

(c) Consistency with ATBCB guidelines

Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(d) Interim accessibility standards**(1) Facilities**

If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars

If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

(Pub. L. 101-336, title III, § 306, July 26, 1990, 104 Stat. 361; Pub. L. 104-59, title III, § 341, Nov. 28, 1995, 109 Stat. 608.)

Editorial Notes

AMENDMENTS

1995—Subsec. (a)(2)(B)(iii). Pub. L. 104-59 substituted “3 years after the date of issuance of final regulations under clause (ii)” for “7 years after July 26, 1990” in subcl. (I) and “2 years after the date of issuance of such final regulations” for “6 years after July 26, 1990” in subcl. (II).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

§ 12187. Exemptions for private clubs and religious organizations

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a–a(e)) [42 U.S.C. 2000a et seq.] or to religious organizations or entities controlled by religious organizations, including places of worship.

(Pub. L. 101-336, title III, § 307, July 26, 1990, 104 Stat. 363.)

Editorial Notes

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title II of the Act is classified generally to subchapter II (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

§ 12188. Enforcement**(a) In general****(1) Availability of remedies and procedures**

The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section¹ 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General**(1) Denial of rights****(A) Duty to investigate****(i) In general**

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compli-

¹So in original. The word “section” probably should not appear.

ance of covered entities under this subchapter.

(ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation

If the Attorney General has reasonable cause to believe that—

- (i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or
- (ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1)(B), the court—

- (A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter—
 - (i) granting temporary, preliminary, or permanent relief;
 - (ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and
 - (iii) making facilities readily accessible to and usable by individuals with disabilities;
- (B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and
- (C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—
 - (i) not exceeding \$50,000 for a first violation; and
 - (ii) not exceeding \$100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single ac-

tion, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages

For purposes of subsection (b)(2)(B), the term “monetary damages” and “such other relief” does not include punitive damages.

(5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

(Pub. L. 101-336, title III, § 308, July 26, 1990, 104 Stat. 363.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1)(A)(ii), (5), was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

CIVIL ACTIONS FOR VIOLATIONS BY PUBLIC ACCOMMODATIONS

For provisions directing that, except for any civil action brought for a violation of section 12183 of this title, no civil action shall be brought for any act or omission described in section 12182 of this title which occurs (1) during the first six months after the effective date of this subchapter, against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less, and (2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less, see section 310(b) of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

§ 12189. Examinations and courses

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(Pub. L. 101-336, title III, § 309, July 26, 1990, 104 Stat. 365.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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