29 C.F.R. § 36.304 (c)).
- 90 *Id.* at 35570 ("The ADA's requirements for readily achievable barrier removal in existing facilities are intended to be substantially less rigorous than those for new construction and alterations.").
- 91 56 Fed. Reg. 35568 (1991) (explaining 28 C.F.R. § 36.304).
- 92 *Id.*
- 93 56 Fed. Reg. 35570-35571 (1991) (explaining 28 C.F.R. § 36.305).
- 94 *Id.*
- 95 56 Fed. Reg. 35571-72 (1991) (explaining 28 C.F.R. § 36.308).
- 96 *Id.* at 35572.
- 97 *Id.* at 35572 (explaining 28 C.F.R. § 36.308(a)(1)(ii)(B)).
- 98 42 U.S.C.A. § 12133 (West Supp. 1991).
- 99 29 U.S.C. § 794(a) (1988).
- 100 42 U.S.C. § 2000d-4(a) (1988); *See also*, Nondiscrimination on the Basis of Disability in State and Local Government Services, 56 Fed. Reg. 35694, 35713 (1991) (describing the compliance procedures under Title II of the ADA, to be codified at 28 C.F.R. pt. 35, subpt. F).
- 101 56 Fed. Reg. 35714 (1991) (explaining 28 C.F.R. § 35.172).
- 102 56 Fed. Reg. 35713 (1991) ("Deferral to the 504 procedures also makes the sanction of [federal] fund termination available where necessary to achieve compliance.").
- 103 42 U.S.C.A. § 12188(a)(1) (West Supp. 1991).
- 104 42 U.S.C. § 2000a-3(a) (1988).
- 105 42 U.S.C.A. § 12188(a)(1) (West Supp. 1991). The authorization of "suits to prevent construction of facilities with architectural barriers will avoid the necessity of costly retrofitting that might be required if suits were not permitted until after the facilities were completed." 56 Fed. Reg. 35589 (1991) (explaining the enforcement regulations under Title III of the ADA to be codified at 28 C.F.R. pt. 36, Subpt. E).
- 106 42 U.S.C.A. § 12188(a)(2) (West Supp. 1991).
- 107 42 U.S.C.A. § 12188(b)(1)(B) (West Supp. 1991).
- 108 42 U.S.C.A. § 12188(b)(2) (West Supp. 1991).
- 109 Pub. L. 101-336, 104 Stat. 365 (1990).
- 110 *Id.*
- 111 Randall Samborn, *No Flood of ADA Suits - Yet*, NAT'L. L. J., March 16, 1992, at 3, 12.
- 112 *Id.* at 12.
- 113 *Id.*
- 114 *Id.*

ANNOUNCEMENT

Federal Government Providing Brochure on Weight Loss

The Federal Trade Commission, the Food and Drug Administration, and the National Association of Attorneys General are offering a free brochure designed to inform consumers about the overwhelming selection of commercially available diet products and programs. The brochure is entitled "About Weight Loss Products and Programs."

An estimated 50 million Americans will go on diets, but few will be successful. 90-95% of them will regain any weight they lose.

One reason may be that marketers of diet products and programs make misleading claims. Late last year, the FTC challenged several marketers of liquid diets to substantiate their weight loss programs.

In addition, some diet products may be dangerous. The FDA stopped the distribution of diet drugs containing guar gum. The drugs were designed to swell in a dieter's stomach causing a feeling of fullness. Evidence suggested that the drugs also could potentially swell in the dieter's esophagus, causing the dieter to choke.

Consumers can obtain a copy of the brochure by writing to: "Weight Loss," Federal Trade Commission, Washington, DC 20580.