

*** FULL DESCRIPTION AND MAJOR ACTION ***

MEASURE: S933

SPONSOR: Harkin (D-IA)

BRIEF TITLE: Americans with Disabilities Act of 1989.

OFFICIAL TITLE: A bill to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

INTRODUCED: 05/09/89

COSPONSORS: 63 (Dems: 44 Reps: 19)

COMMITTEES: Senate Labor and Human Resources

05/09/89 Referred to Senate Committee on Labor & Human Resources. Text of bill appears in the May 9, 1989, Congressional Record. (CR S4984)

05/09/89 Committee hearings held and completed by the Senate Labor & Human Resources Committee.

05/09/89 *** Related bill, HR 2273, introduced in the House. ***

05/10/89 Subcommittee hearings held by the Senate Labor & Human Resources Committee, Subcommittee on Handicapped. (WR p. 1121)

05/16/89 Subcommittee hearings held by the Senate Labor & Human Resources Committee, Subcommittee on the Handicapped.

06/22/89 Committee hearings held and completed by the Senate Labor & Human Resources Committee.

08/02/89 Committee consideration and markup session held by the Senate Labor & Human Resources Committee.

08/02/89 Ordered to be reported favorably by the Senate Labor & Human Resources Committee amended. (WR pp. 2044, 2093, 2215)

08/30/89 REPORTED TO THE SENATE AMENDED by the Senate Committee on Labor & Human Resources. Report No: 101-116.

09/06/89 A unanimous-consent agreement was reached in the Senate providing for the Senate to proceed to the consideration of S 933. (CR S10677-S10678)

09/07/89 PASSED SENATE WITH SENATE AMENDMENTS by yea-nay vote: 76-8. (CR S10701-S10723, S10732, S10734-S10763, S10765-S10803) (Votes 170-171, 173); the text of S 933 as passed by the Senate appears in the September 12, 1989, Congressional Record on pages S10954-S10961. (WR pp. 2318, 2722, 3167, 3301, 3554; 1990 pp.22, 600,

752, 837, 1273 1354)

- 05/14/90 *** Related bill, HR 4807, introduced in the House. ***
- 05/16/90 H Res 394, the rule for House consideration of HR 2273 (Americans With Disabilities Act) provides that after House passage of HR 2273, it shall be in order in the House to consider S 933; the rule makes in order a motion to strike all after the enacting clause of S 933 and insert the text of HR 2273, as passed by the House. (CR D615) (WR 1559)
- 05/22/90 House struck all after the enacting clause of S 933 and inserted in lieu thereof the text of HR 2273, as passed by the House. (CR H2599-H2639) (Votes 119-123)
- 05/22/90 PASSED HOUSE, as amended by the House, by voice vote. (CR H2639-H2653)
- 05/24/90 House insisted on its amendments.
- 05/24/90 House requested a conference and Speaker appointed conferees. (CR H3070-H3071) (WR p. 1657)
- 05/24/90 House conferees instructed to insist on the inclusion of the provisions of section 310(b) of the House amendment relating to the date when civil actions may be taken against certain private entities in title III.
- 06/06/90 Senate disagreed to the House amendments by unanimous consent. (CR S7422-S7436)
- 06/06/90 Senate agreed to request for a conference and appointed conferees; Senate agreed to instruct conferees to include in their report the language contained in the amendment of Rep. Chapman which would allow employers to transfer an employee with a communicable or infectious disease out of food handling jobs. (CR S7436-S7450) (WR p. 1793)
- 06/25/90 Conferees agreed to file a conference report.
- 06/26/90 Conference report 101-558 filed in the House. (CR H4169-H4193)
- 06/27/90 Hearing held by the House Committee on Rules.
- 06/27/90 House Rules Committee granted a rule providing for the consideration of the conference report on S 933; the rule waives clauses 2 and 3 of rule XXVIII against the conference report and against its consideration; rule provides that the conference report is to be considered read when called up for consideration.
- 06/27/90 Rules Committee Resolution H Res 427 reported to the House.
- 06/28/90 Objection was heard in the Senate to a unanimous consent

request to permit the papers regarding the conference report on S 933 to be transferred from the Senate to the House, so that the House could act first on the conference report. (CR S8988-S8991) (WR p. 2071)

07/11/90 Senate agreed to a motion to recommit S 933 to conference and to instruct the Senate conferees to agree to certain provisions. (CR S9527-S9556) (Votes 148-149)

07/12/90 Conference held and completed.

07/12/90 Conference report 101-596 filed in the House. (CR H4582-H4606)

07/12/90 Senate agreed to a unanimous consent request providing for consideration of the conference report on S 933 on Friday, July 13, 1990. (CR S9643-S9644, S9669)

07/12/90 H Res 427, the rule for the consideration of the conference report on S 933, was agreed to in the House by a yea-nay vote: 355-58. (CR H4611-H4614) (Vote 226)

07/12/90 House agreed to conference report by yea-nay vote: 377-28, clearing the measure for Senate action. (CR H4614-H4630) (Votes 227-228)

07/13/90 Senate agreed to conference report by yea-nay vote: 91-6, clearing the measure for the President. (CR S9684-S9698) (Vote 152) (WR p. 2227)

07/26/90 SIGNED BY PRESIDENT.

07/26/90 BECAME PUBLIC LAW 101-336. (WR pp. 2437, 2664)

Process

- A) 1st Bill: Changed definition of drug insurance.
Changed standard
- B) Jan. 1989 - May 89 - Rewrite of bill
(Process w/in comms, plus behind the scenes)
a) definition ; b) standard ; c) changed p. acc. scope.
- C) May - July 89 - Negot. w/ Admin.
Main complaints: damages; p. acc; lang - "type"
Resulted in: explain terms; remedies; p. a.
- D) Senate - Sept. '89. Mostly: drugs; Cong'l coverage
- E) House: TV mini-series.
1) Ed + L - refinements: e.g. —.
2) E + C ; PW + T
3) Judy: 3x3 ; direct threat. (to others)
- F) House floor - Chapman
- G) Conference: Cong'l coverage.
- H) Regs

Groups ; major pressure; major objections

Pr To Discuss

- ① How define p. w/ a dy:
 - a) substy limited in working
 - b) scope of regarded as
 - c) what is the goal here?

② How do you deal w/ issues re -
future costs; future inability to work.

③ How deal w/ risk to self issues?

④ Discuss concept of reasl acc. - need to
be flexible. /standard

3/7/90

TO: Mort, Pat, Ralph
Carolyn, Bobby, Melissa

FROM: Chai

RE: Damages Issue

Based on conversations with Mort and Pat, I am putting down on paper some thoughts about the White House/damages issue, including some ideas based on what MaryAnn and Lee said at the CCD meeting last week.

1. MaryAnn and Lee stated at the meeting that the White House was not opposed to disability getting the same remedies (whatever they may end up being) as sex and religion, and therefore the W.H. would not oppose a separate provision in the Civil Rights Act of 1990 that gave disability damages in employment. (I.e., they might oppose the whole provision regarding damages, or part of it -- but they would not support giving disability less than what other groups got in that bill.)

2. Having said that, Lee recognized that legally the ADA provision reflected exactly that result -- but was adamant that, politically, it was just never going to be possible to calm the business community down as long as there was not some language change in the ADA that clearly stating that--at the moment--there were no damages in the ADA for employment discrimination.

3. My first thought, after discussing this with Mort and Pat after the CCD meeting, was that it would make sense for Kennedy to call Sununu directly and ask him straight out: "Is it your position that disability should get the same as other groups if the law on damages gets changed?" If the answer is yes (as it should be given the comments from MaryAnn and Lee), then Kennedy should try to hard-hit on the fact that this is exactly what the ADA already does. If the answer is no, then Kennedy is in a very strong position to say: that was certainly not what I heard you say when we made this deal.

4. While I still think a phone call from Kennedy to Sununu makes sense, I truly believe that, despite how right we are legally, Sununu will never be happy with anything less than some language change in the ADA and as long as we are balking on that, we will get screwed by the W.H. in all other areas (like transportation and like, as the NPR story intimated this morning, in the bill overall.) It would seem really ironic and sad to me to let that happen to ourselves when it's not as if we have

anything substantive in the ADA right now on damages--it really is at bottom, how one phrases the language in each bill.

5. So, at the risk of total heresy, I would like to recommend that we also think about the following option -- and think about it soon enough so that if we do do it, it would make a difference vis a vis the White House:

a) Agree to add in the ADA: Remedies of Title Vii as of July 1990--whatever the day of the deal was.

b) Ralph would have to check with the Civil Rights coalition and staff, before we agreed to anything on this with the W.H., and get a consensus agreement from the community and the staff that a provision stripping the reference to the date would be added to the civil rights bill, basically after ADA passed, in order to have a reference cite.

In my mind, if we are assured that there won't be a problem from the civil rights community or staff in adding this at Committees, (and certainly I think we have a strong argument with them that this is exactly what the bills say right now, albeit in different language)--then I don't think we're going to have a political problem of some Member being able to strip the disability provision out on the floor. At that point, we will either have the votes for all damages for everybody or not, or we will have a compromise with the W.H. on damages for harassment--for everybody. So, to me, this approach achieves the same legal result we currently have in the ADA, and gets rid of the serious political problem we are currently facing with Sununu.

I still think that, if we all think we should do this, it should be Kennedy who talks directly to Sununu and works this out -- and then Kennedy who says to Sununu--so where are you guys? I thought the deal was that you would support this bill and help lobby it through the House. I'd like to see some results from you guys.

So much for my contribution in this area. Mostly I think that if we want to do something on this, we need to do it soon--before the full Committee markups in Public Works and Energy and Commerce next week in order to get the White House activated on the transportation stuff.

damageswh

10/13/89 5:40 P.M.

TO: Ellen W., Bill B. et al.
FROM: Chai F.
RE: Discussion of Provisions in the ADA that Pertain to Alcohol
and Drug Dependence Problems -- Developed for 10/16/89 Mtg

Here are my comments on the stuff you have prepared for your Monday meeting with staff. I think the first page and a half, where you summarize the various amendments, is very useful. It makes it clear that we have duplicative amendments in the Senate-passed ADA which clearly have to be "cleaned up" in the House bill.

As a strategic matter, my thoughts are pretty much what I've already said over the phone. I'm not sure how smart some of the other discussion is -- especially if you have any Republican staff in the room. Even with Democratic staff, I think there is some problem if you make it sound as if you are asking for something significantly different and more expansive than the Senate bill.

What I would have said to the Democratic staff (when we finally sat down in whatever process got set up) is that -- as someone who was there negotiating on the Senate side, certain principles had been clearly accepted by all sides:

1) That if discrimination occurred on the basis of some other covered disability, that action is still prohibited. (There's a small clean-up of language that needs to be done in this regard, which the White House has already asked for, and which some of the House staff is already alerted to.);

2) That people who are in treatment, or have completed treatment, and are no longer using drugs are covered.

Therefore, any changes that needed to be made to the various amendments to reflect these two principles (e.g., in the Armstrong amendment, in combining the Humphrey, Harkin amendments

etc.) would be presented, seen, understood etc. as simply technical amendments to bring the language into conformity with the principles already accepted by all on the Senate side. (Of course, as you know, from the conversation you, Bonnie and I had -- we would actually be trying to get some substantive fixes through--especially with regard to the Armstrong amendemnt--but it would never be presented that way.)

Anyway, if you start talking a lot about the need for these changes, of course they are going to start sounding as if they are a lot more than just technical changes and more like requests for substantive changes. The House Democratic staff will be nervous about doing those types of changes because 1) the deal is, we are accepting the Senate bill and resisting all changes to it on principle; and 2) they don't want the bill to fall apart on the Senate side when it bounces back over there. Again, as I said, you certainly don't want minority staff thinking these are substantive changes. But, that's something of a Catch-22 in even having this meeting and writing this up.

Anyway, as you can see, I have therefore noted next to each paragraph what type of change I think you are talking about. The first four I think should be treated as totally technical cleanups to conform to the generally accepted understanding on the Senate side. (Right now, they are presented as more substantively than that, which is something of a problem.) On no. 5, I understand your problem, but I don't think we will be able to do much here without totally alienating Helms' staff and maybe jeopardizing the bill on the Senate side. No. 6, as I've noted to you, is the one request that I see as a substantive request beyond what the Senate deal was -- and therefore, a hard one for us (and Legal Action Center) to ask for. But, at least, it doesn't have the same problem of needing to be cast as a "technical cleanup" request.

I realize you folks are in a hard spot. My strategic advice to you has been not to raise this stuff at all to a high visibility level so that it can just be slipped in at the end as a technical change. But I realize this is hard advice because it requires you to sit on your hands until we have a process in place where these changes are beginning to be talked about. And that process has simply not been set up yet, because we're not sure yet whether we are doing markups or yet, or which staff will be doing what. So, all I can say is that by taking this other tack -- of having the meetings, papers etc. -- you're certainly running something of a risk that the requests will ultimately be seen as more than technical, and therefore staff will balk at putting it in down the line when it gets raised. On the other hand, maybe you can get by by presenting these as technical changes to conform to the Senate deal -- but just stress that they're "important" technical changes (and that's why you're having a meeting). I don't know. It's sort of a hard line to walk.

Hope this is helpful.

cc. Bonnie M.
Arlene M.
Nan H.

Oct. 1987 - Mtgs w/ BB etc.
Jan. 1988 - Mtgs w/ Weicker etc.
April 1988 - introduced
May 1988 - hearing
Nov. 1988 - Weicker defeated
Dec. 1988

Jan. 1989 - start rewrite

Feb. 1989

Mar. 1989

Apr. 1989

May 1989 - introduced;
hearings

June-July 1989 - negotiations w/ Admin.

Aug. '89 - Senate rpt

Sept. '89 - Passed Senate

Oct.-Nov '89 - Negats in Ext + Labor

Dec 89 - Break

Jan. 90 - Mar. 90 - Negats - Ext; PW+T

Apr. 90 - Judiciary Comm.

May 90 - House floor

June - July 90 - Conference

_____ : Court
RFS bill
introduced

CHRONOLOGY OF MAJOR EVENTS
AMERICANS WITH DISABILITIES ACT

1. April 28, 1988--The Americans With Disabilities Act of 1988 (S. 2345) introduced.
2. September 27, 1988--Joint hearing on the ADA.
3. August 10, 1988--VP Bush said at the White House to a group: "Disabled people do not have the same civil rights protections as women and minorities. However, an enactment of the Americans with Disabilities Act of 1988 or similar legislation would remedy this situation. Senator Harkin and Simon hold press conference on Dukakis record on disability issues in contrast to Reagan/Bush record.
4. August 18, 1988--VP Bush at the Republican National Convention: "I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out anymore."
5. October 13, 1988--VP Bush at the Second National Debate: "I want to help those with disabilities fit into the mainstream."
6. December 1, 1989--Meeting with Senator Hatch about revising the ADA.
7. January 12, 1989--Receive memo from-Senator Hatch's staff on his proposals.
8. January 18, 1989--President-elect Bush at Pre-Inaugural event said: "I said during the campaign that disabled people had been excluded for far too long from the mainstream of American life. And I still believe that this is an accurate statement. And I want to do what I can, working with those of you in this room that care too, I want to do what I can to correct all of that. One step that I've discussed will be action on the Americans with Disabilities Act in order, in simple fairness, to provide the disabled with the same rights afforded others, afforded other minorities..."
9. February 9, 1989--President Bush in Speech before the Congress: "To those 37 million Americans with some form of disability: you belong in the economic mainstream. We need your talents in America's workforce. Disabled Americans must become full partners in America's opportunity society...I believe in a society that is free from discrimination and bigotry of any kind. I will work to knock down the barriers left by past discrimination and to build a more tolerant society that will stop such barriers from ever being built again."

10. March 15, 1989--First revised draft of ADA shared with Senator Hatch's staff, disability community and representatives from the Administration.
11. March 22, 1989--OMB sends out letter asking for comments on the ADA draft from various agencies.
12. March 28, 1989--Second revised draft of the ADA completed and shared with the Administration.
13. April 5, 1989--Meeting with Hatch re his concerns with the revised draft.
14. April 5, 1989--Call from David Sloan White House Liason with the Senate to Bob S. >Need one to two weeks to clear through process. Confident can be very positive agreement. They would decide who and how the minority Senators and Representatives would become involved.
15. April 6, 1989-- Letter from Harkin, Kennedy, and Coelho to the President agreeing to his request for two additional weeks to review the draft.
16. April 6, 1989-April 30, 1989--Communications between Tony Coelho and Boyden Gray, John Sununu, and McClure saying: "we're on track."
17. May 1, 1989--Agreement to hold joint press conference at the White House between Tony Coelho and John Sununu. At the press conference will be Harkin, Kennedy, Coelho and minorities selected by the President.