

(including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

(Pub. L. 101-336, title III, §302, July 26, 1990, 104 Stat. 355.)

REFERENCES IN TEXT

For the effective date of this subparagraph, referred to in subsec. (b)(2)(B), (C)(ii), see section 310 of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(2)(B), (C) only) effective July 26, 1990, and with certain qualifications with respect to bringing of civil actions, see section 310 of Pub. L. 101-336, set out as a note under section 12181 of this title.

§ 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term

Except as provided in subsection (b), as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the re-

quirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(Pub. L. 101-336, title III, §303, July 26, 1990, 104 Stat. 358.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a), (b) of Pub. L. 101-336, set out as a note under section 12181 of this title.

§ 12184. Prohibition of discrimination in specified 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 specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction

For purposes of subsection (a), discrimination includes—

(1) the imposition or application by a¹ entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoy-

¹ So in original. Probably should be "an".

ing the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and²

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the pur-

chase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception

To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition

As used in this subsection, the term “historical or antiquated rail passenger car” means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

(Pub. L. 101-336, title III, § 304, July 26, 1990, 104 Stat. 359.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (b)(3), (5), see section 310 of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

The effective date of this paragraph, referred to in subsec. (b)(6), is 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

The Federal Railroad Safety Act of 1970, referred to in subsec. (c)(1), is title II of Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which was classified generally to subchapter II (§ 431 et seq.) of chapter 13 of Title 45, Railroads, and was repealed and reenacted in section 5109(c) of Title 5, Government Organization and Employees, section 54a of Title 45, Railroads, chapter 201 and sections 21301, 21302, 21304, 21311, 24902, and 24905 of Title 49, Transportation, and provisions set out as a note under section 20103 of Title 49 by Pub. L. 103-272, §§ 1(e), 4(b)(1), (i), (t), 7(b), July 5, 1994, 108 Stat. 862, 891, 893, 930, 935, 1361, 1365, 1372, 1379, the first section of which enacted subtitles II, III, and V to X of Title 49.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(3) only) and subsec. (b)(3) of this section effective July 26, 1990, see section 310(a), (c) of Pub. L. 101-336, set out as a note under section 12181 of this title.

§ 12185. Study

(a) Purposes

The Office of Technology Assessment shall undertake a study to determine—

² So in original. The word “and” probably should not appear.