

115TH CONGRESS
2D SESSION

S. 3728

To promote the provision of exercise or fitness equipment, and exercise or fitness classes and instruction, that are accessible to individuals with disabilities.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2018

Ms. DUCKWORTH introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To promote the provision of exercise or fitness equipment, and exercise or fitness classes and instruction, that are accessible to individuals with disabilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Exercise and Fitness
5 for All Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Individuals with disabilities can maintain
2 and improve their health through appropriate phys-
3 ical activity.

4 (2) In the 2018 Physical Activity Guidelines for
5 Americans (referred to in this section as the “Guide-
6 lines”), the Department of Health and Human Serv-
7 ices recommends that individuals with disabilities,
8 who are able, participate in regular aerobic activity.

9 (3) The Guidelines also recommend that adults
10 with disabilities, who are able, do muscle strength-
11 ening activities of moderate or high intensity on 2
12 or more days a week, as these activities provide ad-
13 ditional health benefits.

14 (4) The Guidelines recommend that when
15 adults with disabilities are not able to meet the
16 Guidelines, they should engage in regular physical
17 activity according to their abilities and avoid inac-
18 tivity.

19 (5) Physical inactivity by adults with disabilities
20 can lead to increased risk for functional limitations
21 and secondary health conditions.

22 (6) Many individuals with disabilities are unable
23 to engage in the exercises or fitness activities rec-
24 ommended in the Guidelines due to the failure of ex-

1 exercise or fitness service providers to provide acces-
2 sible exercise or fitness equipment.

3 (7) The failure to provide accessible exercise or
4 fitness equipment constitutes discrimination in viola-
5 tion of the Americans with Disabilities Act of 1990
6 (referred to in this section as the “ADA”).

7 (b) PURPOSE.—The purpose of this Act is—

8 (1) to carry out the ADA’s objectives of pro-
9 viding “a clear and comprehensive national mandate
10 for the elimination of discrimination” and “clear,
11 strong, consistent, enforceable standards addressing
12 discrimination”; and

13 (2) specifically, to carry out those objectives by
14 issuing guidelines and regulations for exercise or fit-
15 ness service providers specifying the accessible exer-
16 cise or fitness equipment, and the accessible exercise
17 or fitness classes and instruction, necessary to en-
18 sure that individuals with disabilities can—

19 (A) obtain the benefits of physical activity;

20 and

21 (B) fully participate in the services offered

22 by exercise or fitness service providers.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1 (1) ACCESS BOARD.—The term “Access Board”
2 means the Architectural and Transportation Bar-
3 riers Compliance Board established under section
4 502 of the Rehabilitation Act of 1973 (29 U.S.C.
5 792).

6 (2) ACCESSIBLE EXERCISE OR FITNESS EQUIP-
7 MENT.—The term “accessible exercise or fitness
8 equipment”—

9 (A) means exercise or fitness equipment
10 that is accessible to, and can be independently
11 used and operated by, individuals with disabil-
12 ities; and

13 (B) includes equipment that complies
14 with—

15 (i) the American Society for Testing
16 and Materials (referred to in this section
17 as “ASTM”) Standard Specification for
18 Universal Design of Fitness Equipment for
19 Inclusive Use by Persons with Functional
20 Limitations and Impairments, ASTM
21 F3021–17 (or any corresponding similar
22 ASTM standard); and

23 (ii) other ASTM standards with speci-
24 fications for inclusive use of specific exer-

1 cise or fitness equipment, such as bicycles
2 or strength equipment.

3 (3) EXERCISE OR FITNESS EQUIPMENT.—The
4 term “exercise or fitness equipment” means devices
5 such as motorized treadmills, stair climbers or step
6 machines, stationary bicycles, rowing machines,
7 weight machines, circuit training equipment, cardio-
8 vascular equipment, strength equipment, or other
9 similar equipment.

10 (4) EXERCISE OR FITNESS SERVICE PRO-
11 VIDER.—The term “exercise or fitness service pro-
12 vider”—

13 (A) means an entity that—

14 (i) provides exercise or fitness equip-
15 ment, or exercise or fitness classes or in-
16 struction, for the use of patrons; and

17 (ii) is considered a public accommoda-
18 tion under section 301 of the Americans
19 with Disabilities Act of 1990 (42 U.S.C.
20 12181) or is considered a public entity
21 under section 201 of such Act (42 U.S.C.
22 12131); and

23 (B) includes a stand-alone exercise or fit-
24 ness center and an exercise or fitness center
25 within an entity such as a hotel, retirement

1 community, gymnasium, elementary or sec-
 2 ondary school, or institution of higher edu-
 3 cation.

4 (5) INDIVIDUAL WITH A DISABILITY.—The term
 5 “individual with a disability” means any person with
 6 a disability as defined in section 3 of the Americans
 7 with Disabilities Act of 1990 (42 U.S.C. 12102).

8 **SEC. 4. EXERCISE AND FITNESS ACCESSIBILITY GUIDE-**
 9 **LINES AND REGULATIONS.**

10 (a) ESTABLISHMENT OF GUIDELINES.—Not later
 11 than 18 months after the date of enactment of this Act,
 12 the Access Board shall develop and publish guidelines for
 13 exercise or fitness service providers regarding the provi-
 14 sion of accessible exercise or fitness equipment.

15 (b) CONTENTS OF GUIDELINES.—The guidelines de-
 16 scribed in subsection (a) shall ensure that the appropriate
 17 number of items and types of accessible exercise or fitness
 18 equipment are provided by an exercise or fitness service
 19 provider.

20 (c) REVIEW AND AMENDMENT.—

21 (1) REVISION.—The Access Board shall periodi-
 22 cally review and, as appropriate, amend the guide-
 23 lines, and shall issue the resulting guidelines as re-
 24 vised guidelines.

1 (2) INAPPLICABILITY OF REGULATORY ELIMI-
 2 NATION PROVISION.—Executive Order 13771 (5
 3 U.S.C. 601 note; relating to reducing regulation and
 4 controlling regulatory costs) shall not apply to this
 5 Act.

6 (d) REGULATIONS.—

7 (1) IN GENERAL.—Not later than 18 months
 8 after the Access Board issues guidelines under this
 9 section, the Department of Justice shall issue regu-
 10 lations regarding the provision of accessible exercise
 11 or fitness equipment and accessibility of exercise or
 12 fitness classes and instruction.

13 (2) EQUIPMENT.—With respect to the provision
 14 of exercise or fitness equipment, the regulations
 15 shall be consistent with the Access Board guidelines.

16 (3) EXERCISE OR FITNESS CLASSES AND IN-
 17 STRUCTION.—The regulations shall—

18 (A) ensure that exercise or fitness classes
 19 and instruction offered by the service provider
 20 are accessible to individuals with disabilities;
 21 and

22 (B) ensure that the service provider makes
 23 available at least one employee who is able to
 24 assist individuals with disabilities in their use of
 25 accessible exercise or fitness equipment.

(4) CONSIDERATIONS.—In issuing the regulations, the Department of Justice shall take into consideration each of the following:

(A) Whether the exercise or fitness service provider is providing equipment, classes, or instruction at a new or existing facility.

(B) The size of the exercise or fitness facility.

(C) The availability of closed captioning of video programming displayed on equipment or a television provided by the exercise or fitness service provider.

SEC. 5. TAX CREDIT FOR EXPENDITURES TO PROVIDE ACCESSIBLE EXERCISE OR FITNESS EQUIPMENT.

(a) IN GENERAL.—Paragraph (1) of section 44(c) of the Internal Revenue Code of 1986 is amended—

(1) by striking “means amounts paid or incurred by an eligible small business” and inserting “means amounts paid or incurred—

“(A) amounts paid or incurred by an eligible small business”;

(2) by striking “section).” and inserting “section), and”; and

(3) by inserting at the end the following:

1 “(B) amounts paid or incurred by an eligi-
2 ble small business which is an exercise or fit-
3 ness service provider for the purpose of pro-
4 viding for use by individuals with disabilities ac-
5 cessible exercise or fitness equipment that
6 meets the guidelines established by the Access
7 Board under section 4 of the Exercise and Fit-
8 ness for All Act.

9 Any term used in subparagraph (B) which is defined
10 in section 3 of the Exercise and Fitness for All Act
11 shall have the meaning given such term in such sec-
12 tion, as in effect on the date of the enactment of
13 such subparagraph.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to expenses paid or incurred in
16 taxable years beginning after the date of the enactment
17 of this Act.

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