

# ALABAMA LAW REVIEW

---

Volume 53

Summer 2002

Number 4

---

## THE POST-GARRETT WORLD: INSUFFICIENT STATE PROTECTION AGAINST DISABILITY DISCRIMINATION

*Ruth Colker\**

*Adam Milani\*\**

[A]ll 50 States prohibit government-based discrimination against the disabled and, more, affirmatively require all manner of employment and *public-access accommodations* . . . . These [state] laws and administrative regulations . . . all permit monetary relief against the sovereign . . . .

Brief for Petitioners - *Board of Trustees of  
The University of Alabama v. Garrett*<sup>1</sup>

Nine states—including Alabama—have no enforcement mechanism at all against the state for public access discrimination and only twenty-four states provide clear statutory language with coverage comparable to the

---

\* Heck-Faust Memorial Chair in Constitutional Law, Michael E. Moritz College of Law, The Ohio State University. Professor Colker was a signatory to an amicus brief in the *Garrett* case. Brief of Morton Horowitz, Martha Field, Martha Minow and Over 100 Other Historians and Scholars, Amici Curiae in Support of Respondents, Bd. of Trs. of The Univ. of Ala. v. Garrett, 531 U.S. 356 (2001) (No. 99-1240), available at 2000 WL 11540205. We would like to thank John Deeds and Rachel Rubey for their state law research and the USX Foundation for its generous support of that research.

\*\* Assistant Professor, Walter F. George School of Law, Mercer University.

1. Brief for Petitioner at \*2, \*4, Bd. of Trs. of The Univ. of Ala. v. Garrett, 531 U.S. 356 (2001) (No. 99-1240), available at 2000 WL 821035 (emphasis added).

protections found in ADA Title II including the availability of monetary relief against the sovereign.

### Findings of Colker and Milani

#### I. INTRODUCTION

In *Board of Trustees of The University of Alabama v. Garrett*,<sup>2</sup> the United States Supreme Court held in a 5-4 decision that the Eleventh Amendment barred suits in federal court by state employees to recover monetary damages for the state's failure to comply with Title I of the Americans with Disabilities Act (ADA).<sup>3</sup> The Court expressly declined to rule, however, on whether a state employee could sue for employment discrimination under ADA Title II's<sup>4</sup> general prohibition against discrimination by state and local governments.<sup>5</sup> Nor did it rule on the broader question of whether private parties can use ADA Title II to recover monetary damages from states for disability discrimination outside the employment context.<sup>6</sup>

---

2. 531 U.S. 356 (2001).

3. 42 U.S.C. §§ 12111-12117 (1994). Title I prohibits employment discrimination by private and public entities. It states that "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112 (1994) (emphasis added). A "covered entity" is defined as "an employer, employment agency, labor organization, or joint labor-management committee." *Id.* § 12111(2).

4. ADA Title II states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (1994) (emphasis added). A "public entity" is defined as, among other things, "any State or local government [and] any department, agency, special purpose district, or other instrumentality of a State or States or local government." *Id.* § 12131(1)(A)-(B).

5. *Garrett*, 531 U.S. at 360 n.1. Lower courts are divided on the issue of whether state employees could pursue employment discrimination claims under Title II. *Id.* (citing *Zimmerman v. Oregon Dep't of Justice*, 170 F.3d 1169, 1174 (9th Cir. 1999) (holding that Title II's reference to "services" of a public entity unambiguously does not apply to employment but refers only to the "outputs" of a public agency, not to "inputs" such as employment); *Bledsoe v. Palm Beach County Soil & Water Conservation Dist.*, 133 F.3d 816, 821 (11th Cir. 1998) ("The statutory language used by Congress in the creation of Title II is brief. Extensive legislative commentary regarding the applicability of Title II to employment discrimination, however, is so pervasive as to belie any contention that Title II does not apply to employment actions.")).

6. The Court said that, while the petitioners' "Question Presented" could be read to apply to both Title I and Title II of the ADA, "no party has briefed the question whether Title II of the ADA, dealing with the 'services, programs, or activities of a public entity,' is available for claims of employment discrimination when Title I of the ADA expressly deals with that subject." *Garrett*, 531 U.S. at 360 n.1 (citation omitted). The Justices were "not disposed to decide the constitutional issue of whether Title II, which has somewhat different remedial provisions from Title I, is appropriate legislation under § 5 of the Fourteenth Amendment when the parties have not favored us with briefing on the statutory question." *Id.* Accordingly, the Court dismissed as improvidently granted the portion of the writ of certiorari on the question of whether employees may sue their state employers for damages under Title II of the ADA. *Id.*

After *Garrett* was decided, dozens of appellate and district courts quickly dismissed pending ADA Title I cases against state employers.<sup>7</sup> Many courts also addressed whether the holding in *Garrett* should be extended to all suits brought under ADA Title II for discrimination in government services. While some courts have held that the Eleventh Amendment does not preclude recovery of monetary damages against states under ADA Title II,<sup>8</sup> other courts have applied the *Garrett* Court's reasoning to hold that ADA Title II did not validly abrogate state sovereign immunity.<sup>9</sup> In fact, one court held that the reasoning in

---

7. See, e.g., *Acevedo López v. Police Dep't of Puerto Rico*, 247 F.3d 26 (1st Cir. 2001); *Nihiser v. Ohio Envtl. Prot. Agency*, 269 F.3d 626 (6th Cir. 2001); *Lindner v. State of Nebraska, Dep't of Health & Human Servs.*, 12 Fed. Appx. 429, No. 00-3374, 2001 WL 669271 (8th Cir. June 15, 2001); *Demshki v. Monteith*, 255 F.3d 986 (9th Cir. 2001); *Menchaca v. Ottenwalder*, 18 Fed. Appx. 508, No. 99-55082, 2001 WL 1005903 (9th Cir. Aug. 29, 2001); *Denton v. Arizona*, No. 00-16530, 2001 WL 700958 (9th Cir. June 11, 2001); *Randall v. Oklahoma*, 15 Fed. Appx. 703, No. 00-5209, 2001 WL 830331 (10th Cir. July 24, 2001); *Ferguson v. Oklahoma*, 6 Fed. Appx. 797, No. 99-6320, 2001 WL 321357 (10th Cir. Apr. 3, 2001); *Diaz Reyes v. Police Dep't of Puerto Rico*, 153 F. Supp. 2d 74 (D.P.R. 2001); *Smith v. Alabama Dep't of Corr.*, 145 F. Supp. 2d 1291 (N.D. Ala. 2001); *Maull v. Div. of State Police*, 141 F. Supp. 2d 463 (D. Del. 2001); *Williamson v. Georgia Dep't of Human Res.*, 150 F. Supp. 2d 1375 (S.D. Ga. 2001); *Sullivan v. Univ. of Ill. at Chicago*, No. 00-C7898, 2001 WL 855433 (N.D. Ill. July 27, 2001); *Molinari v. Illinois*, No. 01-C2474, 2001 WL 849748 (N.D. Ill. July 27, 2001); *Loren v. Levy*, No. 00 Civ 7687, 2001 WL 921173 (S.D.N.Y. Aug. 14, 2001).

8. See, e.g., *Popovich v. Cuyahoga County Court of Common Pleas*, 276 F.3d 808 (6th Cir. 2002) (en banc) (holding that the Eleventh Amendment barred ADA Title II action to extent it relied on congressional enforcement of equal protection in non-employment ADA cases but did not bar action based on due process claim of denial of participation in public services); *Wroncy v. Oregon Dep't of Transp.*, 9 Fed. Appx. 604, No. 00-35356, 2001 WL 474550, at \*1 (9th Cir. May 4, 2001) (noting that court had twice rejected sovereign immunity challenges to Title II and stating that *Garrett* "does not compel us to reconsider. . . [because] [t]he Court . . . expressly declined to reach the constitutionality of ADA's Title II"); *Project Life, Inc. v. Glendening*, 139 F. Supp. 2d 703, 707 n.5 (D. Md. 2001) (noting that the Eleventh Amendment did not preclude recovery of monetary judgment against state under ADA Title II despite *Garrett* decision); *Navedo v. Maloney*, 172 F. Supp. 2d 276 (D. Mass. 2001) (holding that Congress validly abrogated state's immunity in Title II of the ADA); *Bowers v. NCAA*, 171 F. Supp. 2d 389 (D. N.J. 2001) (holding that Congress abrogated Tennessee's sovereign immunity under Title II of ADA); see also *Shaboon v. Duncan*, 252 F.3d 722 (5th Cir. 2001) (citing an earlier holding that the states enjoy no Eleventh Amendment immunity from Title II, but remanding to the district court for a decision because, without briefing on the impact of *Garrett*, it was premature to decide the issue); *Bartlett v. New York State Bd. of Law Exam'rs*, No. 93-4986, 2001 WL 930792, at \*51 n.63. (S.D.N.Y. Aug. 15, 2001) ("Because the [*Garrett*] decision addressed exclusively Title I of the ADA, it is an open question whether the same rationale applies to the other titles of the ADA.").

9. See, e.g., *Reickenbacker v. Foster*, 274 F.3d 974 (5th Cir. 2001) (holding that Title II of the ADA did not represent a valid exercise of Congressional power under Section 5 of the Fourteenth Amendment, and thus did not abrogate state sovereign immunity); *Thompson v. Colorado*, 258 F.3d 1241 (10th Cir. 2001). The court stated:

This court cannot conclude that Congress "identified a history and pattern" of unconstitutional discrimination by the states against the disabled. *Garrett*, 121 S. Ct. at 964. Nor can this court find in the caselaw 'extensive litigation and discussion of the constitutional violations.' *Id.* at 968 (Kennedy, J., concurring). Without this foundation, Title II cannot be considered preventive or remedial legislation that is congruent and proportional to any constitutional violation. Without numerous documented occurrences of unconstitutional state discrimination against the dis-

*Garrett* required it to reconsider *and reverse* an earlier decision that Title II was a valid abrogation of the states' sovereign immunity.<sup>10</sup>

Some courts have also applied sovereign immunity principles to conclude that a parallel statute—Section 504 of the Rehabilitation Act of 1973<sup>11</sup>—cannot be used to obtain monetary damages against a state entity.<sup>12</sup> Still others have held that actions against state officials for in-

---

abled, Title II's accommodation requirement appears to be an attempt to prescribe a new federal standard for the treatment of the disabled rather than an attempt to combat unconstitutional discrimination.

*Thompson*, 258 F.3d at 1255. See also *Neiberger v. Hawkins*, 150 F. Supp. 2d 1118, 1122 (D. Colo. 2001) ("Although not conclusive, *Garrett* is instructive in the proper analysis of the abrogation claim here."); *Doe v. Div. of Youth & Family Servs.*, 148 F. Supp. 2d 462, 486 (D. N.J. 2001) (dismissing complaint against state agency and stating that "the Court is guided by the reasoning of the *Garrett* decision, which suggests that the Court would have reached the same result under Title II of the ADA as it did under Title I"); *Frederick L. v. Dep't of Pub. Welfare*, 157 F. Supp. 2d 509 (E.D. Pa. 2001) (holding that ADA Title II did not validly abrogate the state's immunity). The Second Circuit Court of Appeals in *Garcia v. S.U.N.Y. Health Science Center of Brooklyn*, 280 F.3d 98 (2d Cir. 2001), also found that Title II in its entirety exceeds Congressional authority to abrogate immunity, but it went on to frame a damage suit against the state and its officials under Title II that will meet constitutional standards. *Garcia*, 280 F.3d at 108-10. The plaintiff must allege that the state was motivated by discriminatory animus or ill-will based on the plaintiff's disability. *Id.* at 111. The court recognized that direct proof of this will often be lacking, but the plaintiff may rely on the burden-shifting technique from *McDonnell Douglas Corp. v. Green*, 411 U.S. 793 (1973), or a motivating analysis from *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1986). *Garcia's* Title II claim was dismissed because it did not allege discriminatory animus. *Garcia*, 280 F.3d at 113-14.

10. *Jones v. Pennsylvania*, 164 F. Supp. 2d 490 (E.D. Pa. 2001). The court stated that, although the *Garrett* court "expressly declined" to decide whether states are immune under Title II,

the analytical framework established by the Court is clearly applicable to this case and requires a reversal of our earlier conclusion that Congress abrogated states' Eleventh Amendment immunity under Title II of the ADA. We now hold that Title II is not a valid exercise of Congress' § 5 power and that the Commonwealth is immune from plaintiff's ADA claim.

*Jones*, 164 F. Supp. 2d at 493.

11. 29 U.S.C. § 794 (1994 & Supp. V 1999).

12. Section 504 bars disability discrimination by the recipients of federal funds. While some courts have concluded that it, like ADA Title II, was enacted pursuant to Congress's power under Section 5 of the Fourteenth Amendment, see, e.g., *Clark v. California*, 123 F.3d 1267, 1270 (9th Cir. 1997), cert. denied sub nom. *Wilson v. Armstrong*, 524 U.S. 937 (1998); *Mayer v. Univ. of Minn.*, 940 F. Supp. 1474, 1476-80 (D. Minn. 1996), most courts have held that the Rehabilitation Act was passed under the Spending Clause and that states have waived their sovereign immunity as a condition of receiving federal funds. See, e.g., *Pederson v. Louisiana State Univ.*, 213 F.3d 858, 875-76 (5th Cir. 2000); *Nihiser v. Ohio Envtl. Prot. Agency*, 269 F.3d 636 (6th Cir. 2001); *Stanley v. Litscher*, 213 F.3d 340, 344 (7th Cir. 2000) (concluding that "the Rehabilitation Act is enforceable in federal court against recipients of federal largess"); *Jim C. v. United States*, 235 F.3d 1079, 1082 (8th Cir. 2000) (holding that Arkansas's Department of Education waived its sovereign immunity for suit brought under § 504), cert. denied sub nom., *Ark. Dep't of Educ. v. Jim C.*, 533 U.S. 949 (2001); *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001) (finding that the acceptance of the federal funds on which applicability of the Rehabilitation Act is conditioned waived Eleventh Amendment sovereign immunity); *Clark*, 123 F.3d at 1271 (finding that "the Rehabilitation Act includes an express waiver of Eleventh Amendment immunity which California accepted when it accepted Rehabilitation Act funds"); *Douglas v. Cal. Dep't of Youth Auth.*, 271 F.3d 812 (9th Cir. 2001) (holding that California waived its sovereign immunity against a Rehabilitation Act claim by accepting funds under the act, and abrogating *Pugliese v. Ariz. Dep't of Health & Human Servs.*, 147 F. Supp. 2d 985, 991 (D.



Ariz. 2001)); *Kvorjak v. Maine*, 259 F.3d 48, 50 n.1 (1st Cir. 2001) (finding that a § 504 claim is still viable after *Garrett*); *Mauil v. Div. of State Police*, 141 F. Supp. 2d 463 (D. Del. 2001) (holding that the Eleventh Amendment did not bar claims under the Rehabilitation Act); *Lieberman v. Delaware*, No. 96-523, 2001 WL 1000936 (D. Del. Aug. 30, 2001) (holding the same); *Boudreau ex rel. Boudreau v. Ryan*, No. 00 C 5392, 2001 WL 840583, \*2 (N.D. Ill. May 2, 2001) ("[T]he Eleventh Amendment does not bar the plaintiffs' Rehabilitation Act claim."); *Bowers v. NCAA*, 171 F. Supp. 2d 389 (D. N.J. 2001) (holding that Tennessee knowingly and voluntarily waived its Eleventh Amendment immunity from suit when it accepted federal funds pursuant to the terms of the Rehabilitation Act); *Frederick L. v. Dep't of Pub. Welfare*, 157 F. Supp. 2d 509 (E.D. Pa. 2001) (finding no immunity from § 504 claims). *But see* *Randolph v. Rodgers*, 253 F.3d 342 (8th Cir. 2001) (remanding the case and stating that the plaintiff will need to show that the state waived its Eleventh Amendment immunity with respect to § 504 of Rehabilitation Act in order to receive federal funds and that the waiver is valid under the Spending Clause). *See also generally* *College Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 686-87 (1999) ("Congress may, in the exercise of its spending power, condition its grant of funds to the States upon their taking certain actions that Congress could not require them to take, and that acceptance of the funds entails an agreement to the actions.").

On remand in *Garrett*, however, the court initially dismissed her Rehabilitation Act claim without addressing the critical question of whether that statute was passed under the Spending Clause or Section 5 of the Fourteenth Amendment. *Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 261 F.3d 1242 (11th Cir. 2001). Instead, it issued a one paragraph decision noting that it had stated in its earlier opinion that the "decision under the Rehabilitation Act [was] also controlled by this Court's decision as to the ADA." . . . Accordingly, the judgment of the district court regarding both the ADA and the Rehabilitation Act must be affirmed based on the Supreme Court's decision." *Garrett*, 261 F.3d at 1244. However, on rehearing the plaintiffs noted that neither the Supreme Court nor any of the lower courts had addressed the sovereign immunity implications of the Rehabilitation Act and argued that the state had voluntarily waived its immunity by receiving federal financial assistance conditioned upon such a waiver. *Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 276 F.3d 1227, 1228 (11th Cir. 2001). The court asked for a response, and the state said the court should "grant a rehearing, vacate the Rehabilitation aspect of its previous decision, and remand the plaintiff's Rehabilitation Act claims to the district court. . . . It simply was not analyzed or discussed; frankly, none of the parties presented much in the way of argument on the issue of waiver." *Garrett*, 276 F.3d at 1228. Accordingly, the state argued that the "best course would be for this Court to remand in order to allow the district court to analyze the issue and, if it deems appropriate, to develop an evidentiary record." The Eleventh Circuit agreed. *Id.*

However, other recent decisions have specifically held that states did not waive their sovereign immunity when they accepted federal funds under the Rehabilitation Act. *See, e.g.,* *Reickenbacker v. Foster*, 274 F.3d 974 (5th Cir. 2001) (finding that the Rehabilitation Act did not represent a valid exercise of Congressional power under Section 5 of Fourteenth Amendment, and thus did not abrogate state sovereign immunity); *Pugliese v. Ariz. Dep't of Health & Human Servs.*, 147 F. Supp. 2d 985 (D. Ariz. 2001) (dismissing § 504 claim because there was insufficient showing of a waiver of immunity), *abrogated by* *Douglas v. Cal. Dep't of Youth Auth.*, 271 F.3d 812 (9th Cir. 2001); *Koslow v. Pennsylvania*, 158 F. Supp. 2d 539 (E.D. Pa. 2001), *vacated* (June 5, 2001), *motion for reconsideration denied*, No. 97-5951, 2001 WL 1175119 (E.D. Pa. July 31, 2001) (holding that the state had not waived immunity under § 504 because of insufficient showing that there was a connection between federal funds received by the state and the plaintiff's Rehabilitation Act claim, and holding that a plaintiff may not maintain an *Ex parte* Young action for injunctive relief against a defendant under ADA Title II).

The court in *Garcia v. S.U.N.Y. Health Science Center of Brooklyn*, 280 F.3d 98 (2d Cir. 2001), also found that a state had not waived its sovereign immunity when it accepted federal funds, but the opinion is a complicated one. 280 F.3d. at 113-14. First, the court held that, because section 504 is enacted under the Spending Clause, Congress may condition acceptance of funds on consent to waive sovereign immunity, and that 42 U.S.C. § 2000d-7 is a clear expression of Congress's intent to do so. *Id.* However, it further stated that an effective waiver requires an intentional relinquishment of a known right. *Id.* at 114. When New York received the funds applicable to the suit, *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), had not been decided and Title II was understood to abrogate New York's sovereign immunity under Com-

junctive relief are not available under ADA Title II.<sup>13</sup> Thus, state law

merce Clause authority. 517 U.S. at 114 n.4. Therefore, the court stated that a state accepting federal funds could not have made a decision to waive immunity because "by all reasonable appearances state sovereign immunity had already been lost." *Id.* at 114. The result of this approach is that a waiver is not valid if the state agreed to the condition before March 27, 1996, the date of the *Seminole* opinion. *Id.* at 113-14.

13. The *Garrett* Court stated private individuals could enforce the standards in the ADA by bringing actions for injunctive relief against state officials in their official capacity under *Ex parte Young*, 209 U.S. 123 (1908). 531 U.S. at 374 n.9. However, decisions both before and after *Garrett* have held that an *Ex parte Young* action was unavailable because there is no individual liability for an ADA Title II claim. *See, e.g.,* Reickenbacker v. Foster, 274 F.3d 974, 976 n.9 (5th Cir. 2001) (holding that an action under *Ex parte Young* was unavailable even though complaint originally named state officials as defendants); Walker v. Snyder, 213 F.3d 344, 347 (7th Cir. 2000) (finding that a claim based on *Ex parte Young* must be dismissed where individuals are sued in their official capacities in an action brought under Title II), *cert. denied sub nom.*, United States v. Snyder, 531 U.S. 1190 (2001); Douglas v. Cal. Dep't of Youth Auth., 271 F.3d 812, 821 n.6 (9th Cir. 2001) (noting that the *Ex parte Young* doctrine did not apply to ADA action where the plaintiff failed to name the state official as a defendant); Koslow v. Pennsylvania, 158 F. Supp. 2d 539 (E.D. Pa. 2001), *order vacated without opinion* (June 5, 2001), *motion for reconsideration denied*, No. 97-5951, 2001 WL 1175119 (E.D. Pa. July 31, 2001); Lewis v. N.M. Dep't of Health, 94 F. Supp. 2d 1217, 1230 (D. N.M. 2000) (holding that the plaintiffs could not properly invoke 42 U.S.C. § 1983 to enforce the ADA against state officials because "Title II claims cannot be maintained against individual defendants"); Loren v. Levy, No. 00-7687, 2001 WL 921173 (S.D.N.Y. Aug. 14, 2001) (holding that individuals may not be sued under the ADA in either their personal or official capacities); Menes v. CUNY Univ., 92 F. Supp. 2d 294, 306 (S.D.N.Y. 2000) (collecting cases on the same). *But see* Boudreau v. Ryan, No. 00C-5392, 2001 WL 840583 (N.D. Ill. May 2, 2001) (questioning the vitality of the holding in *Walker* in the aftermath of *Garrett*).

However, most courts have allowed claims limited to injunctive relief to proceed under the *Ex parte Young* doctrine. *See, e.g.,* Garcia v. S.U.N.Y. Health Sci. Ctr. of Brooklyn, 280 F.3d 98 (2d Cir. 2001); Gibson v. Ark. Dep't of Corrs., 265 F.3d 718 (8th Cir. 2001) (holding that state employees can sue state officials for prospective injunctive relief under ADA Title I by using the *Ex parte Young* doctrine); Randolph v. Rodgers, 253 F.3d 342 (8th Cir. 2001) (holding that a hearing-impaired inmate was not barred by the Eleventh Amendment from seeking prospective injunctive relief in federal court against a state prison official in her official capacity for violations of the ADA and Rehabilitation Act arising from the official's refusal to provide him with a sign language interpreter during medical visits and prison proceedings); Frazier v. Simmons, 254 F.3d 1247 (10th Cir. 2001) (holding that a state employee's claims under ADA Title I could be construed as requesting injunctive relief and thus were not barred by Eleventh Amendment); Roe #2 v. Ogden, 253 F.3d 1225 (10th Cir. 2001) (holding that a law students' challenge to a bar admission rule was not precluded by the Eleventh Amendment or the *Ex parte Young* doctrine); Navedo v. Maloney, 172 F. Supp. 2d 276 (D. Mass. 2001) (allowing a suit against individual public officials in their official capacities); Frederick L. v. Dep't of Pub. Welfare, 157 F. Supp. 2d 509 (E.D. Pa. 2001) (holding that a state official can be sued in her official capacity under ADA Title II); Doe v. Rowe, 156 F. Supp. 2d 35, 56 (D. Me. 2001) ("In their respective official capacities, both the Maine Attorney General and the Maine Secretary of State are agents of the public entities they lead. In these roles, they may be properly named as defendants to a claim under Title II of the ADA.").

It must be noted that a very recent decision suggests that even injunctive relief may be barred based on Eleventh Amendment grounds. In *Federal Maritime Comm'n v. South Carolina State Ports Auth.*, 122 S. Ct. 1864, 1877 (2002), the Court stated that "sovereign immunity applies regardless of whether a private plaintiff's suit is for monetary damages or some other type of relief. . . . Sovereign immunity does not merely constitute a defense to monetary liability or even to all types of liability. Rather, it provides an immunity from suit." The Court said that the core of the sovereign immunity doctrine is not to "shield[] state treasuries" but instead is to "accord the States the respect owed them as joint sovereigns." *Federal Maritime Comm'n*, 122 S. Ct. at 1877.

may soon be the sole remedy for individuals who face disability discrimination by the state.

In the first sentence of the "Statement" section of its brief before the Supreme Court, the State of Alabama said that "all 50 States prohibit government-based discrimination against the disabled and, more, affirmatively require all manner of employment and *public-access accommodations* designed to provide the disabled with the kind of equal opportunity and dignity that all individuals deserve."<sup>14</sup> The brief later elaborated that "[t]hese [state] laws and administrative regulations pre-date passage of the ADA, far exceed the rational-basis requirements of equal-protection review, *all permit monetary relief against the sovereign*, and in the end markedly overprotect rather than underprotect the constitutional rights of the disabled."<sup>15</sup>

These statements were each followed by a citation to Appendix A of the brief which listed state disability discrimination statutes and regulations. While this appendix listed specific statutes and regulations that allow for "[e]quitable and monetary remedies" for *employment discrimination*, it merely identifies state statutes with "*policies* requiring accessibility and accommodation."<sup>16</sup> There was no mention of the scope of these "policies" nor of the types of remedies they provide, if any.

Nonetheless, the Supreme Court echoed Alabama's brief and stated that "state laws protecting the rights of persons with disabilities in employment and other aspects of life provide independent avenues of redress."<sup>17</sup> The Court offered no support for the "other aspects of life" statement.

Thus, an important question in light of the *Garrett* sovereign immunity decision is: Would extending the Court's ruling to ADA Title II affect the remedies available for victims of disability discrimination by state actors? More specifically, are there state statutes barring state governments from discriminating in public access and services and, if so, do they offer remedies similar to those found in ADA Title II?<sup>18</sup>

---

14. Brief for Petitioner at \*2, *Bd. of Trs. of The Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001), available at 2000 WL 821035 (emphasis added).

15. *Id.* at \*4 (citations omitted and emphasis added).

16. *Id.* at App. A.

17. *Garrett*, 531 U.S. at 374 n.9 (emphasis added). Earlier in its opinion, the Court noted that "by the time that Congress enacted the ADA in 1990, every State in the Union had enacted such measures" requiring accommodations for the disabled. *Id.* at 368 n.5. It also cited a legislator's statement during debates over the ADA that "this is probably one of the few times where the states are so far out in front of the Federal Government, it's not funny." *Id.* (quoting *Hearing Before the House Subcomm. on Select Education*, 101st Cong. 5 (Oct. 6, 1989) (Rep. Moakley)). However, the Court acknowledged that "[a] number of these provisions . . . did not go as far as the ADA did in requiring accommodation." *Id.* (emphasis added).

18. Our assessment is limited to discrimination *outside* the employment context; we made no attempt to verify (or dispute) the Court's assertion in *Garrett* that state law provided adequate relief against disability discrimination in the employment context by state actors. 531 U.S. at 374

In order to answer these questions, we had to define the scope of protection afforded by ADA Title II. We considered that protection to include:

- prohibition of discrimination in access to "facilities,"<sup>19</sup>
- prohibition of discrimination in access to "services,"<sup>20</sup>
- a private right of action to enforce these protections, including compensatory damages,<sup>21</sup> and

n.9.

19. ADA Title II bars discrimination in "the benefits of the *services*, programs, or activities of a public entity." 42 U.S.C. § 12132 (1994) (emphasis added). The ADA Title II regulations provide that "no qualified individual with a disability shall, *because a public entity's facilities are inaccessible* to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity." 28 C.F.R. § 35.149 (2001) (emphasis added). Accordingly, the regulations require that each facility or part of a facility constructed or altered by, on behalf of, or for the use of a state or local government agency completed after January 26, 1992, be readily accessible to and usable by persons with disabilities. *Id.* § 35.151. For facilities constructed before January 26, 1992, each program or activity, when viewed in its entirety, must be "readily accessible" to persons with disabilities. *Id.* § 35.150. Public entities need not remove all physical barriers in all existing buildings as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility. Instead, compliance can be achieved by delivering the services at alternate sites, or providing benefits or services at an individual's home, or providing an aide or personal assistant to enable an individual with a disability to obtain the service. *Id.* § 35.150(b)(1).

20. 42 U.S.C. § 12132 (1994) (barring discrimination in "the benefits of the *services*, programs, or activities of a public entity") (emphasis added).

21. ADA Title II specifically incorporates the remedial provisions of the Rehabilitation Act of 1973, 29 U.S.C. § 794a (1994 & Supp. V 1999), as its enforcement provision. 42 U.S.C. § 12133 (1994) ("The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title."). Courts interpreting the Rehabilitation Act, and subsequently Title II, have held that monetary damages are available for *intentional* discrimination. *See, e.g.,* *W.B. v. Matula*, 67 F.3d 484, 494 (3d Cir. 1995) (holding that damages are available under the Rehabilitation Act); *Rodgers v. Magnet Cove Pub. Sch.*, 34 F.3d 642, 644-45 (8th Cir. 1994) (holding the same); *Waldrop v. Southern Co. Serv.*, 24 F.3d 152 (11th Cir. 1994) (holding the same); *Pandazides v. Va. Bd. of Educ.*, 13 F.3d 823 (4th Cir. 1994) (holding the same); *Johnson v. City of Saline*, 151 F.3d 564, 573 (6th Cir. 1998) ("[C]ompensatory damages are available under Title II of the ADA, by extension from their availability under the Rehabilitation Act . . . ."); *Ferguson v. City of Phoenix*, 157 F.3d 668, 674 (9th Cir. 1998) (holding that monetary damages are available under ADA Title II and the Rehabilitation Act only upon a showing of intentional discrimination); *Jeremy H. by Hunter v. Mount Lebanon School Dist.*, 95 F.3d 272, 279 (3d Cir. 1996) (holding that monetary damages are permitted under ADA Title II).

This is consistent with the legislative history of ADA Title II. For example, Senator Harkin, one of the statute's chief sponsors stated that:

under the public accommodations provisions of title III, the bill expressly limits relief to equitable remedies. However, title II of the act, covering public services, contains no such limitation. Title II of the bill makes available the rights and remedies also available under section 505 of the Rehabilitation Act, and *damages remedies are available under that provision enforcing section 504 of the Rehabilitation Act and, therefore, also under title II of this bill.*

135 CONG. REC. 19780, 19855 (1989) (statement of Sen. Harkin) (emphasis added). For a discussion of why damages were not included as a remedy for lack of accessibility by private entities under ADA Title III, 42 U.S.C. §§ 12181-12189, see Ruth Colker, *ADA Title III: A Fragile Compromise*, 21 BERKELEY J. EMP. & LAB. L. 377, 378-79 (2000).



- availability of attorney's fees.<sup>22</sup>

Our research shows that the statements in the State of Alabama's brief that "all 50 States" have "laws and administrative regulations" which "permit monetary relief against the sovereign"<sup>23</sup> are simply *not* true with regard to access to state facilities and services. In fact, the statements are not even true for a majority of the states—including Alabama. We found that only twenty-four of fifty-one states provided clear statutory language with protection comparable to ADA Title II.<sup>24</sup>

22. 42 U.S.C. § 12205 (1994) ("In any action or administrative proceeding commenced pursuant to [the Act or this part], the court or agency, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee, including litigation expenses, and costs...."). Section 12205 covers all of the ADA, and the same language appears in the Title II regulations. 28 C.F.R. § 35.175 (2001).

In addition to the listed areas, ADA Title II has also been interpreted to include a de-institutionalization requirement for individuals with disabilities. See *Olmstead v. L.C. ex. rel. Zimring*, 527 U.S. 581 (1999). Because the relief sought in *Olmstead* did not include monetary damages against the state, we did not research whether state law would cover this cause of action if *Garrett* were extended to ADA Title II. The question of what impact extension of *Garrett* to ADA Title II would have on injunctive relief to obtain de-institutionalization is beyond the scope of this Article. In theory, the relief in *Olmstead* should be available irrespective of the Supreme Court's holding on the sovereign immunity issue. However, in practice some courts have held that injunctive relief against state officials would not be available if sovereign immunity principles applied to ADA Title II because of a statutory interpretation problem with ADA Title II. See, e.g., *Walker v. Snyder*, 213 F.3d 344, 347 (7th Cir. 2000) (holding that claim based on *Ex parte Young* must be dismissed where individuals are sued in their official capacities in an action brought under Title II). For further discussion, see *supra* note 13.

23. Brief for Petitioner at \*4, *Bd. of Trs. of The Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001), available at 2000 WL 821035.

24. We have used the definition of "State" found in the ADA that includes the District of Columbia. 42 U.S.C. § 12102(3) (1994). The twenty-four states with clear statutory language that prohibited discrimination at state facilities and in state services, and also provided for compensatory damages and attorneys' fees comparable to the ADA are: Alaska, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Virginia, and West Virginia. See *infra* Appendix. We have included Connecticut on this list although its definition of "disability" is more limited than the definition provided under the ADA. CONN. GEN. STAT. ANN. § 46a-71(a) (West 1995 & Supp. 2001) (covering discrimination on the basis of "mental retardation, learning disability or physical disability"). We have included Hawaii on this list although it limits attorney's fees to twenty-five percent of the damages award. HAW. REV. STAT. ANN. § 662-12 (Michie 1995). The Hawaii Revised Statute states that a court:

may, as a part of such judgment, award, or settlement, determine and allow reasonable attorney's fees which shall not, however, exceed twenty-five per cent of the amount recovered and shall be payable out of the judgment awarded to the plaintiff; provided that such limitation shall not include attorney's fees and costs that the court may award the plaintiff as a matter of its sanctions.

*Id.* For a more complete discussion of the statutory law in each of the states, see the Appendix to this Article. In conducting our research into the law of the various states, we have made every conceivable attempt to portray the law accurately. With the assistance of two excellent research assistants, we researched the statutory provisions and case law in every state. However, state law research is very challenging to complete accurately. We apologize in advance for any errors in our results from the state survey, and will update our findings if any errors are brought to our attention.

## II. STATE LAW

A. *Prohibition of Discrimination in Access to Facilities*

The ADA Title II regulations provide broad protection against discrimination at facilities, and we found that all states have laws specifically requiring government-owned buildings to be accessible. Nonetheless, we found ambiguities regarding these statutes' coverage and problems with their enforcement. First, while every state appears to require that public "buildings" be accessible to individuals with disabilities,<sup>25</sup> it is unclear in some states whether this rule applies more broadly to all government-owned entities. Second, fifteen states do not have clear, effective, private enforcement mechanisms for their accessibility policies. We will discuss these enforcement problems in Part II.C, but those problems are noted in boldface type in Table I *infra*.

ADA Title II covers state property that encompasses far more than the buildings themselves. Under ADA Title II, streets and sidewalks<sup>26</sup> as well as parks and recreational facilities must be accessible.<sup>27</sup> Accessible sidewalks are a particularly important right guaranteed by ADA Title II. Without accessible sidewalks, a person with a disability might never get to the front door of a public building. Indeed, one of the earliest appellate court decisions on ADA Title II was a successful class action suit against the Secretary of the Pennsylvania Department of Transportation and the Commissioner of the Philadelphia Streets Department which sought to compel the city to install curb ramps on streets that had been resurfaced since the effective date of the ADA.<sup>28</sup>

---

25. The ADA defines disability as, "a physical or mental impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2)(A) (1995). Not all states define disability as broadly as the federal standard. Where appropriate, we have indicated the usage of a narrower definition in certain states.

26. See 28 C.F.R. § 35.150(d)(2) ("If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs."); 28 C.F.R. § 35.151(e)(1)-(2) (stating that "[n]ewly constructed or altered streets, roads, and highways must contain curb ramps" at intersections with pedestrian walkways and "[n]ewly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways"); 36 C.F.R. pt. 1191 app. A § 4.7 (1999) (containing curb ramp requirements).

27. The Architectural and Transportation Barriers Compliance Board ("Access Board") issues accessibility guidelines for such facilities. The guidelines on recreation areas are currently being finalized. *Recreation Facilities*, at <http://www.access-board.gov/recreation/status.htm> (last visited Oct. 16, 2001). The Access Board published guidelines for play areas on May 10, 2001. *Guidance Available on Play Area Guidelines*, at <http://www.access-board.gov/news/playguide.htm> (last visited Oct. 16, 2001). In addition, the board is preparing a proposed rule on "outdoor developed areas" such as trails, beaches, and picnic and camping areas. *Outdoor Developed Areas*, at <http://www.access-board.gov/outdoor/status.htm> (last visited Oct. 16, 2001).

28. *Kinney v. Yerusalim*, 9 F.3d 1067 (3d Cir. 1993). A court recently rejected a city's argument that the ADA regulations did not cover sidewalks but only applied to curb ramps between them and the street. *Barden v. City of Sacramento*, No. 01-15744, 2002 WL 128135, at \*4

Most state statutes specifically cover both "buildings" and "facilities" which indicates that their scope is equivalent to the coverage found in ADA Title II. Many states also adopt the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG)<sup>29</sup> or accessibility standards promulgated by the American National Standard Institute (ANSI),<sup>30</sup> which cover a broad range of facilities.<sup>31</sup> Still others have state statutes that specifically include sidewalks and curb ramps.<sup>32</sup>

Determining whether sidewalks and other facilities like state parks are covered is problematic, however, in three states that limit their accessibility rules to state "buildings."<sup>33</sup> For example, Ohio has a state statute requiring "all buildings" to be accessible to individuals with disabilities,<sup>34</sup> and presumably this statute covers state-owned buildings; but it does not have a public accommodations statute which clearly applies to the state and would cover all state facilities.<sup>35</sup> Similarly, Ten-

---

(9th Cir. June 12, 2002). The City of Sacramento conceded that it had to install curb ramps as required by 28 C.F.R. §§ 35.150-35.151, but argued that it had no "obligation to remove other barriers to sidewalk accessibility, such as benches, sign posts, or wires." *Clark*, 2002 WL 128135, at \*1. The district court agreed, holding that "the public sidewalks in Sacramento are not a service, program, or activity of the City and, accordingly, are not subject to the program access requirements of either the ADA or the Rehabilitation Act." *Id.* The Ninth Circuit reversed, stating that "[s]ection 35.150's requirement of curb ramps in all pedestrian walkways reveals a general concern for the accessibility of public sidewalks, as well as a recognition that sidewalks fall within ADA's coverage, and would be meaningless if the sidewalks between curb ramps were inaccessible." *Id.* at \*3.

29. 28 C.F.R. pt. 36 App. A (1999).

30. The table of contents for the 1998 revision to the ANSI standards can be found at *ICC/ANSI A117.1-1998 Table of Contents*, at <http://www.intlcode.org/standards/a117toc.htm> (last visited Mar. 14, 2002).

31. See, e.g., GA. CODE ANN. §§ 30-3-2, 3 (2001); LA. REV. ST. ANN. §§ 40:1732, 1733 (West 2001).

32. See, e.g., CAL. GOV'T CODE § 4450(a) (West 1995) ("[A]ll buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities."); OR. REV. STAT. § 447.310 (2001) (providing standards for curbing.); WYO. STAT. ANN. § 16-6-501(b) (Michie 2001). The statute states:

Every curb or sidewalk to be constructed or reconstructed in Wyoming, where both are provided and intended for public use, whether constructed with public or private funds, shall provide a ramp at points of intersection between pedestrian and motorized lines of travel and no less than two (2) curb ramps per lineal block. Design for curb ramps shall take into consideration the needs of all physically handicapped persons including blind pedestrians.

*Id.* § 16-6-501(b).

33. Those states are: Ohio, Tennessee and Wisconsin. See *infra* Appendix.

34. OHIO REV. CODE ANN. § 3781.111(A) (West 1998).

35. Ohio has a general civil rights statute that bars public accommodation discrimination. That statute bars discrimination in employment and a number of other areas and makes it unlawful:

[f]or any proprietor or any employee, keeper, or manager of a *place of public accommodation* to deny to any person, except for reasons applicable alike to all persons regardless of . . . handicap . . . the full enjoyment of the accommodations, advantages, facilities or privileges of the place of public accommodation.

nessee has a state policy to make all "public buildings" accessible; the definition of "public buildings" does not mention state parks or sidewalks.<sup>36</sup> Wisconsin has a state statute requiring public "building[s]" to be accessible to individuals with disabilities.<sup>37</sup> It does not appear to have a broader public accommodation statute that would be broadly applicable to all state facilities.<sup>38</sup> Although these states adopt ADAAG or ANSI standards,<sup>39</sup> we do not know if these standards would apply to sidewalks because sidewalks might not come within the scope of the state statute.

Table I shows whether there is a state statute requiring government-owned facilities to be accessible as well as any ambiguities or problems with respect to coverage or enforcement. For states with ineffective private enforcement mechanisms, which we will discuss in Part II.C, the coverage of streets and sidewalks may be of little consolation to a person with a disability who has no remedy if the state does not follow its own law.

---

OHIO REV. CODE ANN. § 4112.02 (West 2001) (emphasis added). The term "public accommodation" is defined as including "any inn, restaurant, eating house, . . . or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public." *Id.* § 4112.01(A)(9). Other sections of the civil rights statute bar certain types of discrimination by "any person." *Id.* § 4112.02(H)(1) (making it unlawful for any person to "[r]efuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, ancestry, disability, or national origin"). In that statute, "person" is defined to include "the state and all political subdivisions, authorities, agencies, boards, and commissions of the state." *Id.* § 4112.01(A)(1). Because of the failure to expressly cover the state in the public accommodation statute, an Ohio court could conclude that the legislature did not intend to waive sovereign immunity for this cause of action. For a more detailed discussion of this issue see *infra* notes 65-69 and accompanying text.

36. TENN. CODE ANN. §§ 68-120-202-1, 120-203 (2001).

37. WIS. STAT. ANN. § 101.13(2)(a) (West 1997).

38. *Id.* § 106.52 (providing limited protections at places of accommodation or amusement).

39. See OHIO ADMIN. CODE § 4101:2-11-01 (2001); TENN. CODE ANN. § 68-120-204 (2001); TENN. COMP. R. & REGS. § 0620-2-3-.02 (2002); WIS. ADMIN. CODE § Comm 69.10 (2002).



Table I:<sup>40</sup> Scope of Nondiscrimination Statutes – Facilities

State	Clearly Covers State "Facilities"	Enforcement Comparable to ADA Title II for Facility Accessibility	Comments
Alabama	Yes	No	one statute covers "all buildings and facilities" constructed with state funds but <b>only enforcement mechanism is state fire marshal's power to order that the building conform with accessibility standards</b> ; another statute covers "places of public accommodation" but <b>only remedy is misdemeanor which would not apply to the state</b>
Alaska	Yes	Yes	covers public "facilities"
Arizona	Yes	Yes	covers "buildings and facilities" "used [or funded] by public entities"
Arkansas	Yes	No	<b>only remedy is misdemeanor which would not apply to the state</b> ; definition of disability limited to "visually handicapped, hearing impaired, [and] . . . physically handicapped"
California	Yes	Possibly	one statute requires facilities and sidewalks to be accessible but provides no private remedies; separate statute requires accessibility at "business establishments;" not clear whether state could be sued under this provision; <i>see Black v. Dept. of Mental Health</i> , 100 Cal. Rptr. 2d 39, 42 n.4 (2000) (declining to rule whether the statute applies to the state)

40. The supporting material for Table I can be found in the Appendix *infra*.

State	Clearly Covers State "Facilities"	Enforcement Comparable to ADA Title II for Facility Accessibility	Comments
Colorado	Yes	No	covers public "facilities;" <b>relief appears limited to equitable relief</b>
Connecticut	Yes	Yes	covers public "facilities"
Delaware	Yes	Yes	covers public "facilities"
D.C.	Yes	Yes	covers public "facilities"
Florida	Yes	Unclear	one statute requires state build- ings and facilities to be acces- sible, <b>but there is no private enforcement</b> ; separate statute requires accessibility at public accommodations, <b>but only remedy is misdemeanor which would not apply to the state</b> ; another statute provides private cause of action for "public accommodations" discrimination but does not specify scope of the nondis- crimination policy
Georgia	Yes	No	covers "public buildings;" but <b>only remedy is misdemeanor which would not apply to the state</b>
Hawaii	Yes	Yes	covers any program or activity receiving state financial assis- tance; building code rule requires accessibility
Idaho	Yes	No	statute covers state buildings and facilities; <b>only remedy is misdemeanor which would not apply to the state</b>
Illinois	Yes	Yes	covers public "facilities"
Indiana	Yes	Yes	covers "public conveniences and accommodations"
Iowa	Yes	Yes	covers public "facilities"

State	Clearly Covers State "Facilities"	Enforcement Comparable to ADA Title II for Facility Accessibility	Comments
Kansas	Yes	No	covers public "facilities;" \$2,000 limit for pain, suffering, and humiliation award before state civil rights commission
Kentucky	Yes	Yes	covers public "facilities;" state building code
Louisiana	Yes	Yes	covers "program[s] or activit[ies] that receive financial assistance from the state or any of its political subdivisions"
Maine	Yes	Yes	covers public "facilities"
Maryland	Yes	No	covers public "facilities" but enforcement limited to state civil rights commission
Massachusetts	Yes	Yes	covers public "facilities"
Michigan	Yes	Yes	covers public "facilities"
Minnesota	Yes	Yes	covers public "facilities"
Mississippi	Yes	No	covers public "facilities" but only remedy is misdemeanor which would not apply to the state; definition of disability limited to "[b]lind persons, visually handicapped persons, deaf persons and other physically disabled persons"
Missouri	Yes	Yes	covers public "facilities"
Montana	Yes	Yes	covers public "facilities"
Nebraska	Yes	No	covers public "facilities;" only remedy is misdemeanor which would not apply to the state
Nevada	Yes	Yes	state facility rule; enforcement for public accommodation statute that can be reasonably interpreted to cover state

State	Clearly Covers State "Facilities"	Enforcement Comparable to ADA Title II for Facility Accessibility	Comments
New Hampshire	Yes	Yes	covers places of "public accommodation;" state explicitly covered
New Jersey	Yes	Yes	covers places of "public accommodation;" state not explicitly covered but some state entities explicitly exempted
New Mexico	Yes	No	covers public "facilities"
New York	Yes	Yes	covers public "buildings" and "facilities"
North Carolina	Yes	No	covers state "facilities"; <b>only declaratory and injunctive relief available</b>
North Dakota	Yes	Yes	covers "public accommodations;" explicitly covers state
Ohio	No	Unclear	general building code statute covers "all buildings" and presumably applies to the state <b>but enforcement mechanism against the state unclear</b> ; public accommodation statute does not explicitly cover the state
Oklahoma	Yes	Yes	covers public "facilities"
Oregon	Yes	Yes	covers places of "public accommodation;" case law suggests coverage of the state; public facilities rules; specific reference to curb cuts
Pennsylvania	Yes	Yes	covers "public accommodation;" explicitly covers state
Rhode Island	Yes	Yes	covers public "facilities"
South Carolina	Yes	Yes	covers "public accommodations" and "public services;" building code rules require accessibility
South Dakota	Yes	Yes	covers "public accommodations;" explicitly covers state; explicitly covers curb ramps



State	Clearly Covers State "Facilities"	Enforcement Comparable to ADA Title II for Facility Accessibility	Comments
Tennessee	No	No	has a state policy that all "public buildings" are accessible but no penalty or fine may be assessed against the state for noncompliance
Texas	Yes	Yes	covers public "building" or "facility"
Utah	Yes	No	covers "buildings" and "facilities;" only remedy is misdemeanor which would not apply to the state
Vermont	Yes	Yes	covers "public accommodation[s];" explicitly covers state; building code rules require accessibility
Virginia	Yes	Yes	covers any program or activity receiving state financial assistance or any program or activity conducted by or on behalf of any state agency
Washington	Yes	Yes	covers access to places of public accommodation; definition of disability appears limited to "the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled;" specifically mentions "walkways"
West Virginia	Yes	Yes	covers place of "public accommodation;" explicitly includes state
Wisconsin	No	Yes	requires public "buildings" to be accessible

State	Clearly Covers State "Facilities"	Enforcement Comparable to ADA Title II for Facility Accessibility	Comments
Wyoming	Yes	No	Requires public "buildings" to be accessible; no enforcement mechanism specified; public accommodation statute provides a misdemeanor remedy which would not apply to the state; coverage of sidewalks explicit

### B. Prohibition of Discrimination in Services

ADA Title II covers far more than physical access—it bars discrimination in the “services, programs, or activities of a public entity.”<sup>41</sup> While some states have statutes barring disability discrimination in state “services,” many do not provide this specific protection. Therefore, we looked to statutes barring disability discrimination by “public accommodations” to see if they provided such protection. We found two problems in assessing state coverage in this area: (1) whether the state public accommodation statute barred “services” discrimination, and (2) whether public accommodations statutes which specifically bar services discrimination applied to the state. The sparse case law in this area indicates that these ambiguities can be significant. Accordingly, we have concluded that only twenty-four of fifty-one statutes clearly cover services discrimination by the states.<sup>42</sup>

The first problem with state public accommodations laws is that twenty-four states do not have statutes which explicitly cover “services” discrimination.<sup>43</sup> This may not be a significant issue in four of the states, however, because they have adopted language clearly modeled after section 504 of the Rehabilitation Act which states that people with disabilities shall not “be excluded from the participation in, be

41. 42 U.S.C. § 12132 (1994) (emphasis added).

42. Those states are: Alaska, Colorado, Connecticut, District of Columbia, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, and West Virginia. See *infra* Appendix and Table II.

43. Twenty-seven states do have statutes which specifically include such coverage: Alaska, California, Colorado, Connecticut, District of Columbia, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, and West Virginia.

denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."<sup>44</sup> While this language does not explicitly list "services" discrimination, we assume that a state court would interpret it broadly and therefore imply such coverage.<sup>45</sup>

Three states, however, do not have a broad public accommodation statute that applies to discrimination on the basis of disability.<sup>46</sup> Hence, it is not possible for a court to find a nondiscrimination policy in the provision of state services in those states.

The remaining seventeen states have public accommodation statutes that do not clearly state whether they apply to services.<sup>47</sup> In eight of those states, the public accommodation statute does not apply to the state, so whether it applies to services discrimination is not relevant to the present inquiry.<sup>48</sup>

Of the remaining nine states where coverage of services was ambiguous, courts have interpreted two of the statutes to only apply to "places" or "physical structures." Specifically, in *Fell v. Spokane Transit Authority*,<sup>49</sup> the Washington Supreme Court held that the state's public accommodations statute did not apply to paratransit services.<sup>50</sup> The statute at issue prohibited any person from committing an act which "directly or indirectly results in any distinction, restriction, or discrimination, . . . in any place of public resort, accommodation, assemblage, or amusement" because of an individual's disability.<sup>51</sup>

The parties agreed that public transit was a "public accommodation," and the plaintiffs argued that the relevant "place" of public accommodation was the transit authority's entire service area.<sup>52</sup> The court rejected this argument, saying that the statutory language "ma[de] it

---

44. 29 U.S.C. § 794(a) (1999 & Supp. 2001). Those states are: Hawaii, Louisiana, Massachusetts, and Virginia. See *infra* Table II for the language of the statutes.

45. This assumption is based on § 508 of the Rehabilitation Act which defines "program or activity" as "all of the operations" of a governmental entity. 29 U.S.C. § 794(b)(1)(B) (1999). We believe that states that have adopted language similar to section 504 would look to the definitions for that section found in the federal statute.

46. Those states are: Indiana, Tennessee and Wyoming. Tennessee and Wyoming have public accommodation statutes but those statutes do not apply to disability. Indiana has a general statement of public policy that applies to some types of state programs—education, employment and public conveniences and accommodations. That language is narrower than the language found in the other states' public accommodation statutes.

47. Those states are: Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Maryland, Mississippi, Nebraska, New Jersey, New York, Ohio, Texas, Utah, Washington, and Wisconsin. See *infra* Appendix and Table II.

48. Those states are: Alabama, Arkansas, Delaware, Georgia, Idaho, Mississippi, Nebraska, and Utah. See *infra* Appendix and Table II.

49. 911 P.2d 1319 (Wash. 1996).

50. *Fell*, 911 P.2d at 1332.

51. WASH. REV. CODE ANN. § 49.60.215 (West 1985).

52. *Fell*, 911 P.2d at 1329.

very clear that the reach of the statute extends to places and facilities, *not services*.”<sup>53</sup> It noted that “Titles II and III of the ADA . . . distinguish services from places of public accommodation,” and further stated:

What must be very clear . . . is that the [state] statutory mandate to provide access to places of public accommodation is not a mandate to provide services. While entitlement to services may be in the ADA, the Legislature has not enacted a counterpart to the ADA in Washington creating such entitlements.<sup>54</sup>

A federal court interpreting an Ohio statute reached a similar conclusion.<sup>55</sup> The Ohio statute forbids discrimination in “the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.”<sup>56</sup> A patient sued a medical clinic under this statute when it refused to provide a sign language interpreter during marital counseling services. The clinic argued that the Ohio Civil Rights Commission’s regulations interpreting this section “prohibit[] a facility that is a place of public accommodation from engaging in affirmative acts discrimination against the handicapped, but does not require such facilities to ‘accommodate’ a handicap *beyond making modifications to physical structures*.”<sup>57</sup> The court agreed:

Unlike the implementing regulations for the ADA and the Rehabilitation Act, nothing in [the state regulations] requires a place of public accommodation to provide auxiliary aids . . . . Rather, . . . the regulation requires, as an accommodation, some modification of the relevant facilities and identifies various structural considerations.<sup>58</sup>

---

53. *Id.*

54. *Id.* (citations omitted). A federal district court reached a similar conclusion in a case brought under both the ADA and the Washington Law Against Discrimination. *Matthews v. NCAA*, 79 F. Supp. 2d 1199 (E.D. Wash. 1999). The court noted that the parties’ briefs in the case ignored the state statute and focused on the ADA’s applicability and requirements, but stated that “this provision is similar to the relevant portion of the ADA, and many of the concerns raised by application of the ADA also apply to the Washington statute.” *Matthews*, 79 F. Supp. at 1203 n.2. In *Matthews*, the plaintiff argued that a place of public accommodation “includes not only physical structures and locations, but also services and other intangibles.” *Id.* at 1205. The court rejected this argument, stating that “[t]raditionally, places of public accommodation are considered to be physical ‘places.’” *Id.* (citing *Elitt v. USA Hockey*, 922 F. Supp. 217, 223 (E.D. Mo. 1996)). See also *Brown v. 1995 Toner ParaAmerica Bicycle Challenge*, 959 F. Supp. 496, 499 (N.D. Ill. 1997); *Stoutenborough v. Nat’l Football League, Inc.*, 59 F.3d 580, 583 (6th Cir. 1995).

55. *Davis v. Flexman*, 109 F. Supp. 2d 776 (S.D. Ohio 1999).

56. OHIO REV. CODE ANN. § 4112.02(G) (West 2001).

57. *Davis*, 109 F. Supp. 2d at 796 (emphasis added).

58. *Id.* at 797-98. Courts interpreting the “public accommodations” provision of Title III of



Nonetheless, a federal district court in New Jersey interpreted New Jersey's state law (which is similar to Ohio's) to include services discrimination.<sup>59</sup>

A second problem with state public accommodation statutes is determining whether they apply to the state itself. Of the twenty-seven states which specifically ban discrimination in *services* to individuals with disabilities, three have statutes which do not clearly indicate that the rule against discrimination applies to the state.<sup>60</sup> In California, the only legal authority we were able to find was contrary to implied coverage of the State. California's public accommodation statute—the Unruh Civil Rights Act—states that people with disabilities are “entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all *business establishments* of every kind whatsoever.”<sup>61</sup> In *Black v. Department of Mental Health*,<sup>62</sup> the trial court held that the State was not covered under the Unruh Act because it was not a “business establishment.” Black, the administrator of the estate of a long-term mental patient, argued on appeal that “the [Unruh] Act did away with any such limitation by incorporating the ADA in its entirety, including provisions which applied to public entities.”<sup>63</sup> The appellate court, however, said that it need not resolve this issue because it could affirm on a different ground. Accordingly, it is still an open question whether the State of California is covered under the Unruh Act.<sup>64</sup>

In other states, however, the absence of specific mention of the state in a public accommodation statute might be interpreted narrowly

---

the ADA have also held that it only applies to access to physical structures. See, e.g., *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 613 (3d Cir. 1998); *Parker v. Metro. Life Ins. Co.*, 121 F.3d 1006, 1010-11 (6th Cir. 1997). But see *Carparts Distrib. Ctr. v. Automotive Wholesalers Ass'n of New England*, 37 F.3d 12, 19 (1st Cir. 1994). The First Circuit stated that:

The plain meaning of the terms do not require “public accommodations” to have physical structures for persons to enter. Even if the meaning of “public accommodation” is not plain, it is, at worst, ambiguous. This ambiguity, considered together with agency regulations and public policy concerns, persuades us that the phrase is not limited to actual physical structures.

*Carparts Distrib. Ctr.*, 37 F.3d at 19. See also *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 32 (2d Cir. 1999), *amended on denial of rehearing*, 204 F.3d 392 (2d Cir. 2000). The *Pallozzi* court noted that:

Title III's mandate that the disabled be accorded “full and equal enjoyment of the goods, [and] services . . . of any place of public accommodation,” suggests to us that the statute was meant to guarantee them more than mere physical access.

*Pallozzi*, 198 F.3d at 32 (footnotes omitted) (quoting 42 U.S.C. § 12182(a)(1994)).

59. See *D.B. v. Bloom*, 896 F. Supp. 166 (D. N.J. 1995) (interpreting a New Jersey statute, which forbids a public accommodation from withholding advantages or privileges on the basis of disability, to forbid discrimination in the provision of dental services).

60. These states are: California, Oregon, and Vermont. See *infra* Table II.

61. CAL. CIV. CODE § 51 (1982) (emphasis added).

62. 100 Cal. Rptr. 2d 39, 42 (Cal. Ct. App. 2000).

63. *Black*, 100 Cal. Rptr. 2d at 42 n.4.

64. *Id.*

by a court.<sup>65</sup> Indeed, the Delaware State Attorney General's Office took the position that the state is not covered under the Delaware Equal Accommodations Law because it was not specifically included as a covered entity.<sup>66</sup> The statute's prohibition of discrimination provides that:

No *person* being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, color, sex, handicap or national origin, any of the accommodations, facilities, advantages or privileges thereof.<sup>67</sup>

The term "person" is not defined in the chapter, but another statute declares that it includes "corporations, companies, associations, firms, partnerships, societies and joint-stock companies, as well as individuals."<sup>68</sup> The Attorney General concluded that because the State was not mentioned in the equal accommodations law's definitions or other provisions "there is no manifest intent that the General Assembly intended to include the State" in its definition of "person."<sup>69</sup> Although this opinion letter is not binding legal authority, it is instructive for our present inquiry because the statutory ambiguity problem in the Delaware statute is similar to the ambiguity we found in Ohio, Oregon, Vermont, and Wisconsin. These states also have public accommodation statutes which do not specifically identify whether the state is covered.

Table II lists the states with respect to whether they prohibit services discrimination by the state government.<sup>70</sup> We found that twenty-

---

65. Those states include: Delaware, Ohio, Oregon, Vermont, and Wisconsin.

66. State of Delaware as a Party to an Equal Accommodation Complaint, Op. Del. Att'y Gen. No. 00-IB09, at 1 (May 30, 2000), available at 2000 WL 1092966, at \*1 (interpreting DEL. CODE ANN., tit. 6, §§ 4500-4512 (1999)).

67. DEL. CODE ANN., tit. 6, § 4504 (1999) (emphasis added).

68. DEL. CODE ANN., tit. 1, § 302(16) (2001).

69. State of Delaware as a Party to an Equal Accommodation Complaint, Op. Del. Att'y Gen. No. 00-IB09, at 3 (May 30, 2000), available at 2000 WL 1092966, at \*1. The Attorney General's Office, which noted that "other states have written their public accommodations statutes to include specifically State agencies and facilities," forwarded a copy of its opinion to the Governor "to pursue legislative changes necessary to include specifically the State and its agencies within the equal accommodations law." *Id.* at 2, 2000 WL 1092966, at \*1. It should be noted that Delaware does have another "public accommodation" law which states that "[t]he blind, the visually handicapped and the otherwise physically disabled shall have the same rights as able-bodied persons to use streets, highways, sidewalks, walkways, public buildings, public facilities and other public places." DEL. CODE ANN., tit. 16, § 9502(a) (1997). This statute does not mention "services" and the only enforcement mechanism is a misdemeanor which would not apply to the state. *Id.* § 9504.

70. Some states prohibit discrimination in public accommodations but not by the state itself. For example, the Arkansas Civil Rights Act of 1993 bars discrimination in "[t]he right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement." ARK. CODE ANN. § 16-123-107(a)(2) (Michie Supp. 2001). Yet, it also specifically states that "[n]othing in this subchapter

nine states had coverage equivalent to ADA Title II by virtue of express language, implied statutory language, or case law. If a state adopted Section 504's language, then we concluded that services discrimination could reasonably be expected to be covered. In light of the negative precedent found in California, and the narrow interpretation offered by the Delaware Attorney General, however, we have indicated that it is "unclear" if a state is covered under a "public accommodation" law unless it is specifically identified in the statute. Similarly, if a state statute failed to explicitly mention whether "services" are covered, we have described the status of those states as "unclear" in light of the adverse precedent interpreting the Ohio and Washington statutes.

Table II:<sup>71</sup> Scope of Nondiscrimination Statutes – Services Discrimination

State	Services Covered	State Covered	Comments
Alabama	Unclear	No	public accommodation statute does not mention "services" discrimination and only remedy is misdemeanor which would not be applicable to the state
Alaska	Yes	Yes	
Arizona	Unclear	Yes	statute updated after passage of ADA to parallel its protections but no specific reference to "services"
Arkansas	Unclear	No	public accommodation statute does not mention "services" discrimination and only remedy is misdemeanor which would not be applicable to the state; state civil rights act does not mention "services" discrimination and bars recovery against state
California	Yes	Unclear	provides for nondiscrimination in services at "business establishments;" court declined to rule whether the statute applies to the state; <i>Black v. Dept. of Mental Health</i> , 100 Cal. Rptr. 2d 39, 42 n.4 (2000)
Colorado	Yes	Yes	
Connecticut	Yes	Yes	

shall be construed to waive the sovereign immunity of the State of Arkansas." *Id.* § 16-123-104.

71. The material supporting Table II can be found in the Appendix *infra*.

State	Services Covered	State Covered	Comments
Delaware	Unclear	No	Attorney General Opinion states that state and political subdivisions not covered under Delaware Equal Accommodations Law; a separate "public accommodation" statute does not mention "services" discrimination and only remedy is misdemeanor which would not be applicable to the state
D.C.	Yes	Yes	
Florida	Unclear	Yes	prohibits discrimination at place of "public accommodation" but does not specifically mention "services" discrimination
Georgia	Unclear	No	public accommodation statute does not mention "services" discrimination and only remedy is misdemeanor which would not be applicable to the state
Hawaii	Yes (by reasonable implication)	Yes	Adopts language based on Section 504: "No otherwise qualified individual in the state shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by State agencies, or under any program or activity receiving State financial assistance." No mention of "services" discrimination but reasonably implied.
Idaho	Unclear	No	public accommodation statute does not mention "services" discrimination and only remedy is misdemeanor which would not be applicable to the state
Illinois	Yes	Yes	
Indiana	No	Yes	"It is the public policy of the state to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations . . . and to eliminate segregation and separation based solely on . . . disability." Some services specified as covered but no general services language.
Iowa	Yes	Yes	
Kansas	Yes	Yes	

State	Services Covered	State Covered	Comments
Kentucky	Yes	Yes	
Louisiana	Yes (by reasonable implication)	Yes	Adopts language based on Section 504: person with a disability cannot be "excluded from participating in, or denied the benefits of, any program or activity which receives financial assistance from the state or any of its political subdivisions;" no explicit mention of "services" discrimination but reasonably implied
Maine	Yes	Yes	
Maryland	Unclear	Yes	unlawful to deny any person "the accommodations, advantages, facilities or privileges" of any place of public accommodation;" "public accommodation" defined as "a public or private entity;" no mention of "services" discrimination; only the State Civil Rights Commission can seek relief; no private right of action; separate statute bars discrimination in public accommodations against "blind or the visually handicapped and the deaf or hearing impaired," but it is not clear if this covers state and enforcement is misdemeanor or action for injunctive relief
Massachusetts	Yes (by reasonable implication)	Yes	Adopts language based on Section 504: state Constitution states that "No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth." MASS. CONST. amend. art. 114.  Chapter 272, section 98 creates the right to a public accommodation as a civil right. No explicit mention of "services" discrimination but reasonably implied under State constitution.
Michigan	Yes	Yes	
Minnesota	Yes	Yes	
Mississippi	Unclear	No	public accommodation statute does not mention "services" discrimination and only remedy is misdemeanor which would not be applicable to the state
Missouri	Yes	Yes	



State	Services Covered	State Covered	Comments
Montana	Yes	Yes	
Nebraska	Unclear	No	services discrimination not specified in public accommodation statute; only misdemeanor penalty which is not applicable against the state
Nevada	Yes	Yes	
New Hampshire	Yes	Yes	
New Jersey	Yes (by case law)	Yes	public entities not specifically listed as a type of public accommodation but seem to be covered by implication; statute does not specifically cover services; instead it mentions "advantages, facilities and privileges of any place of public accommodation"; case law interprets statutes to include services, <i>D.B. v. Bloom</i> , 896 F. Supp. 166 (D. N.J. 1995).
New Mexico	Yes	Yes	
New York	Unclear	Yes, but incomplete	public accommodation statute does not explicitly cover "services" discrimination; exempts educational institutions and public libraries
North Carolina	Yes	Yes	
North Dakota	Yes	Yes	
Ohio	No (by case law)	Unclear	unlawful to deny any person "the accommodations, advantages, facilities or privileges" of any place of public accommodation; not clear whether definition of public accommodation includes the state; statute has been interpreted not to include provision of services. <i>Davis v. Flexman</i> , 109 F. Supp. 2d 776, 797 (S.D. Ohio 1999); state law does prohibit disability discrimination at places of higher education
Oklahoma	Yes	Yes	
Oregon	Yes	Unclear	public accommodation covers "services" but does not specifically list public entities as a type of public accommodation
Pennsylvania	Yes	Yes	
Rhode Island	Yes	Yes	

State	Services Covered	State Covered	Comments
South Carolina	Yes, but narrow definition of disability	Yes	definition of disability does not include mental illness and only includes impairments that appear "reasonably certain to continue throughout the lifetime of the individual without substantial improvement"
South Dakota	Yes	Yes	
Tennessee	No	No	public accommodation statute does not include disability
Texas	Unclear	Yes	persons with disabilities have the same right as the able-bodied to the full use and enjoyment of any public facility in the state; no mention of services
Utah	Unclear	No	general public accommodation statute does not include disability; separate statute on disability rights does not mention "services" and only provides misdemeanor penalty which is not applicable against the state
Vermont	Yes	Unclear	covers "services" discrimination at place of public accommodation; not clear whether state is covered under the definition of public accommodation but reference to schools as being covered suggests coverage of public entities
Virginia	Yes (by reasonable implication)	Yes	Adopts language based on Section 504: "No otherwise qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial assistance or under any program or activity conducted by or on behalf of any state agency."
Washington	No (by case law)	Yes	"What must be very clear . . . is that the statutory mandate to provide access to places of public accommodation is not a mandate to provide services." <i>Fell v. Spokane Transit Authority</i> , 911 P.2d 1319, 1329 (Wash. 1996).
West Virginia	Yes	Yes	

State	Services Covered	State Covered	Comments
Wisconsin	Unclear	Unclear	unlawful for a place of public accommodation to "[d]eny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of . . . disability;" the definition of "public accommodation" does not specify that it covers state facilities
Wyoming	No	No	state only has a public facilities statute; does not have a public services statute and general public accommodation statute does not apply to disability

### C. Relief

No matter how broad the coverage of state statutes prohibiting disability discrimination, their effectiveness may be limited if they cannot be enforced by those with the greatest incentive to do so—individuals with disabilities who have been harmed by discrimination. In enacting the ADA, Congress was aware that "[c]ivil right laws depend heavily on private enforcement"<sup>72</sup> and that the "inclusion of penalties and damages is the driving force that facilitates voluntary compliance."<sup>73</sup> Two enforcement problems exist with the state statutes: (1) nine states have no enforcement mechanism at all against the state;<sup>74</sup> and (2) seven other states provide for enforcement against the state but limit remedies that would be available under ADA Title II.<sup>75</sup> Hence, relief is equivalent to ADA Title II in thirty-five of fifty-one states.

We consider the nine states with no private enforcement mechanism against the state to have antiquated disability laws.<sup>76</sup> These states allow

72. *Testimony on the Americans with Disabilities Act of 1989*, Staff of the House Subcomm. on Select Educ. of the Comm. on Educ. and Labor, 101st Cong. 928 (1990) (statement of Howard Wolf, Partner, Fulbright & Jaworski). Mr. Wolf continued:

Provisions such as the right to attorney's fees, injunctive relief and damages are essential to provide private citizens a meaningful opportunity to vindicate their rights. Attempts to weaken the remedies available under the ADA are attacks on the ADA itself, and their success would make the ADA an empty promise of equality.

*Id.*

73. S. REP. NO. 101-116, at 15 (1989).

74. Those states are: Alabama, Arkansas, Georgia, Idaho, Mississippi, Nebraska, Tennessee, Utah, and Wyoming. See *infra* Appendix.

75. Those states are: Colorado, Florida, Kansas, Maryland, Nevada, North Carolina and South Carolina. See *infra* Appendix.

76. Although we have not included Delaware on this list, it arguably belongs there. While

no more than a misdemeanor remedy or enforcement by the state fire marshal for public accommodation or public facility discrimination, thereby making no private remedy available against the state.

Alabama is a prime example of a state that has an antiquated statutory scheme and needs to strengthen its state laws on disability discrimination by allowing for private enforcement. The Alabama statute mandating accessibility in state buildings and facilities<sup>77</sup> charges the State Fire Marshal with enforcing the standards.<sup>78</sup> The fire marshal has the power to order that the building conform with the accessibility standards and "[s]uch order may be appealed and enforced in the same manner prescribed for appealing and enforcing the Fire Marshal's orders relative to the elimination of fire hazards."<sup>79</sup> The right to appeal, however, applies only to the "owner or occupant of such building or premises."<sup>80</sup>

Alabama's public accommodation statute states a general policy "to encourage and enable" full participation "in the social and economic life of the state and to engage in remunerative employment" which is limited to the "blind, visually handicapped and the otherwise physically disabled."<sup>81</sup> More specifically, the statute then provides the right of the "blind, the visually handicapped and the otherwise physically disabled" to have the "full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities and other public places."<sup>82</sup> It also provides the right of the "blind, the visually handicapped and the otherwise physically disabled" to the "full and equal accommodations, advantages, facilities and privileges of . . . public conveyances or modes of transportation, and hotels, lodging places, places of public accommodation, amusement or resort and other places to which the general public is invited."<sup>83</sup> Finally, it provides the right of a person who is "totally or partially blind" to use an assistive animal without being required to pay an extra charge.<sup>84</sup>

---

Delaware does permit a private cause of action to enforce its public facilities rule, it only provides a misdemeanor remedy to enforce its public accommodation statute. See DEL. CODE ANN. tit. 16, § 9504 (1997) (public facilities remedies); DEL. CODE ANN. tit. 29, § 7310(d) (1997) (public accommodation remedies).

77. ALA. CODE § 21-4-4 (1975).

78. *Id.* § 21-4-7.

79. *Id.*

80. *Id.* § 36-19-12; see *id.* § 36-19-13.

81. ALA. CODE § 21-7-1 (1975) ("It is the policy of this state to encourage and enable the blind, the visually handicapped and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment.").

82. *Id.* § 21-7-2.

83. *Id.* § 21-7-3.

84. *Id.* § 21-7-4. In addition, there is a "white cane law." *Id.* § 21-7-6. For further discussion of white cane laws, see Adam Milani, *Living in the World: A New Look at the Disabled in the Law of Torts*, 48 CATH. U. L. REV. 323, 350-52 (1999).

The penalty for violating these rules is a misdemeanor conviction. Enforcement through a misdemeanor penalty, however, would not apply to the state because neither the state attorney general nor a local prosecutor can charge a fellow state agency with a criminal violation.<sup>85</sup> Thus, under Alabama law there is no private cause of action for compensatory damages stemming from disability discrimination outside the employment arena.<sup>86</sup> Accordingly, although Patricia Garrett could have brought her claim for employment discrimination under state law, she could not have brought a claim of discrimination against the state for a discriminatory denial of services or access to facilities.

The Alabama public accommodation statute's limitation to "physical disabilities" also would appear to preclude coverage of many individuals who are covered under federal disability laws. Discrimination based on psychiatric and learning disabilities now make up over thirteen percent of EEOC charges.<sup>87</sup> Neither of these disabilities would appear to

---

85. See also ARK. CODE ANN. § 20-14-302 (Michie 2000) (stating that a violation of accessibility policy is a misdemeanor); GA. CODE ANN. § 30-3-8 (2001) (stating that violating accessibility statute or failing or refusing to comply with a "regulation promulgated under this chapter" is a misdemeanor); *id.* § 30-4-4 (stating that violating a public accommodation statute is a misdemeanor; punishment can either be a fine not to exceed \$2,000.00, imprisonment for not more than 30 days, or both).

It should be noted that merely providing for a misdemeanor penalty may also preclude private enforcement of an accessibility requirement. In *Reilly v. Alcan Aluminum Corp.*, 528 S.E.2d 238, 240 (Ga. 2000), the court held that an employee did not have a private remedy under the state statute which makes age discrimination a misdemeanor. The court reasoned that:

[W]hen the General Assembly enacted Georgia's age discrimination statute in 1971, it did not provide a civil remedy, but instead only provided for criminal misdemeanor penalties. The failure to provide a civil remedy in § 34-1-2 is significant considering that the General Assembly has created specific civil remedies in other areas of employer action against employees and considering that the General Assembly is presumed to have enacted the statute with knowledge that under existing law, the employee-at-will doctrine precluded employees from bringing a tort action against their employers for wrongful discharge. Because the inability of an at-will employee to sue in tort for wrongful discharge is a fundamental statutory rule governing employer-employee relations in Georgia; because the General Assembly did not specifically provide a civil action as a remedy when enacting Georgia's age discrimination statute, although it has specified such remedies in other areas of employer-employee relations; and because the specific provisions of §§ 34-7-1 and 34-1-2 must control over the more general tort provisions of §§ 51-1-6 and 51-1-8, we conclude that the General Assembly did not intend for age-discrimination to provide the basis for a tort of wrongful discharge in this State.

*Reilly*, 528 S.E.2d at 240 (footnotes and citations omitted) (emphasis added).

86. Alabama apparently provides for damages for disability discrimination in employment through a regulation. ALA. ADMIN. CODE r. 670-x-4-.03 (1982) (allowing State Personnel Board to "order appropriate corrective action").

87. For EEOC charges filed under the ADA between July 26, 1992 and September 30, 1999, the alleged impairments included depression (6.2%); manic depressive disorder (1.6%), schizophrenia (0.3%), other psychological disorders (3.9%) and learning disabilities (1.5%). *Cumulative ADA Charge Data - Receipts*, at <http://www.eeoc.gov/stats/ada-receipts.html> (last visited Sept. 17, 2001). In addition, the national clearinghouse on postsecondary education for individuals with disabilities, noted that 9% of college freshmen in 1998 (154,520 students) reported having a disability. Among that group, 41% had a learning disability. American Council on



be covered under Alabama law.

Maryland permits no private enforcement actions; only the state civil rights commission can enforce its public accommodation statute.<sup>88</sup> Limited protection also exists in Colorado and North Carolina, because no compensatory damages are permitted against the state.<sup>89</sup> Four states cap damages in some way. Florida limits damages to \$100,000 per plaintiff.<sup>90</sup> Nevada's limit is \$50,000.<sup>91</sup> Kansas limits damages for pain, suffering, and humiliation to \$2,000 in orders by the Civil Rights Commission.<sup>92</sup> South Carolina allows injured persons to seek injunctive relief or civil damages but caps damages at \$5,000.<sup>93</sup> Courts interpreting ADA Title II, however, have required a showing of intentional discrimination to recover such damages,<sup>94</sup> so these damage caps may not be a significant limit on private enforcement. Nonetheless, sixteen states offer less relief than is provided under the language of ADA Title II.<sup>95</sup>

---

Education, 2001 *College Freshman with Disabilities: A Biennial Statistical Profiles*, at <http://www.acenet.edu/bookstore/pdf/CollegeFresh.pdf> (last visited Sept. 17, 2001).

88. *Johnston v. Tufton Group, Inc.*, No. CIV. L-99-144, 2001 WL 210046 (D. Md. Feb. 28, 2001); *Dillon v. Great Atl. Pac. Tea Co.*, No. D-2491, 1978 WL 3435 (Md. Cir. Ct. Nov. 13, 1978).

89. North Carolina's public accommodation statute is limited to declaratory and injunctive relief. N.C. GEN. STAT. § 168A-11 (1999). The Colorado Governmental Immunity Act (CGIA) has a strong policy with respect to sovereign immunity protection. COLO. REV. STAT. ANN. § 24-10-102 (West 2001). This policy bars compensatory damages against the state, but a court recently ruled that it does not provide the government immunity from claims for relief under the Colorado Civil Rights Act when such claims are not based on providing compensatory relief to individuals but instead focus on the anti-discrimination purposes of the statute. *City of Colorado Springs v. Conners*, 993 P.2d 1167, 1171 (Colo. 2000). Accordingly, it allowed claims for reinstatement and back pay asserted against a city by a former employee, stating they were not actions that lay in tort, or could lie in tort, but were best characterized as equitable and non-compensatory in nature; therefore the CGIA neither provided immunity for those actions nor subjected the employee to that statute's notice requirements. *Conners*, 993 P.2d at 1175-76.

90. FLA. STAT. ANN. § 768.28 (West 1994 & Supp. 2000).

91. NEV. REV. STAT. ANN. § 41.031(1) (Michie 1996).

92. KAN. STAT. ANN. § 44-1005 (2000).

93. S.C. CODE ANN. § 43-33-540 (Law Co-op. 1976).

94. See generally *supra* note 21.

95. Additionally, some states did not permit punitive damages against the state. Because punitive damages may not be available under ADA Title II, we did not consider that fact to cause a state to offer fewer remedies than are available under ADA Title II. See *Harrelson v. Elmore County*, 859 F. Supp. 1465, 1468-69 (M.D. Ala. 1994) (noting that Title II does not provide for punitive damages on its face and stating that Congress's express provision of punitive damages under Title I of the ADA counseled against a statutory construction that punitive damages are available under Title II). However, as noted above ADA Title II adopts the remedies and procedures found in the Rehabilitation Act of 1973. See generally *supra* note 21. Courts are split on the availability of punitive damage claims under the Rehabilitation Act, but the majority allow them. See, e.g., *Pandazides v. Va. Bd. of Educ.*, 13 F.3d 823, 830 (4th Cir. 1994) (stating that the "full panoply of legal remedies are available" for a § 504 violation); *Gorman v. Easley*, 257 F.3d 738, 745-49 (8th Cir. 2001) (holding that punitive damages are available under the Rehabilitation Act and ADA Title II); *Hernandez v. Hartford*, 959 F. Supp. 125 (D. Conn. 1997) (holding that punitive damages are available under the Rehabilitation Act); *DeLeo v. Stamford*, 919 F. Supp. 70 (D. Conn. 1995); *Patricia N. v. Lemahieu*, 141 F. Supp. 2d 1243 (D. Hawaii

Table III records whether state statutes provide a private right of action for victims of discrimination by a state actor.<sup>96</sup> It does not distinguish between states based on the scope of the nondiscrimination protection. If a state only prohibits facility discrimination, but not services discrimination, and provides a private right of action, then it is listed as a "Yes" in the private right of action column.<sup>97</sup>

Table III:<sup>98</sup> Private Right of Action Against State

State	Private Right of Action	No Limit on Compensatory Damages	Comments
Alabama	No	No	
Alaska	Yes	Yes	
Arizona	Yes	Yes	
Arkansas	No	No	

2001); *Burns-Vidlak v. Chandler*, 980 F. Supp. 1144 (D. Hawaii 1997); *Filardi v. Loyola Univ.*, 1998 WL 111683 (N.D. Ill. Mar. 12, 1998); *Garrett v. Chicago School Reform Bd.*, No. 95 C 7341, 1996 WL 411319 (N.D. Ill. July 19, 1996); *Simenson v. Hoffman*, No. 95 C 1401, 1995 WL 631804 (N.D. Ill. Oct. 24, 1995); *Kilroy v. Husson College*, 959 F. Supp. 22 (D. Me. 1997); *Proctor v. Prince George's Hosp. Ctr.*, 32 F. Supp. 2d 820, 829-30 (D. Md. 1998); *Mild v. Mehlville Pub. Sch. Dist.*, 1995 WL 819138 (E.D. Mo. Sept. 18, 1995); *Zaffino v. Surles*, No. 91 CIV. 1637 (MGC), 1995 WL 146207 (S.D.N.Y. Mar. 31, 1995). *But see Doe v. County of Centre*, 242 F.3d 437, 457 (3d Cir. 2001) ("[W]e find that Title II of the ADA and Section 504 of the Rehabilitation Act lack any indicia of Congress' intent to override the settled common law immunity of municipalities from punitive damages."); *Moreno v. Consol. Rail Corp.*, 99 F.3d 782, 791 (6th Cir. 1996) (en banc) (holding that punitive damages are not available under the Rehabilitation Act); *accord*, *Winfrey v. City of Chicago*, 957 F. Supp. 1014 (N.D. Ill. 1997); *Dertz v. City of Chicago*, No. 94 C 542, 1997 WL 85169 (N.D. Ill. Feb. 24, 1997).

96. See *infra* Appendix for statutes.

97. An alternative form of litigation under state law would be to proceed under state constitutional law. Appendix A of the *Garrett* brief, *supra* note 1, identified five states with provisions in their constitutions regarding people with disabilities. Each of these states, however, already has a statutory provision allowing a private right of action so there would be no need to bring suit under the state constitutional provision. Moreover, two of these state constitutional provisions are narrowly-worded and do not offer coverage equal to that in ADA Title II. ILL. CONST. art. I, § 19 ("All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer."); LA. CONST. art. I, § 12 ("In access to public areas, accommodations, and facilities, every person shall be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition."). The other state constitutional provisions are worded more broadly. Conn. CONST. art. I, § 20 ("No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability."); MASS. CONST. amend. art. 114 ("No otherwise qualified handicapped individual shall, solely by reason of his handicap, [be] excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth."); R.I. CONST. art. I, § 2 ("No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state.").

98. The material supporting Table III can be found in the Appendix *infra*.

State	Private Right of Action	No Limit on Compensatory Damages	Comments
California	Yes	Yes	
Colorado	Yes	No	probably only injunctive relief; no compensatory damages available
Connecticut	Yes	Yes	
D.C.	Yes	Yes	
Delaware	Yes	Yes	private right of action for facilities discrimination but not for public accommodation discrimination
Florida	Yes	No	\$100,000 limit per plaintiff in actions against state
Georgia	No	No	
Hawaii	Yes	Yes	
Idaho	No	No	
Illinois	Yes	Yes	
Indiana	Yes	Yes	
Iowa	Yes	Yes	
Kansas	Yes	No	\$2,000 limit for pain, suffering, and humiliation award before Civil Rights Commission
Kentucky	Yes	Yes	
Louisiana	Yes	Yes	
Maine	Yes	Yes	\$10,000 fine also available
Maryland	No	No	only Civil Rights Commission can enforce; <i>Dillon v. Great Atl. Pac. Tea Co.</i> , No. D-2491, 1978 WL 3435 (Md. Cir. Ct. Nov. 13, 1978)
Massachusetts	Yes	Yes	
Michigan	Yes	Yes	
Minnesota	Yes	Yes	punitive damages limited to \$8,500
Mississippi	No	No	misdemeanor conviction which would not apply to the state
Missouri	Yes	Yes	
Montana	Yes	Yes	
Nebraska	No	No	
Nevada	Yes	No	\$50,000 limit on damages in tort actions against the state
New Hampshire	Yes	Yes	\$10,000 civil penalty also available

State	Private Right of Action	No Limit on Compensatory Damages	Comments
New Jersey	Yes	Yes	
New Mexico	Yes	Yes	
New York	Yes	Yes	
North Carolina	Yes	No	relief limited to declaratory and injunctive relief
North Dakota	Yes	Yes	injunctive and equitable relief available
Ohio	Yes	Yes	private right of action may be available if state covered but it is not clear that state is even covered
Oklahoma	Yes	Yes	
Oregon	Yes	Yes	
Pennsylvania	Yes	Yes	
Rhode Island	Yes	Yes	
South Carolina	Yes	No	relief limited to \$5,000
South Dakota	Yes	Yes	
Tennessee	No	No	public accommodation statute does not even apply to the state
Texas	Yes	Yes	cause of action limited to "full use or enjoyment of any public facility or conveyance"
Utah	No	No	only remedy is misdemeanor remedy that would not apply to the state
Vermont	Yes	Yes	
Virginia	Yes	Yes	
Washington	Yes	Yes	
West Virginia	Yes	Yes	
Wisconsin	Yes	Yes	State statute requiring "public buildings" to be accessible includes private right of action
Wyoming	No	No	No private right of action; statutes pertaining to public accommodations do not apply to individuals with disabilities

*D. Attorney's Fees*

Even if a state allows a private right of action, the ability to assert that right may be limited if a person who has been discriminated against is unable to find an attorney to file an action. The availability of representation may depend in part on whether attorney's fees are available for a successful suit against the state. Moreover, the prospect of having to pay a prevailing plaintiff's attorney's fees often acts as an incentive for complying with a law.<sup>99</sup> We found, however, that attorney's fees are expressly provided for by statute in only thirty-four of fifty-one states.<sup>100</sup>

The importance of an attorney's fees provision was demonstrated in *Sutherland v. Nationwide General Insurance Co.*,<sup>101</sup> where the court refused to award fees to a plaintiff who sued under an Ohio law that created a private right of action for discrimination in the workplace. The statute provided that "[w]hoever violates this chapter is subject to a civil action for damages, injunctive relief, or any other appropriate relief."<sup>102</sup> The plaintiff contended that the language "any other appropriate relief" included attorney fee awards.<sup>103</sup> The court disagreed, citing *Sorin v. Warrensville Heights School District Board of Education*<sup>104</sup> where the Ohio Supreme Court rejected the argument that a statute's broad remedial language "impliedly permits a court to exercise its equitable powers in awarding attorney fees."<sup>105</sup> Instead, the *Sorin* court deferred to the legislature on the statutory authorization for recovery of

---

99. This is especially true for ADA Title II because, as noted above, courts have held that damages are available under it only for "intentional" discrimination, which can be very difficult to prove. See generally *supra* note 21. The importance of the availability of attorney's fees was emphasized recently in testimony before a Congressional committee regarding an attempt to amend ADA Title III, 42 U.S.C. §§ 12181-12189, which bars discrimination by public accommodations but does not allow actions for damages. For example, Christine Griffin, the Executive Director of the Disability Law Center, the designated protection and advocacy agency in Massachusetts and a member of the National Association of Protection and Advocacy Systems, stated that "the primary economic motivation to voluntarily comply with the law is the prospect of paying attorneys' fees to plaintiff's counsel if a Title III violation is proven." *The ADA Notification Act: Hearing on H.R. 3590 Before Subcomm. on the Constitution of the House Comm. on the Judiciary*, available at 2000 WL 19303717 (May 18, 2000) (statement of Christine Griffin). Similarly, Andrew Levy, a lawyer from Baltimore, said that "there is only one true incentive built in to the law" with respect to public accommodations—"the desire not to get sued and having to pay attorney's fees." *The ADA Notification Act: Hearing on H.R. 3590 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, available at 2000 WL 19303719 (May 18, 2000) (statement of Andrew D. Levy).

100. This conclusion covers the availability of fees under any disability discrimination statute regardless of whether it expressly covered the state.

101. 657 N.E.2d 281 (Ohio Ct. App. 1995).

102. *Sutherland*, 657 N.E.2d at 282 (quoting OHIO REV. CODE ANN. § 4112.99 (Baldwin 1995)) (emphasis added).

103. *Id.*

104. 347 N.E.2d 527, 528-29 (Ohio 1976).

105. *Sutherland*, 657 N.E.2d at 282.



attorney fees and "rejected the argument that public policy would be subverted if recovery of attorney fees were not permitted."<sup>106</sup>

The *Sutherland* court also deferred to the legislature. It noted that the legislature was "certainly aware of the method, means and procedure for legislating attorney fee shifting" because several anti-discrimination statutes expressly authorized recovery of attorney fees.<sup>107</sup> The court also rejected the plaintiff's attempt to use the "'private attorney general' doctrine because she constructively acted as a private attorney general by helping to end discrimination."<sup>108</sup> It noted that the United States Supreme Court had expressly rejected this doctrine in *Alyeska Pipeline Services Co. v. Wilderness Society*.<sup>109</sup>

Nonetheless, one might argue that courts sometimes have general equitable discretion to award attorney's fees. Not only is relying on such discretion problematic for an attorney who depends on fees to support herself, but it can be eliminated at the whim of the legislature. In Ohio, for example, plaintiffs' attorneys had a short-lived era in which they could obtain discretionary attorney's fees, but that court-made result was quickly overturned by the legislature.<sup>110</sup>

Table IV summarizes our results with respect to the availability of attorney's fees under state law.

---

106. *Id.*

107. *Id.* at 283.

108. *Id.*

109. 421 U.S. 240 (1975). Courts have also held that the New York State Human Rights Law does not provide for an award of attorney fees. *New York City Bd. of Educ. v. Sears*, 443 N.Y.S.2d 23, 25 (App. Div. 1981); *Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 913 (2d Cir. 1997).

110. See *Motorists Mut. Ins. Co. v. Brandenburg*, 648 N.E.2d 488 (Ohio 1995) (permitting attorney's fees at the court's discretion in a declaratory judgment action). However, shortly after this case was decided the legislature amended the statute at issue to state:

A court of record shall not award attorney's fees to any party on a claim for declaratory relief under this chapter unless a section of the Revised Code explicitly authorizes a court of record to award attorney's fees on a claim for declaratory relief under this chapter or unless an award of attorney's fees is authorized by section 2323.51 of the Revised Code, by the Civil Rules, or by an award of punitive or exemplary damages against the party ordered to pay attorney's fees.

OHIO REV. CODE ANN. § 2721.16 (Supp. 2001). The legislative history for this statute states, among other things, that it was intended to overrule *Brandenburg* and "[t]o recognize the holding of the Ohio Supreme Court in *Sorin v. Bd. of Edn.* (1976), 46 Ohio St.2d 177, 347 N.E.2d 527, and its progeny that Ohio follows the 'American Rule' under which an award of attorney's fees to a prevailing party in a civil action or proceeding generally must be based on an express authorization of the General Assembly." *Ohio Farmers Ins. Co. v. Coup*, No. S-00-005, 2000 WL 678833, at \*3 (Ohio App. 6th Dist. May 22, 2000) (quoting legislative history).

Table IV:<sup>111</sup> Attorney's Fees Available

State	Attorney's Fees Clearly Available	Comments
Alabama	No	
Alaska	Yes	
Arizona	Yes	
Arkansas	No	
California	Yes	
Colorado	No	
Connecticut	Yes	
Delaware	Yes	State statute requiring public facilities to be accessible permits attorney's fees
D.C	Yes	
Florida	Yes	
Georgia	No	
Hawaii	Yes	Limited to 25% of the damages award
Idaho	No	
Illinois	Yes	
Indiana	Yes	
Iowa	Yes	
Kansas	No	No express provision for attorney's fees although other state civil rights provisions do contain such language. <i>See, e.g.</i> , KAN. STAT. ANN. § 44-1021(4) (2000) (housing discrimination).
Kentucky	Yes	
Louisiana	Yes	
Maine	Yes	
Maryland	No	
Massachusetts	Yes	
Michigan	Yes	
Minnesota	Yes	
Mississippi	No	
Missouri	Yes	
Montana	Yes	
Nebraska	No	
Nevada	Yes	
New Hampshire	Yes	

---

111. The material supporting Table IV can be found in the Appendix *infra*.

State	Attorney's Fees Clearly Available	Comments
New Jersey	Yes	
New Mexico	Yes	
New York	No	Case law interprets statute as not permitting attorney's fees. <i>New York City Bd. of Educ. v. Sears</i> , 443 N.Y.S.2d 23, 25 (App. Div. 1981).
North Carolina	Yes	
North Dakota	Yes	
Ohio	No	Court found lack of an attorney's fees provision to preclude award of fees to a plaintiff who sued under an Ohio law which created a private right of action for discrimination in the workplace. <i>Sutherland v. Nationwide Gen. Ins. Co.</i> , 657 N.E.2d 281 (Ohio Ct. App. 1995).
Oklahoma	Yes	
Oregon	Yes	
Pennsylvania	Yes	
Rhode Island	Yes	
South Carolina	Yes	
South Dakota	Yes	
Tennessee	No	
Texas	No	
Utah	No	
Vermont	Yes	
Virginia	Yes	
Washington	Yes	
West Virginia	Yes	
Wisconsin	Yes	State statute requiring "public buildings" to be accessible allows for attorney's fees.
Wyoming	No	

### *E. Comparison to ADA Title II*

As noted above, the Supreme Court suggested in *Garrett* that its holding that ADA Title I claims against the states for monetary damages were barred in federal courts would have little effect because "state laws protecting the rights of persons with disabilities in employment and other aspects of life provide independent avenues of re-

dress."<sup>112</sup> However, the Court also acknowledged that "[a] number of these provisions . . . did not go as far as the ADA did in requiring accommodation."<sup>113</sup> Our study confirms the accuracy of this second statement—only a minority of states actually have statutory protection against disability discrimination in "other aspects of life" similar to that found in ADA Title II.<sup>114</sup>

### 1. Coverage Equivalent to ADA Title II

As reflected in Table V, only twenty-four of fifty-one states have disability discrimination statutes that appear comparable to ADA Title II.<sup>115</sup> Thus, about half of the states provide less protection than ADA Title II. If *Garrett* were extended to ADA Title II, the effect would be profound.

Although we have listed Connecticut as providing full protection against disability discrimination, its definition of disability is actually more narrow than the one found in the ADA.<sup>116</sup> Hence, we recommend that Connecticut amend its statute to provide broader coverage of individuals with disabilities.

### 2. Moderate Protection from State Disability Discrimination

Another sixteen states offer moderate protection from state disability discrimination.<sup>117</sup> These states clearly allow for a private right of action to enforce their disability laws, but there is (1) ambiguity in the scope of those statutes' coverage or (2) a limit on compensatory damages or attorney's fees.

Eight states have public accommodation statutes that might be interpreted to cover the state and provide adequate enforcement but do not explicitly state that they cover all "services" discrimination.<sup>118</sup> Because

---

112. *Bd. of Trs. of The Univ. of Ala. v. Garrett*, 531 U.S.356, 374 n.9 (emphasis added).

113. *Garrett*, 531 U.S. at 368 n.5.

114. 42 U.S.C. 12131 (1990).

115. These states are: Alaska, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Virginia, and West Virginia. We have included Connecticut on this list although its definition of disability is not as broad as that found in the ADA. See *infra* Appendix for statutes.

116. CONN. GEN. STAT. ANN. §§ 46a-71 (West 1995) provides that "[a]ll services of every state agency shall be performed without discrimination based upon . . . mental retardation, learning disability or physical disability, including, but not limited to, blindness." *Id.* (emphasis added).

117. These states are: Arizona, California, Colorado, Delaware, Florida, Indiana, Kansas, Nevada, New York, North Carolina, Oregon, South Carolina, Texas, Vermont, Washington, and Wisconsin.

118. These states are: Arizona, Florida, Indiana, New Jersey, New York, Texas, Washington,

these states already have a public accommodations statute, they could amend this statute by specifically covering services without major legislative overhaul. In addition, three states have statutes that might ban services discrimination but they do not explicitly cover the state.<sup>119</sup> One state has both problems.<sup>120</sup> These statutes could be amended by making explicit reference to the state.

Seven states might cover services discrimination by the state but have some limitations on compensatory damages or attorney's fees.<sup>121</sup> (Three of those states had some of the problems mentioned in the previous paragraph.)<sup>122</sup> These statutes could be amended by removing the limit on compensatory damages and by enacting an explicit attorney's fees provision.

### 3. *Limited Protection from State Disability Discrimination*

Eleven states have very limited protection against disability discrimination because there are few enforcement mechanisms available for what is often a narrowly-drafted disability discrimination statute.<sup>123</sup> Nine states have no enforcement mechanism at all against the state for public access discrimination.<sup>124</sup> Maryland permits no private enforcement actions; only the state civil rights commission can enforce its public accommodation statute.<sup>125</sup> Finally, Ohio has case law that specifically holds that "services" are not covered under its public accommodation statute<sup>126</sup> and that suggests that attorney's fees are not available to

---

and Wisconsin.

119. These states are: California, Oregon, and Vermont.

120. Delaware.

121. These states are: Colorado, Florida, Hawaii, Kansas, Nevada, North Carolina, and South Carolina. New York and Texas also do not provide for attorney's fees.

122. These states are: Colorado, Florida, and South Carolina.

123. These states are: Alabama, Arkansas, Georgia, Idaho, Maryland, Mississippi, Nebraska, Ohio, Tennessee, Utah, and Wyoming.

124. These states are: Alabama, Arkansas, Georgia, Idaho, Mississippi, Nebraska, Tennessee, Utah, and Wyoming.

125. *Johnston v. Tufton Group, Inc.*, No. Civ. L-99-144, 2001 WL 210046 (D. Md. Feb. 28, 2001); *Dillon v. Great Atl. Pac. Tea Co.*, No. D-2491, 1978 WL 3435 (Md. Cir. Ct. Nov. 13, 1978). No compensatory damages are permitted against the state in Colorado and North Carolina. However, courts interpreting ADA Title II have required a showing of intentional discrimination to recover such damages. See generally *supra* note 21. Accordingly, we have kept those states in the "limited" coverage category. Florida limits damages to \$100,000 per plaintiff. FLA. STAT. ANN. Ch. 768.28 (Harrison 1994). That limit, however, was much higher than the limit found in other states with limits and is probably higher than nearly all plaintiffs would obtain for such actions. The same is true of Nevada's \$50,000 limit. NEV. REV. STAT. ANN. §§ 41.031(1), 41.035(1) (Michie 1996). South Carolina allows injured persons to seek injunctive relief or civil damages but caps damages at \$5000. S.C. CODE ANN. § 43-33-540 (Law. Co-op 1975). Similarly, Kansas limits damages for pain, suffering and humiliation to \$2000 in orders by the Civil Rights Commission. KAN. STAT. ANN. § 44-1005 (2000). We did not consider these limits to reflect a significant enforcement problem.

126. *Davis v. Flexman*, 109 F. Supp. 2d 776, 797 (S.D. Ohio 1999) (holding that a clinic was



enforce the public accommodations rule.<sup>127</sup> These states need a major legislative overhaul. As discussed more fully in the next section, we recommend that they use language found in the Michigan statute as a model for new legislation.

Table V summarizes our comparison between ADA Title II and the level of protection found in each state.

Table V:<sup>128</sup> Summary and Comparison to ADA Title II Coverage

State	Clearly Covers State "Facilities"	Clearly Covers "Services" Discrimination	Clearly Covers "State" in Services Discrim- ination Statute	Clear Private Right of Action	No Limit on Compensatory Damages	Clearly Provides Attor- ney's Fees	Overall Category
Alabama	Yes	Unclear	No	No	No	No	Limited
Alaska	Yes	Yes	Yes	Yes	Yes	Yes	Full
Arizona	Yes	Unclear	Yes	Yes	Yes	Yes	Moderate
Arkansas	Yes	Unclear	No	No	No	No	Limited
California	Yes	Yes	Unclear	Yes	Yes	Yes	Moderate
Colorado	Yes	Yes	Yes	Yes	No	No	Moderate
Connecticut	Yes	Yes	Yes	Yes	Yes	Yes	Full, but limited definition of disability
Delaware	Yes	Unclear	No	Yes	Yes	Yes	Moderate
D.C.	Yes	Yes	Yes	Yes	Yes	Yes	Full
Florida	Yes	Unclear	Yes	Yes	No, limit of \$100,000	Yes	Moderate

not required to provide the services of a sign language interpreter because "nothing in [the state statute] requires a place of public accommodation to provide auxiliary aids, such as an interpreter, for deaf individuals").

127. *Sutherland v. Nationwide Gen. Ins. Co.*, 657 N.E.2d 281 (Ohio Ct. App. 1995) (refusing to award fees to a plaintiff who sued under an Ohio law which created a private right of action for discrimination in the workplace, because the legislature did not specifically allow for such fees).

128. The material supporting Table V can be found in the Appendix *infra*.

State	Clearly Covers State "Facilities"	Clearly Covers "Services" Discrimination	Clearly Covers "State" in Services Discrimi- nation Statute	Clear Private Right of Action	No Limit on Compensatory Damages	Clearly Provides Attor- ney's Fees	Overall Category
Georgia	Yes	Unclear	No	No	No	No	Limited
Hawaii	Yes	Yes (by rea- sonable impli- cation)	Yes	Yes	Yes	Yes, with limits	Full but limit on attorney's fees
Idaho	Yes	Unclear	No	No	No	No	Limited
Illinois	Yes	Yes	Yes	Yes	Yes	Yes	Full
Indiana	Yes	Unclear	Yes	Yes	Yes	Yes	Moderate
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Full
Kansas	Yes	Yes	Yes	Yes	Yes, with limits on pain and suffering to \$10,000	No	Moderate
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes	Full
Louisiana	Yes	Yes (by rea- sonable impli- cation)	Yes	Yes	Yes	Yes	Full
Maine	Yes	Yes	Yes	Yes	Yes	Yes	Full
Maryland	Yes	Unclear	Yes	No	No	No	Limited
Massachusetts	Yes	Yes (by rea- sonable impli- cation)	Yes	Yes	Yes	Yes	Full
Michigan	Yes	Yes	Yes	Yes	Yes	Yes	Full
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes	Full
Mississippi	Yes	Unclear	No	No	No	No	Limited
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Full
Montana	Yes	Yes	Yes	Yes	Yes	Yes	Full

State	Clearly Covers State "Facilities"	Clearly Covers "Services" Discrimination	Clearly Covers "State" in Services Discrimi- nation Statute	Clear Private Right of Action	No Limit on Compensatory Damages	Clearly Provides Attor- ney's Fees	Overall Category
Nebraska	Yes	Unclear	No	No	No	No	Limited
Nevada	Yes	Yes	Yes	Yes	No, limited to \$50,000	Yes	Moderate to Full
New Hamp- shire	Yes	Yes	Yes	Yes	Yes	Yes	Full
New Jersey	Yes	Yes (by case law)	Yes	Yes	Yes	Yes	Full
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Full
New York	Yes	Unclear	Yes	Yes	Yes	No (case law)	Moderate
North Caro- lina	Yes	Yes	Yes	Yes	No	Yes	Moderate
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Full
Ohio	No	No (by case- law)	Unclear	Yes	Yes	No	Limited
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes	Full
Oregon	Yes	Yes	Unclear	Yes	Yes	Yes	Moderate
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	Full
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Full
South Caro- lina	Yes	Yes	Yes	Yes	No	Yes	Moderate
South Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Full
Tennessee	No	No	No	No	No	No	Limited
Texas	Yes	Unclear	Yes	Yes	Yes	No	Moderate
Utah	Yes	Unclear	No	No	No	No	Limited
Vermont	Yes	Yes	Unclear	Yes	Yes	Yes	Moderate

State	Clearly Covers State "Facilities"	Clearly Covers "Services" Discrimination	Clearly Covers "State" in Services Discrimi- nation Statute	Clear Private Right of Action	No Limit on Compensatory Damages	Clearly Provides Attor- ney's Fees	Overall Category
Virginia	Yes	Yes (by rea- sonable impli- cation)	Yes	Yes	Yes	Yes	Full
Washington	Yes	No	Yes	Yes	Yes	Yes	Moderate
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	Full
Wisconsin	No	Unclear	Unclear	Yes	Yes	Yes	Moderate
Wyoming	Yes	No	No	No	No	No	Limited

### III. PROPOSAL FOR REFORM

There are a number of ways to remedy this lack of protection at the state level if *Garrett* were extended to ADA Title II. A simple remedy would be for states to waive their sovereign immunity under Title II. Legislation to do so has passed in two states<sup>129</sup> and been introduced in several others. Some of these bills, however, are limited solely to the employment discrimination provisions of the ADA and other statutes.<sup>130</sup>

129. S.B. 550, 91st Gen. Assemb. (Mo. 2001) (amending Missouri Code chapter 537.617.1 to read as follows: "The state of Missouri hereby grants limited consent to be sued under the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., in the state courts for the state of Missouri. The state of Missouri does not consent to be sued under the Americans with Disabilities Act in federal courts."), *available at* <http://www.senate.state.mo.us/01info/billtext/intro/SB550.htm> (last visited Apr. 18, 2002); H.B. 898, 2001 Gen. Assemb. (N.C. 2001) (enacted) (amending North Carolina General Statutes section 143-300.35 and waiving sovereign immunity "for the limited purpose of allowing State employees, except for those in exempt policy-making positions . . . to maintain lawsuits in State and federal courts" under FLSA, ADEA, FMLA, and ADA).

130. *See, e.g.*, S.B. 1196, 2001-02 Reg. Sess. (Cal. 2001) (amended May 1, 2001) (waiving immunity from suit under the ADA as well as under Age Discrimination in Employment Act of 1967 (ADEA), Title VII of the Civil Rights Act of 1964 (Title VII), the Fair Labor Standards Act of 1938 (FLSA), and the Family and Medical Leave Act (FMLA)), *available at* <http://www.sen.ca.gov/> (last visited Apr. 18, 2002); S.B. 275, 141st Gen. Assemb. (Del. 2002) ("The Americans with Disabilities Act of 1990 [P.L. 101-336; 42 U.S.C. Sections 12101-12213] shall be enforceable against the State of Delaware and individuals may recover money damages by reason of the State's failure to comply with the provisions thereof."), *available at* <http://www.legis.state.de.us/BillTracking> (last visited Apr. 18, 2002); H.B. No. 3772, 92d Gen. Assemb. (Ill. 2002) (amending the State Lawsuit Immunity Act to provide that state employees may file a civil action for any conduct which would violate the ADEA, FMLA or ADA), *avail-*

If states are not willing to waive sovereign immunity under Title II, they can take action to strengthen their state laws. Alabama took a step toward this end when the Alabamians with Disabilities Act was passed by the Senate in 2001.<sup>131</sup> This statute would cover both facilities and services,<sup>132</sup> but remedies appear to be limited to injunctive relief: "in any civil action brought under this act that includes a claim against one or more state defendants, the court may award any equitable relief it deems appropriate, including attorney's fees and costs, as are recognized and authorized under Alabama law."<sup>133</sup> Unfortunately, the legislative session ended before the House could act on the bill, and it will not carry over until the next session.

Other states have broad statutes on disability discrimination that parallel ADA Title II. For example, Michigan's Persons with Disabilities Civil Rights Act<sup>134</sup> states:

Except where permitted by law, a person shall not:

---

able at <http://www.legis.state.il.us/legisnet/legisnet92/92gatoc.html> (last visited Apr. 18, 2002); S. File. No. 1614, 82d Reg. Sess. (Minn. 2001) (enacted May 22, 2001) (waiving immunity from suit under ADA Title I as well as under ADEA, FLSA, and FMLA), available at <http://www.leg.state.mn.us/leg/legis.htm> (last visited Apr. 18, 2002); Assembly 5971, 224th Annual Leg. Sess. (N.Y. June 7, 2001) (waiving immunity for "all claims, actions and proceedings brought pursuant" to the ADA); L.B. 1120, 97th Legis. (Neb. 2002) (providing that "state, governmental agencies, and political subdivisions may be sued . . . in the same manner as . . . suits against other employers" under ADA, Title VII, FLSA, FMLA and section 504), available at <http://www.unicam.state.ne.us/documents/bills.htm> (last visited Apr. 18, 2002); S.B. 2190, 2001-02 Legis. Sess. (R.I. Jan. 23, 2002) (consenting to suit under the FLSA, the Equal Pay Act of 1963, Title VI and VII of the Civil Rights Act of 1964, the Fair Housing Act of 1968, the Civil Rights Act, 42 U.S.C. §§ 1981-1988, the ADEA, Title IX of the Education Amendments of 1972, the ADA, the Rehabilitation Act of 1973, the The Religious Land Use and Institutionalized Persons Act of 2000, the FMLA, the Uniformed Services Employment and Reemployment Act of 1994, the Copyright Act of 1976, the Patent and Plant Variety Protection Remedy Clarification Act, and the "whistleblowing" provisions of the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Safe Drinking Water Act, the Solid Waste Disposal Act, and the Toxic Substances Control Act).

131. S.B. 435, 2001 Reg. Sess. (Ala. 2001), available at <http://alisd.b.legislature.state.al.us/acas/searchableinstruments/2001rs/bills/sb435.htm> (last visited Apr. 18, 2002).

132. *Id.* § 3(1). Section 3 states that:

Persons with disabilities are guaranteed the fullest possible participation in the social and economic life of the state to engage in remunerative employment, to use, enjoy and participate in government programs, services and facilities, places of public accommodation or services, resort, or amusement, and to secure housing accommodations of their choice, without discrimination.

*Id.* (emphasis added).

133. *Id.* § 11(b). Damages are available in employment actions. *Id.* at § 2(9) (stating that plaintiffs "shall be entitled to recover from the defendant back pay owed to him or her"). See also Alabama Human Relations Act, H.B. No. 291, 2002 Reg. Sess. (Ala. 2002), which would prohibit discrimination based on race, creed, disability, religion, sex, age, or national origin in employment and public accommodations and establish the Alabama Human Relations Commission. The commission could file civil actions and levy civil penalties for such discriminatory practice. Failing to obey its lawful order would constitute a Class C misdemeanor, but there is no private right of action.

134. MICH. COMP. LAWS §§ 37.1101-37.1601 (1997).



Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of . . . public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids.<sup>135</sup>

The enforcement mechanism underlying this rule is also quite broad. An individual can bring an action for injunctive relief or damages; damages includes reasonable attorney's fees.<sup>136</sup> In addition, a civil rights commission exists which can enforce the disability laws.<sup>137</sup>

If a state is not willing to waive sovereign immunity under the

135. *Id.* § 37.1301, sec. 302(a).

136. *Id.* § 37.1606.

137. *Id.* § 37.1601. Michigan's public accommodation statute specifically covers both "services" and state entities, but early judicial interpretations of the statutory definition of "disability" limited its scope. The legislature responded to these interpretations by modifying the statute to ensure broad coverage.

The Michigan disability statute originally defined "handicap" as "a determinable physical or mental characteristic of an individual or a history of the characteristic which may result from disease, injury, congenital condition of birth, or functional disorder which characteristic:"

- for employment: "is *unrelated* to the individual's ability to perform the duties of a particular job or position."
- for public accommodations or public services "is *unrelated* to the individual's ability to utilize and benefit from a place of public accommodation or public service."

MICH. COMP. LAW § 37.1103(b)(ii) (repealed 1990) (emphasis added).

The court in *Miller v. City of Detroit*, 462 N.W.2d 856 (Mich. App. 1991), interpreted the definition corresponding with public accommodations and services. It held that people who could not utilize the city's bus service because they used wheelchairs were not "handicapped." It stated that the statute required the plaintiffs to "demonstrate their handicaps are unrelated to their ability to utilize and benefit from defendant's bus service." *Miller*, 462 N.W.2d at 857. They could not do so because:

[t]he very nature of the handicaps asserted, the use of wheelchairs, does more than relate to plaintiffs' ability to utilize the buses. In fact, it prevents plaintiffs from using the buses, the problem sought to be remedied by this lawsuit. . . . Thus . . . the plaintiffs' status as wheelchair-bound persons unable to utilize defendant's bus service does not constitute a handicap within the meaning of the act.

*Id.* at 857-58.

This can only be described as a bizarre reading of a disability rights statute: people who use wheelchairs are *not* "disabled" when they seek to use the city's bus service. The legislature attempted to solve this problem by adding a new definition to the statute. This definition stated that "[u]nrelated to the individual's ability" meant that "with or without accommodation, an individual's disability does not prevent the individual from . . . performing the duties of a particular job or position . . . [or] utilizing and benefiting from a place of public accommodation or public service." MICH. COMP. LAWS § 37.1103(I)(i)-(ii) (1997) (emphasis added). In *Rourke v. Oakwood Hosp. Corp.*, 580 N.W.2d 397, 400 (Mich. 1998), the court held that "the addition of the language 'with or without accommodation' lowers the threshold of proof of a handicap by providing that an individual is handicapped even if some accommodation is necessary to allow that individual to perform the duties of a particular job or position." 580 N.W.2d at 400.

ADA, it should consider enacting legislation similar to the Michigan statute. That will ensure that people with disabilities have the same right to access state facilities and services as other citizens—and a way to enforce that right if they are denied access.

#### IV. CONCLUSION

We have found a range of state law protections in the area of disability discrimination. We have shown that state law is not a sufficient gap filler in the disability area. Many individuals with disabilities would find themselves left with state statutes that do not clearly cover state entities and/or provide only ineffective misdemeanor enforcement if *Garrett* were extended broadly to Title II. An interesting political question is whether federalists and nonfederalists can come together to strengthen rights at the state level.

Our research also reflects why broad national coverage is still needed in the disability area. It should not be acceptable for disability discrimination to go unremedied in Alabama but strongly enforced in Michigan.

## APPENDIX: SELECTED STATE STATUTES

**Alabama**

ALA. CODE § 21-4-1(b) (1975): This section contains a general policy statement "to make all buildings and facilities covered by this article accessible to, and functional for, the physically handicapped to, through and within their doors, without loss of function, space or facility where the general public is concerned."

ALA. CODE § 21-4-4(a) (1975): This section provides that "all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county or municipal funds, or the funds of any political subdivision of the state" shall comply with accessibility standards and specifications prescribed by the state fire marshal.

ALA. CODE § 21-4-7 (1975): The fire marshal has the power to order that the building conform with the accessibility standards and "[s]uch order may be appealed and enforced in the same manner prescribed for appealing and enforcing the Fire Marshal's orders relative to the elimination of fire hazards."

ALA. CODE § 36-19-12 (1975): However, the right to appeal applies only to the "owner or occupant of such building or premises."

ALA. CODE § 21-7-1 (1975): This section contains a general policy statement "to encourage and enable the blind, the visually handicapped and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment."

ALA. CODE § 21-7-3 (1975): "The blind, the visually handicapped and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."

ALA. CODE § 21-7-5 (1975): The only penalty provided is a misdemeanor that would not be applicable to the state as a defendant.

## Alaska

ALASKA STAT. § 11.76.130 (Michie 2000): "Interference with rights of physically or mentally challenged person."

ALASKA STAT. § 18.80.230 (Michie 2000): This section discusses "[u]nlawful practices in places of public accommodation."

ALASKA STAT. § 18.80.255 (Michie 2000): It is unlawful for the state or any of its political subdivisions "to refuse to deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of physical or mental disability."

ALASKA STAT. § 22.10.020 (Michie 2000): This section provides for relief including monetary relief; no punitive damages are allowed against the state, though. *See Johnson v. Alaska State Dep't of Fish & Game*, 836 P.2d 896, 906 (Alaska 1991).

ALASKA STAT. § 35.10.015 (Michie 2000): This section discusses the "[a]ccessibility of public buildings and facilities."

ALASKA R. CIV. P. 82 (amended by Alaska S. Ct. Order No. 1455 (July 15, 1993)): This section provides for a fee schedule for attorney's fees.

## Arizona

ARIZ. REV. STAT. ANN. § 11-1024 (West 1999): This section discusses dog guides and service dogs; rights; procedures; violations; classifications; and definitions.

ARIZ. REV. STAT. ANN. § 41-1492.01 (West 1999): "All buildings and facilities that are used by public entities and that are leased or constructed in whole or in part with the use of state or local monies, the monies of any political subdivision of this state or any combination of these monies shall conform to title II of the Americans with disabilities act."

ARIZ. REV. STAT. ANN. § 41-1492.09 (West 1999): This section provides for monetary damages but not punitive damages. Attorney fees are permitted.

### Arkansas

ARK. CODE ANN. § 16-123-107(2) (Michie 1987 & Supp. 2001): This section guarantees "[t]he right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement."

ARK. CODE ANN. § 16-123-104 (Michie 1987 & Supp. 2001): No relief permitted against the state.

ARK. CODE ANN. § 20-14-301 (Michie 2000): Contains a general policy statement against disability discrimination for individuals who are "visually handicapped, hearing impaired, and . . . physically handicapped."

ARK. CODE ANN. § 20-14-303(a) (Michie 2000): "Visually handicapped, hearing impaired, and other physically handicapped persons shall have the same rights and privileges as other persons to the full use and enjoyment of:

- (1) The public streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places; and
- (2) All common carriers and other public conveyances or modes of transportation, whether by air, land, or water;
- (3) All hotels, motels, lodging places, housing accommodations;
- (4) Other places of public accommodation, amusement, or resort; and
- (5) All other places to which the general public is invited."

ARK. CODE ANN. § 20-14-302 (Michie 2000): The remedy for the above violation is a misdemeanor.

ARK. CODE ANN. § 20-15-301 (Michie 2000): This section heads the "Access to Parking for Persons with Disabilities Act."

### California

CAL. GOV'T CODE § 4450 (West 1995): This section requires that "all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities."

CAL. GOV'T CODE § 4453 (West 1995): The enforcement for this requirement is by "the Director of the Department of General Services



where state funds are utilized for any project or where funds of counties, municipalities, or other political subdivisions are utilized for the construction of elementary, secondary, or community college projects" and by "the governing bodies thereof where funds of counties, municipalities, or other political subdivisions" for other projects.

CAL. GOV'T CODE § 4458 (West 1995): "The district attorney, the city attorney, or the Attorney General may bring an action to enjoin a violation of this chapter."

CAL. GOV'T CODE § 51(b) (West 1982 & Supp. 2002) (Unruh Civil Rights Act): "All persons within the jurisdiction of this state are free and equal, and no matter what their . . . disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Not clear whether state could be sued under this provision as a "business establishment."

CAL. GOV'T CODE § 54.1 (West 1982): This section provides for accessibility and nondiscrimination in services at "business establishments." It is not clear whether the state could be sued under this provision. *Black v. Dep't of Mental Health*, 100 Cal. Rptr. 2d 39, 42 n.4 (2000) (declining to rule whether the statute applies to the state). The remedy for "interference" is up to three times actual compensatory damages and reasonable attorney's fees.

### Colorado

COLO. REV. STAT. ANN. § 9-5-101 (West 1994): This section provides standards for "Buildings Constructed by Public or Private Entities."

COLO. REV. STAT. ANN. § 9-5-104 (West 1994): This section requires compliance with the ANSI standards "for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People."

COLO. REV. STAT. ANN. § 24-34-601(2) (West 2001): "It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability . . . the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or, directly or indirectly, to publish, circulate, issue,

display, post, or mail any written or printed communication, notice, or advertisement which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, marital status, national origin, or ancestry."

COLO. REV. STAT. ANN. § 24-34-601(1) (West 2001): The definition of "public accommodation" does not expressly list the "state" but it does list examples such as "any public transportation facility," or "any public building, park, arena . . . or public facility of any kind whether indoor or outdoor." It therefore appears that state facilities and services are covered.

#### Remedies:

COLO. REV. STAT. ANN. § 24-10-102 (West 2001): The Colorado Governmental Immunity Act (CGIA) has a strong policy with respect to sovereign immunity protection. This policy bars compensatory damages against the state, but a court recently ruled that it does not provide the government immunity from claims for relief under the Colorado Civil Rights Act when such claims are not based on providing compensatory relief to individuals but instead focus on the anti-discrimination purposes of the statute. *See City of Colo. Springs v. Conners*, 993 P.2d 1167, 1171 (Colo. 2000). Accordingly, it allowed claims for reinstatement and back pay asserted against a city by a former employee, stating they were not actions that lay in tort or could lie in tort but were best characterized as equitable and non-compensatory in nature; therefore the CGIA neither provided immunity for those actions nor subjected the employee to that statute's notice requirements. *Id.* at 1175-76.

COLO. REV. STAT. ANN. § 24-34-801 (1)(a) (West 2001): The state also has an antiquated policy "[t]o encourage and enable the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment." This policy has no enforcement mechanism and applies only to a subcategory of individuals with disabilities.

### Connecticut

CONN. GEN. STAT. ANN. § 29-269 (West 1990): This statute provides standards for construction of buildings to accommodate physically handicapped persons.

CONN. GEN. STAT. ANN. § 29-271 (West 1990 & Supp. 2001): This section contains requirements for units accommodating the physically disabled in state-assisted housing.

CONN. GEN. STAT. ANN. § 46a-64 (West 1995 & Supp. 2001): Discriminatory public accommodations practices are prohibited under this statute. The definition of "disability" includes "mental retardation, mental disability or physical disability, including, but not limited to, blindness or deafness of the applicant."

CONN. GEN. STAT. ANN. § 46a-71 (West 1995 & Supp. 2001): "All services of every state agency shall be performed without discrimination based upon . . . mental retardation, learning disability or physical disability, including, but not limited to, blindness; [n]o state facility may be used in the furtherance of any discrimination, nor may any state agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning discrimination."

Note: Connecticut's definition of disability does not appear to be as broad as the ADA.

### Delaware

DEL. CODE ANN. tit. 6 §§ 4500-4512 (1999): The State Attorney General's office has taken the position that the state is not covered under the Delaware Equal Accommodations Law. *See* Op. Atty. Gen. 00-IB09 (Del. May 30, 2000), *available at* 2000 WL 1092966.

DEL. CODE ANN. tit. 6 § 4504 (1999): This statute prohibits the following practices:

"(a) No person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, color, sex, handicap or national origin, any of the accommodations, facilities, advantages or privileges thereof. For the purpose of training support animals to be used by the handicapped, all trainers and their support animals shall be included within those covered by this

included within those covered by this subsection.

(b) No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly publish, issue, circulate, post or display any written, typewritten, mimeographed, printed or radio communications notice or advertisement to the effect that any of the accommodations, facilities, advantages and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of race, age, marital status, creed, color, sex, handicap or national origin, or that the patronage or custom thereof of any person belonging to or purporting to be appearing to be of any particular race, age, marital status, creed, color, sex, handicap or national origin is unlawful, objectionable, or not acceptable, desired, accommodated or solicited, or that the patronage of persons of any particular race, age, marital status, creed, color, sex, handicap or national origin is preferred or is particularly welcomed, desired or solicited.

c) It shall be unlawful to assist, induce, incite or coerce another person to commit any discriminatory public accommodations practice prohibited by subsection (a) or (b) of this section."

DEL. CODE ANN. tit. 29 § 7301 (1997): "It is the purpose of this chapter to enable handicapped members of society to make use of public facilities with the maximum of safety and independence by providing for the implementation of standards for the elimination of architectural barriers. This chapter shall be construed liberally to achieve that purpose."

DEL. CODE ANN. tit. 29 § 7303 (1997): The above provision applies to facilities "[c]onstructed by or on behalf of the State; . . . leased or rented in whole or in part by the State; . . . [or] financed in whole or in part by the State or by bonds guaranteed in whole or in part by the State."

DEL. CODE ANN. tit. 29 § 7310(d) (1997): "Any handicapped person or groups of handicapped persons may bring an action for legal or equitable relief from violations of this chapter and the Board's standards and may be awarded compensatory and punitive damages suffered as a result of such violations. If successful in such litigation, the handicapped persons bringing the litigation shall be reimbursed for all costs and expenses of the litigation, including attorneys' fees as may be allowed by the Court."

DEL. CODE ANN. tit. 16 § 9502(a) (1995): "The blind, the visually

handicapped and the otherwise physically disabled shall have the same rights as able-bodied persons to use streets, highways, sidewalks, walkways, public buildings, public facilities and other public places."

DEL. CODE ANN. tit. 16 § 9504 (1995): "Any person or persons, firm or corporation or an agent thereof who denies or interferes with the admittance to or enjoyment of the public facilities enumerated in § 9502 or otherwise interferes with the rights of a totally or partially blind or otherwise disabled person as specified in § 9502 shall be guilty of a misdemeanor."

### District of Columbia

D.C. CODE ANN. § 2-1402.31(1) (2001): This section makes it unlawful "[t]o deny, directly, or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations." The definition of "public accommodations" is quite broad and would appear to include public entities. Legal action against the District has been brought pursuant to this rule. See *Ramirez v. District of Columbia*, 2000 WL 517758 (D.D.C. Mar. 28, 2000).

### Florida

FLA. STAT. ANN. § 255.21(1) (Harrison 1997 & Supp. 2000): "Any building or facility intended for use by the general public which, in whole or in part, is constructed or altered or operated as a lessee, by or on behalf of the state or any political subdivision, municipality, or special district thereof or any public administrative board or authority of the state shall, with respect to the altered or newly constructed or leased portion of such building or facility, comply with standards and specifications established by part V of chapter 553."

FLA. STAT. ANN. § 553.501 (Harrison 1997): Chapter 553 is the "Florida Americans With Disabilities Accessibility Implementation Act."

FLA. STAT. ANN. § 553.503 (Harrison 1997): "Subject to the exceptions in § 553.504, the federal Americans with Disabilities Act Accessibility Guidelines, as adopted by reference in 28 C.F.R., part 36, subparts A and D, and Title II of Pub. L. No. 101-336, are hereby adopted and incorporated by reference as the law of this state. The guidelines shall establish the minimum standards for the accessibility of



buildings and facilities built or altered within this state."

FLA. STAT. ANN. § 553.513 (Harrison 1997): "It shall be the responsibility of each local government and each code enforcement agency established pursuant to § 553.80 to enforce the provisions of this part. This act expressly preempts the establishment of handicapped accessibility standards to the state and supersedes any county or municipal ordinance on the subject. However, nothing in this section shall prohibit municipalities and counties from enforcing the provisions of this act."

FLA. STAT. ANN. § 760.07 (Harrison 1997): Florida generally codifies its civil rights laws in Chapter 760. That chapter contains broad protection against employment discrimination and clearly covers the state. The remedies section for this chapter refers to "public accommodations" discrimination, but we have not been able to locate a nondiscrimination rule that corresponds with that remedy. A general nondiscrimination policy is specified in § 760.01 (providing for "freedom from discrimination"). Possibly, that general policy is what is enforced under § 760.07 and could cover discrimination in the provision of services at public entities.

FLA. STAT. ANN. § 768.28 (Harrison 1997): Florida waives sovereign immunity in tort actions but caps damages at \$100,000. That waiver and cap probably apply to civil rights actions.

FLA. STAT. ANN. § 413.08(1)(a) (Harrison 1997 & Supp. 2000): Florida has a separate provision regarding discrimination at places of public accommodation. It states that: "[t]he deaf, hard of hearing, blind, visually handicapped, and otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on all . . . public conveyances . . . and at . . . places of public accommodation . . . ." The remedy for violating this provision is a misdemeanor, *id.* § 413.08(2), so it would not appear to apply to the state itself. Its definition of disability is also limited.

## Georgia

GA. CODE ANN. § 30-3-1 (2001): This section states a general policy that public buildings be accessible to individuals with disabilities.

GA. CODE ANN. § 30-3-8 (2001). Enforcement of the above can result in a misdemeanor violation. Hence, the rule does not appear appli-

cable to the state.

GA. CODE ANN. § 30-4-2(a) (2001): "[B]lind persons, persons with visual disabilities, persons with physical disabilities, and deaf persons are entitled to full and equal accommodations, advantages, facilities and privileges on all . . . public conveyances or modes of transportation and at . . . places of public accommodation."

GA. CODE ANN. § 30-4-4 (2001): Enforcement of the above can result in a misdemeanor violation. Hence, the rule does not appear applicable to the state. In addition, merely providing for a misdemeanor penalty may also preclude private enforcement. *See Reilly v. Alcan Aluminum Corp.*, 528 S.E.2d 238 (Ga. 2000) (holding employee did not have private remedy under state statute making age discrimination a misdemeanor).

### Hawaii

HAW. REV. STAT. ANN. § 103-50 (Michie 2000): State building designs must consider the needs of persons with disabilities. This section incorporates the ADAAG.

HAW. REV. STAT. ANN. § 347-13 (Michie 1999): The blind, partially blind, physically handicapped shall have access to public places.

HAW. REV. STAT. ANN. § 368-1.5(a) (Michie 1999): "No otherwise qualified individual in the state shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by State agencies, or under any program or activity receiving State financial assistance."

HAW. REV. STAT. ANN. § 489-3 (Michie 1998): "Unfair discriminatory practices which deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, color, religion, ancestry, or disability are prohibited."

HAW. REV. STAT. ANN. § 489-2 (Michie 1998): "'Person' has the meaning prescribed in section 1-19 and includes a legal representative, partnership, receiver, trust, trustee, trustee in bankruptcy, the State, or any governmental entity or agency. 'Place of public accommodation' means a business, accommodation, refreshment, entertainment, recrea-

tion, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors."

HAW. REV. STAT. ANN. § 662-12 (Michie 1995): "The court rendering a judgment for the plaintiff pursuant to this chapter or the attorney general making a disposition pursuant to Section 662-11 may, as part of such judgment, award, or settlement, determine and allow reasonable attorney's fees which shall not, however, exceed twenty-five per cent of the amount recovered and shall be payable out of the judgment awarded to the plaintiff; provided that such limitation shall not include attorney's fees and costs that the court may award the plaintiff as a matter of its sanctions."

### Idaho

IDAHO CODE § 39-3201 (Michie 1998): This code section creates a policy that public buildings, accommodations, and facilities shall be made accessible to the "physically handicapped."

IDAHO CODE § 39-3202(4) (Michie 1998): "'Public buildings' and 'facilities' means buildings and facilities constructed by the state, any county, city, district, authority, board, or any public corporation or entity, whether organized and existing under charter or general law."

IDAHO CODE § 39-3210 (Michie 1998): The failure to obtain approval of building plans is enforced by a misdemeanor.

IDAHO CODE § 56-703 (Michie 1994): "The blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, and railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodations, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."

IDAHO CODE § 56-706 (Michie 1998): Public accommodation is not defined and enforcement is by a misdemeanor penalty.

## Illinois

775 ILL. COMP. STAT. § 30/3 (West 2001): "The blind, the visually handicapped, the hearing impaired and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities and other public places.

The blind, the visually handicapped, the hearing impaired and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

Every totally or partially blind, hearing impaired or otherwise physically disabled person or a trainer of support dogs, guide dogs, or hearing dogs shall have the right to be accompanied by a support dog or guide dog especially trained for the purpose, or a dog that is being trained to be a support dog, guide dog, or hearing dog, in any of the places listed in this Section without being required to pay an extra charge for the guide, support or hearing dog; provided that he shall be liable for any damage done to the premises or facilities by such dog."

775 ILL. COMP. STAT. 5/5-102 (West 2001): "It is a civil rights violation for any person on the basis of unlawful discrimination to: . . . Deny or refuse to another, as a public official, the full and equal enjoyment of the accommodations, advantage, facilities or privileges of the official's office or services or of any property under the official's care because of unlawful discrimination."

## Indiana

IND. CODE ANN. § 16-32-3-1 (West 1997): "It is the policy of this state to encourage and enable the blind, the visually disabled, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment."

IND. CODE ANN. § 22-9-1-2(a) (West 1991 & Supp. 2001): "It is the public policy of the state to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real prop-

erty, including but not limited to housing, and to eliminate segregation or separation including but not limited to housing, and to eliminate segregation or separation based solely on . . . disability . . . since such segregation is an impediment to equal opportunity."

IND. CODE ANN. § 22-9-8-3 (West 1991 & Supp. 2001): An aggrieved individual may file a complaint with Indiana Civil Rights Commission. An appeal of the commission action is permitted after administrative remedies have been exhausted.

IND. CODE ANN. 22-9-16 (West 1991 & Supp. 2001): This section provides for an election of a civil action if "both the respondent and the complainant . . . agree in writing to have the claims decided in a court of law."

IND. CODE ANN. § 22-13-4-1(1)(a)(4) (West 1991 & Supp. 2001): The building rules adopted by the commission to govern new construction must promote access by a person with a physical disability.

IND. CODE ANN. § 22-13-4-1.5 (West 1991 & Supp. 2001): This code section incorporates ADAAG.

## **Iowa**

IOWA CODE ANN. § 104A (West 1996): Iowa building code requires accessibility for individuals with disabilities; enforcement by criminal penalties or by injunctive action by state building commissioner.

IOWA CODE ANN. § 216C.1 (West 2000): "It is the policy of this state to encourage and enable persons who are blind or partially blind and persons with physical disabilities to participate fully in the social and economic life of the state and to engage in remunerative employment.

To encourage participation by persons with disabilities, it is the policy of this state to ensure compliance with federal requirements concerning persons with disabilities."

IOWA CODE ANN. § 216C.4 (West 2000): "Persons who are blind or partially blind and persons with physical disabilities are entitled to full and equal accommodations, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, other public conveyances or modes of transportation, ho-



tels, lodging places, eating places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."

IOWA CODE ANN. § 216.7 (West 2000): "It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof: a. To refuse or deny to any person because of . . . disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of . . . disability in the furnishing of such accommodations, advantages, facilities, services, or privileges."

### Kansas

KAN. STAT. ANN. § 39-1101 (2000): "It is hereby declared to be the policy of this state to encourage and enable the blind, the visually handicapped and persons who are otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. Said persons shall have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities and other public places; and said persons are entitled to full and equal accommodations, advantages, facilities and privileges of: (a) All common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation; (b) hotels, lodging places and places of public accommodation, amusement or resort, including food service establishments and establishments for sale of food; and (c) other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."

KAN. STAT. ANN. § 44-1005 (2000): This section provides that the state civil rights commission may order an award of damages for pain, suffering and humiliation but those awards are capped at \$2,000.

KAN. STAT. ANN. § 44-1009(c) (2000): "It shall be an unlawful discriminatory practice . . . (3) [f]or any person, to refuse, deny, make a distinction, directly or indirectly, or discriminate in any way against persons because of the . . . disability . . . of such persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kan-

sas or any political subdivision or municipality thereof."

KAN. STAT. ANN. § 44-1021(4) (2000): No legal authority could be found supporting an award of attorney's fees for public accommodation discrimination; by contrast, attorney's fees are expressly provided as remedy for housing discrimination.

KAN. STAT. ANN. § 58-1301 (West 1994): This section provides accessibility standards for public buildings or facilities.

### **Kentucky**

KY. REV. STAT. ANN. § 198B.260 (Michie 1998): This section adopts ADAAG for the state building code.

KY. REV. STAT. ANN. § 258.500 (Michie 1994 & Supp. 2001): Kentucky requires nondiscrimination for users of guide dogs.

KY. REV. STAT. ANN. § 344.120 (Michie 1997): "[I]t is an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort, or amusement . . . on the ground of disability."

KY. REV. STAT. ANN. § 344.10 (Michie 1997): This statute defines "person" to include "the state, any of its political or civil subdivisions or agencies."

### **Louisiana**

LA. REV. STAT. ANN. §§ 40:1731-1743 (West 2001): These sections provide building code rules for the state, adopts the ADAAG, and provides for enforcement by the fire marshal.

LA. REV. STAT. ANN. § 46:2254 (West 1999): "No otherwise qualified person shall, on the basis of a handicap, be subjected to discrimination by any educational facility, in any real estate transaction, or be excluded from participating in, or denied the benefits of, any program or activity which receives financial assistance from the state or any of its political subdivisions."

LA. REV. STAT. ANN. § 46:1953 (West 1999): Louisiana mandates the following:

"A. Every physically disabled person shall have the same right as an able-bodied person to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

B. Every physically disabled person shall be entitled to full and equal accommodations, advantages, facilities, and privileges in the following, subject only to the conditions and limitations established by law and applicable alike to all persons:

(1) Common carriers, including taxis, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation operated on land or water, in the air, or any stations and terminals thereof.

(2) Educational institutions, including but not limited to kindergartens, primary and secondary schools, trade or business schools, high schools, academies, colleges, and universities.

(3) Hotels, lodging places, restaurants, theaters, places of public accommodation, amusement, or resort.

(4) Other places to which the general public is invited.

C. Every physically disabled person may be accompanied by an assistance dog, especially trained to aid such person, in any of the places provided in Subsection B of this Section without being required to pay an extra charge for such dog. However, he shall be liable for any damage done to the premises, facilities, operators, or occupants by such dog.

D. Nothing in this Section shall require any person who owns, leases, or operates any public conveyance or modes of transportation, educational institutions, hotels, restaurants, theaters, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, to modify his property or facility in any way or provide a higher degree of care for a physically disabled person than for a person who is not physically disabled."

LA. REV. STAT. ANN. §49:146 (West 1987 & Supp. 2002):

"A. (1) In access to public areas, public accommodations, and public facilities, every person shall be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical or mental disability.

(2) For purposes of this Section, a public facility is defined as any publicly or privately owned property to which the general public has access as invitees and shall include such facilities open to the public as hotels, motels, restaurants, cafes, bar-rooms, and places of entertainment or recreation but shall not

include any private club. . . .

(4) Anyone who is denied access to such facilities in violation of this Section shall have as his remedy the same state civil remedy as provided in Article 2315 of the Louisiana Civil Code that is applicable when one has been harmed or injured by another. . . .

B. Notwithstanding any other provision of law, a defendant to a civil suit filed pursuant to this Section shall, if such cause of action is frivolous, have a civil remedy for damages and attorney's fees incurred as a result of the frivolous claim."

### **Maine**

ME. REV. STAT. ANN. tit. 5, § 4591 (West 1989 & Supp. 2002): "The opportunity for every individual to have equal access to places of public accommodation without discrimination because of . . . physical or mental disability . . . is recognized as and declared to be a civil right."

ME. REV. STAT. ANN. tit. 5, § 4592 (West 1989 & Supp. 2002): "It is unlawful . . . for any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to . . . in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend." Part 1.E further provides that unlawful discrimination includes "[a] qualified individual with a disability, by reason of that disability, being excluded from participation in or being denied the benefits of the services, programs or activities of a public entity, or being subjected to discrimination by any such entity."

ME. REV. STAT. ANN. tit. 17, § 1312 (West 1989 & Supp. 2002): This section contains the "model white cane law."

ME. REV. STAT. ANN. tit. 25, § 2701 (West 1989): This section contains building code rules requiring accessibility.

### **Maryland**

MD. CODE ANN., STATE FIN. & PROC. § 2-509 (2001); MD. CODE ANN. art. 83B, § 6-102 (1998): These sections contain the building code rules requiring accessibility.

MD. ANN. CODE art. 30, § 33(c) (1998 & Supp. 2001): "The blind or the visually handicapped and the deaf or hearing impaired have the same right as the persons not so handicapped to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places."

MD. ANN. CODE art. 30, § 33(d)(1) (1998 & Supp. 2001): "The blind or the visually handicapped and the deaf or hearing impaired are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or other public conveyances or modes of transportation, hotels, lodging places, places of public accommodations, amusement, or resort, or other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable to all persons."

MD. ANN. CODE art. 30, § 33(g) (1998 & Supp. 2001): This section provides remedies in the forms of a misdemeanor or an action for injunctive relief.

MD. ANN. CODE art. 49B, § 5 (1998 & Supp. 2001): "It is unlawful for an owner or operator of a place of public accommodation or an agent or employee of the owner or operator, because of the . . . disability of any person, to refuse, withhold from, or deny to such person any of the accommodations, advantages, facilities and privileges of such place of public accommodation." A place of public accommodation includes any establishment that is "operated by a public or private entity." Only the state civil rights commission may seek relief. *Johnston v. Tufton Group, Inc.*, 2001 WL 210046 (D. Md. Feb. 28, 2001); *Dillon v. Great Atl. Pac. Tea Co.*, No. D-2491, 1978 WL 3435 (Md. Cir. Ct. 1978).

### Massachusetts

MASS. GEN. LAWS ANN. CONST. AMEND. CXIV (West 1997): "No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth."

MASS. GEN. LAWS ANN. ch. 22, § 13A (West 1997): This section creates an architectural compliance board.

MASS. GEN. LAWS ANN. ch. 143, § 2W (West 1997): This section contains various building regulations.

MASS. GEN. LAWS ANN. ch. 272, § 98 (West 1997): "Whoever makes any distinction, discrimination or restriction on account of . . . deafness, blindness or any physical or mental disability . . . relative to the admission of any person to, or his treatment in any place of public accommodation, resort or amusement . . . shall be liable to any person aggrieved thereby for such damages as are enumerated in section five of chapter one hundred and fifty-one B."

MASS. GEN. LAWS ANN. ch. 151B, § 1 (West 1997): This section defines the term "person" to include "the commonwealth and all political subdivisions, boards, and commissions thereof."

### **Michigan**

MICH. COMP. LAWS ANN. § 37.1102 (West 2001): "(1) The opportunity to obtain employment, housing, and other real estate and full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right. (2) Except as otherwise provided in article 2, a person shall accommodate a person with a disability for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship."

MICH. COMP. LAWS ANN. § 37.1302 (West 2001): "Except where permitted by law, a person shall not: (a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids."

MICH. COMP. LAWS ANN. §§ 125.1351-125.1356 (West 2001): These sections contain regulations for public facilities.

### **Minnesota**

MINN. STAT. ANN. § 256C.02 (West 1998): "The blind, the visually handicapped, and the otherwise physically disabled have the same



right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places; and are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, boats, or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

Every totally or partially blind, physically handicapped, or deaf person or any person training a dog to be a service dog shall have the right to be accompanied by a service dog in any of the places listed in section 363.03, subdivision 10. The person shall be liable for any damage done to the premises or facilities by such dog. The service dog must be capable of being properly identified as from a recognized school for seeing eye, hearing ear, service, or guide dogs."

MINN. STAT. ANN. § 363.03 (West 1998 & Supp. 2002): "It is an unfair discriminatory practice: (1) to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of . . . disability . . . ."

MINN. STAT. ANN. § 363.01 (West 1998 & Supp. 2002): The Minnesota Human Rights Act defines a place of public accommodation as "a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public." However, principles of sovereign immunity do not apply to the Act. *See Davis v. Hennepin County*, 559 N.W.2d 117, 121 (Minn. App. 1997).

MINN. STAT. ANN. § 471.465-68 (West 1998 & Supp. 2002): This section contains building code rules requiring accessibility.

### Mississippi

MISS. CODE ANN. §§ 43-6-101 to 43-6-124 (2000): These sections contain various building requiring accessibility.

MISS. CODE ANN. § 43-6-3 (2000): "Blind persons, visually handicapped persons, deaf persons and other physically disabled persons shall have the same right as the able-bodied to the full and free use of

the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.”

MISS. CODE ANN. § 43-6-5 (2000): “Blind persons, visually handicapped persons, deaf persons and other physically disabled persons shall be entitled to full and equal access, as are other members of the general public, to accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.”

MISS. CODE ANN. § 43-6-11 (2000): This section provides for a misdemeanor sanction that would not be applicable to the state.

### Missouri

MO. ANN. STAT. §§ 8.610 – 8.657 (West 2000): These sections contain various building code rules and adopt ANSI standards.

MO. ANN. STAT. § 209.150 (West 2000 & Supp. 2002): “1. Every person with a visual, aural or physical disability shall have the same rights afforded to a person with no such disability to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. 2. Every person with a visual, aural or physical disability is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, taxis, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. 3. Every person with a visual, aural or physical disability shall have the right to be accompanied by a guide dog, hearing dog, or service dog, which is especially trained for the purpose, in any of the places listed in subsection 2 of this section without being required to pay an extra charge for the guide dog, hearing dog or service dog; provided that such person shall be liable for any damage done to the premises or facilities by such dog.”

MO. ANN. STAT. § 213.065.2 (West 2000): “It is an unlawful dis-

criminary practice for any person, directly or indirectly, to refuse, withhold from or deny any other person, or to attempt to refuse, withhold from or deny any other person, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation . . . .”

MO. ANN. STAT. § 213.010(15)(e) (West 2000 & Supp. 2002): A place of public accommodation is defined in part to include the following: “Any public facility owned, operated, or managed by or on behalf of this state or any agency or subdivision thereof, or any public corporation; and any such facility supported in whole or in part by public funds.”

### Montana

MONT. CODE. ANN. § 49-2-304(1) (2001): “[I]t is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation: (a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental disability, creed, religion, color, or national origin . . . .”

MONT. CODE. ANN. § 49-2-308(1) (2001): “It is an unlawful discriminatory practice for the state or any of its political subdivisions: (a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of . . . physical or mental disability . . . .”

MONT. CODE. ANN. § 49-4-211(1) (2001): “(1) The blind, the visually impaired, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. (2) The blind, the visually impaired, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.”

MONT. CODE. ANN. § 50-60-201(4) (2001): The state building code contains various broad regulations requiring accessibility to “ensure that any newly constructed public buildings and certain altered public buildings are readily accessible to and usable by persons with disabilities, according to the principles applicable to accessibility to public

buildings for persons with disabilities in the state building code.”

### Nebraska

NEB. REV. STAT. § 20-127(1) (1997): “Any blind, visually handicapped, hearing-impaired, or physically disabled person shall have the same right as an able-bodied person to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.”

NEB. REV. STAT. § 20-129 (1997): The penalty for violating the above section is a misdemeanor.

NEB. REV. STAT. § 81-5,147 (1997): This statute requires the State Fire Marshal to adopt and promulgate “standards, specifications, and exclusions which are consistent with the most current uniform guidelines and standards set by the federal Americans with Disabilities Act of 1990, as amended, for (1) buildings and facilities which are newly constructed for first occupancy and (2) alterations of existing buildings and facilities used by the public.”

NEB. REV. STAT. § 81-5,148 (1997): The fire marshal has the “responsibility for enforcement of the standards and specifications adopted pursuant to section 81-5,147” and “[f]ailure to correct an unauthorized departure from such standards and specifications shall result in denial or revocation of the occupancy permit for the building or facility.”

### Nevada

S.B. 324, 71st Leg. Reg. Sess. (Nev. 2001) (amending Nev. Rev. Stat. § 338.180): Among other things, this bill adopts the ADAAG.

NEV. REV. STAT. ANN. § 651.070 (Michie 2000): “All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, without discrimination or segregation on the ground of . . . disability.”

NEV. REV. STAT. ANN. § 651.050 (2)(n) (Michie 2000): The definition of “Place of public accommodation” includes “[a]ny other establishment or place to which the public is invited or which is intended for public use.”

NEV. REV. STAT. ANN. § 41.031(1) (Michie 2000 & Supp. 2001): The state has generally waived sovereign immunity.

NEV. REV. STAT. ANN. § 41.035 (Michie 2000): There is a \$50,000 limitation on damages in tort actions against the state or its employees.

### **New Hampshire**

N.H. REV. STAT. ANN. § 155:39-b (1994): "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation. Nothing in this subdivision shall be construed to supersede or contradict the provisions of RSA 354-A:8, IV, relative to discriminatory practices in places of public accommodation."

N.H. REV. STAT. ANN. § 167-C:2 (1994): "The blind, the visually disabled, and the otherwise physically disabled have the same rights and privileges as the able-bodied to the full and free use of the facilities enumerated in RSA 167-D. Every totally or partially blind person shall have the right to be accompanied in such facilities by a guide dog, especially trained for the purpose, without being required to pay an extra charge for the guide dog, provided that such person shall be liable for any damage done to the premises or facilities by such dog."

N.H. REV. STAT. ANN. § 275-C:14 (1994): This section contains various building code rules and adopts ANSI access standards.

N.H. REV. STAT. ANN. § 354-A:16 (1995): "The opportunity for every individual to have equal access to places of public accommodation without discrimination because of . . . physical or mental disability . . . is hereby recognized and declared to be a civil right."

N.H. REV. STAT. ANN. § 354-A:17 (1995): "It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the . . . physical or mental disability . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . . ."

N.H. REV. STAT. ANN. § 354-A:2 (XIII) (1995 & Supp. 2001): This statute defines a "person" to include "the state and all political



subdivisions, boards, and commissions thereof."

N.H. REV. STAT. ANN. § 354-A:21(II)(d) (1995 & Supp. 2001): A \$10,000 civil penalty is available "to vindicate the public interest," but it is not clear if this fine is available when the state is the party found in violation of the statute.

### New Jersey

N.J. STAT. ANN. §§ 30:4-24.2(e), 27.11 (West 1993): These sections define certain rights of patients.

N.J. STAT. ANN. § 30:6D-9 (West 1993): "Every service for persons with developmental disabilities offered by any facility shall be designed to maximize the developmental potential of such persons and shall be provided in a humane manner in accordance with generally accepted standards for the delivery of such service and with full recognition and respect for the dignity, individuality and constitutional, civil and legal rights of each person receiving such service, and in a setting and manner which is least restrictive of each person's personal liberty."

N.J. STAT. ANN. § 10:5-4 (West 1993 & Supp. 2001): "All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of [factors other than disability]."

N.J. STAT. ANN. § 10:5-4.1 (West 1993 & Supp. 2001): This section applies these rules to discrimination on the basis of handicap.

N.J. STAT. ANN. § 10:5-5(l) (West 1993 & Supp. 2001): The term "a place of public accommodation" does not explicitly include public facilities but it includes certain public facilities such as public library and public education. Because not all public entities are excluded explicitly from coverage and are included as examples, it would appear that public entities are covered by this law. *See D.B. v. Bloom*, 896 F. Supp. 166 (D. N.J. 1995) (interpreting the statute to forbid discrimination in the provision of dental services).

### New Mexico

N.M. STAT. ANN. § 28-1-7(f) (Michie 2001): "It is an unlawful



discriminatory practice for . . . any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any individual because of . . . physical or mental handicap . . . .”

N.M. STAT. ANN. § 28-1-2(A) (Michie 2001): This statute defines “person” as including “the state and all of its political subdivisions.”

N.M. STAT. ANN. § 28-7-3 (Michie 2001): “A. The blind, the visually handicapped and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities and other public places.

B. The blind, the visually handicapped and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort and any other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. . . .

D. The attorney general, district attorney or any handicapped person may file an action in the judicial district when a building has been built or altered and the work has not been accomplished in accordance with Section 104 and Section 106 of the current uniform building code, other applicable publications and established handicapped [handicap] standards. The building official shall notify those applying for a permit that they must comply with established standards. Any interested person may appeal the granting or denial of a waiver to the district court where the building is located. If the court finds that the building owner was required to comply with handicap access standards of the uniform building code and has failed to comply with such standards within a reasonable period of time, then the party filing [an] action shall recover the court costs, attorneys’ fees and appropriate injunctive relief to remedy the violation.”

## New York

N.Y. CIV. RIGHTS LAW § 47(1) (McKinney 1992): “No person shall be denied admittance to and/or the equal use of and enjoyment of any public facility solely because said person is a person with a disability and is accompanied by a guide dog, hearing dog or service dog.”

N.Y. CIV. RIGHTS LAW § 47(2) (McKinney 1992): "For the purposes of this section the term 'public facility' shall include, but shall not be limited to, all modes of public and private transportation, all forms of public and private housing accommodations whether permanent or temporary, buildings to which the public is invited or permitted, including those maintained by the state or by any political subdivision thereof, all educational facilities and institutions, including those maintained by the state or by any political subdivision thereof, all places where food is offered for sale, all theatres, including both live playhouses and motion picture establishments and all other places of public accommodations, convenience, resort, entertainment, or business to which the general public or any classification of persons therefrom is normally or customarily invited or permitted."

N.Y. PUB. BLDGS. LAW § 51 (McKinney 1996): "In addition to any other requirements respecting the construction of a public building and facilities thereof, the new construction, reconstruction, rehabilitation, alteration or improvement of all such buildings and facilities shall conform to the requirements of the state building construction code relating to facilities for the physically handicapped . . . ."

N.Y. PUB. BLDGS. LAW § 50(1) (McKinney 1996): A "public building" means "any building or portion thereof, other than a privately owned residential structure, public housing structure, police, fire or correction structure, constructed wholly or partially with state or municipal funds, whether tax funds, funds obtained through bond issues or grants or loans under any state law, which is likely to be used by physically handicapped persons, including, but not limited to theaters, concert halls, auditoriums, museums, schools, libraries, recreation facilities, transportation terminals and stations, factories, office buildings and business establishments."

N.Y. EXEC. LAW § 296 (McKinney 1996): This section provides that it shall be an unlawful discriminatory practice "for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the . . . disability . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, with-

held from or denied to any person on account of . . . disability . . . or that the patronage or custom thereat of any person of or purporting to be of any particular . . . disability is unwelcome, objectionable or not acceptable, desired or solicited."

N.Y. EXEC. LAW § 292(9) (McKinney 1996): The definition of "public accommodations" exempts from its scope all "public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of the regents of the state of New York." Courts have also held that the statute does not provide for an award of attorney fees. *Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 913 (2d Cir. 1997); *New York City Bd. of Educ. v. Sears*, 443 N.Y.S.2d 23, 25 (App. Div. 1981).

### North Carolina

N.C. GEN. STAT. § 168-2 (1999): "Handicapped persons have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Health and Human Services shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication available to the Department of Commerce for its use in Welcome Centers and other appropriate Department of Commerce offices. The Department of Economic and Community Development shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Health and Human Services on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Health and Human Services."

N.C. GEN. STAT. § 168-3 (1999): "The handicapped and physically disabled are entitled to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation; hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."

N.C. GEN. STAT. § 168A-6 (1999): "It is a discriminatory practice for a person to deny a qualified person with a disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of a disabling condition."

N.C. GEN. STAT. § 168A-3(7) (1999): "'Person' includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions."

N.C. GEN. STAT. § 168A-7 (1999): "It is a discriminatory practice for a State department, institution, or agency, or any political subdivision of the State or any person that contracts with the above for the delivery of public services including but not limited to education, health, social services, recreation, and rehabilitation, to refuse to provide reasonable aids and adaptations necessary for a known qualified person with a disability to use or benefit from existing public services operated by such entity . . . ."

N.C. GEN. STAT. § 168A-11 (1999): Relief is limited to declaratory and injunctive relief, but "the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as part of costs."

### **North Dakota**

N.D. CENT. CODE § 14-02.4-14 (1997): "It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public accommodations; or to give adverse, unlawful, or unequal treatment to a person with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available because of the person's . . . physical or mental disability . . . ."

N.D. CENT. CODE § 14-02.4-02(11) (1997): The term "person" includes a "public body, public corporation, and the state and a political subdivision and agency thereof."

N.D. CENT. CODE § 14-02.4-20 (1997 & Supp. 2001): A court

may grant temporary or permanent injunctions, equitable relief, and backpay.

N.D. CENT. CODE §. 25-13-02 (1995): Individuals with a disability have the right to use an assistance dog with no extra fee for admission to public places.

N.D. CENT. CODE § 48-02-19 (1998 & Supp. 2001): This statute requires a statement of compliance with accessibility guidelines from persons preparing design plans and specifications for public buildings and facilities, and it adopts the ADAAG.

## Ohio

OHIO REV. CODE ANN. § 3781.111 (West 1998 & Supp. 2001): Under this statute, all buildings are required to be accessible, but the enforcement mechanism against the state is unclear.

OHIO REV. CODE ANN. § 4112.02(G) (West 2001): "[I]t shall be an unlawful discriminatory practice . . . [f]or any proprietor or any employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of . . . disability . . . the full enjoyment of the accommodations, advantages, facilities or privileges of the place of public accommodation . . . ."

OHIO REV. CODE ANN. § 4112.01(A)(1) (West 2001): A "person" is defined to include "the state and all political subdivisions, authorities, agencies, boards, and commissions of the state."

OHIO REV. CODE ANN. § 4112.01(A)(9) (West 2001): The term "public accommodation" is defined as including the following: "any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public." No specific mention of whether the state is covered.

OHIO REV. CODE ANN. § 4112.02(G) (West 2001): This section of the civil rights statute makes it illegal "[f]or any proprietor or any employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of race, color, religion, sex, national origin, disability, age, or



ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation." Ohio caselaw suggests that services discrimination is not covered under this rule. *Davis v. Flexman*, 109 F. Supp. 2d 776, 797 (S.D. Ohio 1999) (holding that a clinic was not required to provide the services of a sign language interpreter because "nothing in [the state statute] requires a place of public accommodation to provide auxiliary aids, such as an interpreter, for deaf individuals"). Yet, even if services discrimination were found to be required under state law, the statute does not explicitly cover public entities in its definition of public accommodations. Finally, Ohio case law suggests that attorneys' fees are not available to enforce the public accommodations rule. See *Sutherland v. Nationwide Gen. Ins. Co.*, 657 N.E.2d 281 (Ohio Ct. App. 1995) (refusing to award fees to a plaintiff who sued under an Ohio law which created a private right of action for discrimination in the workplace because legislature did not specifically allow for such fees).

OHIO REV. CODE ANN. § 4112.02(H)(1) (West 2001): This section of the civil rights statute bars certain types of discrimination by "any person," and makes it unlawful for "any person to . . . [r]efuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, ancestry, disability, or national origin."

OHIO REV. CODE. ANN. § 4112.022 (West 2001): Educational discrimination at state institutions is expressly prohibited.

### Oklahoma

OKLA. STAT. ANN. tit. 7, § 19.1 (West 2001): This section provides various regulations for guide dogs and other accommodation for the disabled.

OKLA. STAT. ANN. tit. 25, § 1402 (West 1987): "It is a discriminatory practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a 'place of public accommodation' because of . . . handicap."

OKLA. STAT. ANN. tit. 25, § 1401 (West 1987): A public accommodation is defined as any place "which is supported directly or indi-



rectly by government funds.”

OKLA. STAT. ANN. tit. 61, § 11 (West 1997): The Oklahoma building code requires accessibility to the handicapped.

### **Oregon**

OR. REV. STAT. § 659A.400 (2001): “A place of public accommodation, subject to the exclusion in subsection (2) of this section, means any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise.” No specific mention of whether the state is covered.

OR. REV. STAT. §§ 346.610 – .660 (2001): This statute prohibits discrimination against blind or deaf persons using assistance dogs at education and cultural facilities.

OR. REV. STAT. §§ 447.210 - 447.310 (2001): The Oregon building code provides for a number of accommodation, adopts the ADAAG, and makes specific reference to curb cuts.

OR. REV. STAT. § 659A.142(3) (2001): “It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 659A.400, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a disabled person.”

### **Pennsylvania**

43 PA. CONS. STAT. ANN. § 955(i) (West Supp. 2001): It is unlawful for “any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any public accommodation, resort or amusement to: (1) refuse, withhold from or deny to any person because of his . . . disability . . . any of the accommodations, advantages, facilities, or privileges of such public accommodation, resort or amusement.”

43 PA. CONS. STAT. ANN. § 954(a) (West Supp. 2001): This statute defines a “person” as including “the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions thereof.”

43 PA. CONS. STAT. ANN. § 954(l) (West Supp. 2001): The term "public accommodation, resort or amusement" includes "all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof."

71 PA. CONS. STAT. ANN. §§ 1455.1 - 1455.3b (West 1990): These sections contain building code rules requiring accessibility.

### **Rhode Island**

R.I. GEN. LAWS § 37-8-15 (1997): The Rhode Island building code explicitly requires accessibility.

R.I. GEN. LAWS § 40-9.1-1 (1997): "It is the policy of this state that:

(a) Persons who are blind, visually impaired, deaf, hard of hearing and otherwise disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities and other public places.

(b) Persons who are blind, visually impaired, deaf, hard of hearing and otherwise disabled are entitled to full and equal accommodations, advantages, facilities and privileges on any public conveyance operated on land or water or in the air, or any stations and terminals thereof, not limited to taxis, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats and in any educational institution, not limited to any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, and in places of public resort, accommodation, assemblage or amusement, not limited to hotels, lodging places, restaurants, theater and in all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(c) Persons who are blind, visually impaired, deaf, hard of hearing and otherwise disabled persons shall be entitled to rent, lease or purchase, as other members of the general public, any housing accommodations offered for rent, lease or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons."

R.I. GEN. LAWS § 42-87-2 (1997): "No otherwise qualified person with a disability shall, solely by reason of his or her disability, be subject to discrimination by any person or entity doing business in the state; nor shall any otherwise qualified person with a disability be excluded from participation in or denied the benefits of any program, ac-

tivity or service of, or, by any person or entity regulated, by the state or having received financial assistance from the state or under any program or activity conducted by the state, its agents or any entity doing business with the state."

### **South Carolina**

S.C. CODE ANN. § 10-5-250 (Law. Co-op. Supp. 2001): This section adopts ANSI standards for building construction.

S.C. CODE ANN. § 43-33-10 (Law. Co-op. 1976): "It is the policy of this State to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the State and to engage in remunerative employment."

S.C. CODE ANN. § 43-33-20(a)-(b) (Law. Co-op. 1976): "(a) The blind, the visually handicapped, and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public facilities, and other public places; (b) The blind, the visually handicapped, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons . . . ."

S.C. CODE ANN. § 43-33-40(B) (Law. Co-op. Supp. 2001): South Carolina provides that enforcement shall be through a misdemeanor.

S.C. CODE ANN. § 43-33-530 (Law. Co-op. Supp. 2001): "No person may discriminate against a handicapped person with respect to public accommodations, public services, or housing without reasonable justification."

S.C. CODE ANN. § 43-33-560 (Law. Co-op. Supp. 2001): "Handicapped" is defined to include the following: "a substantial physical or mental impairment, whether congenital or acquired by accident, injury, or disease, where the impairment is verified by medical findings and appears reasonably certain to continue throughout the lifetime of the

individual without substantial improvement. This does not include an individual who is an alcohol, drug, narcotic, or other substance abuser or who is only regarded as being handicapped. The term "mental impairment" does not include mental illness."

S.C. CODE ANN. § 43-33-540 (Law Co-op. 1976): "A handicapped person aggrieved by the discrimination prohibited by this article has the right to seek injunctive relief or civil damages, not to exceed five thousand dollars actual damages, plus his attorney's fee and costs, in the court of common pleas."

### **South Dakota**

S.D. CODIFIED LAWS §§ 5-14-12 to 5-14-14 (Michie 1994): These section contain various building code rules and adopt the ADAAG.

S.D. CODIFIED LAWS § 9-46-1.2 (Michie 1995): Sidewalk ramps shall be constructed from department of transportation specifications that are in accordance with the ADAAG.

S.D. CODIFIED LAWS § 20-13-23 (Michie 1995): "It shall be an unfair or discriminatory practice for any person engaged in the provision of public accommodations because of race, color, creed, religion, sex, ancestry, disability or national origin, to fail or refuse to provide to any person access to the use of and benefit from the services and facilities of such public accommodations; or to accord adverse, unlawful, or unequal treatment to any person with respect to the availability of such services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available, including terms and conditions relating to credit, payment, warranties, delivery, installation, and repair."

S.D. CODIFIED LAWS § 20-13-23.1 (Michie 1995): "Any person with a disability is entitled to reasonably equal accommodations, advantages, facilities and privileges of all hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."

S.D. CODIFIED LAWS § 20-13-23.2 (Michie 1995): A violation of the above provision is a misdemeanor.

S.D. CODIFIED LAWS § 20-13-24 (Michie 1995): "It is an unfair or

discriminatory practice for any person engaged in the provision of public services, by reason of . . . disability . . . to fail or refuse to provide to any person access to the use of and benefit thereof, or to provide adverse or unequal treatment to any person in connection therewith."

S.D. CODIFIED LAWS § 20-13-1(13) (Michie 1995): "Public service" is defined as "any public facility, department, agency, board or commission, owned, operated or managed by or on behalf of the State of South Dakota, any political subdivision thereof, or any other public corporation."

### **Tennessee**

TENN. CODE ANN. § 62-7-112 (Supp. 2001): This section provides various rules pertaining to guide dogs.

TENN. CODE ANN. § 4-21-501 (1998): The public accommodation statute does not include disability as a covered ground of discrimination.

TENN. CODE ANN. § 68-120-202 (2001): This statute contains a public policy "to make all public buildings accessible to and functional for persons who are physically handicapped." There does not appear to be any enforcement for this right and it is limited to buildings (rather than all facilities) and only covers people who have physical impairments.

TENN. CODE ANN. § 68-120-205(b) (2001): "No penalty or fine shall be assessed against the federal, state, or local government on account of noncompliance with these provisions."

### **Texas**

TEX. REV. CIV. STAT. ANN. art. 9102, § (2)(a)(1) (Vernon Supp. 2002): This statute provides that "a building or facility used by the public that is constructed, or renovated, modified, or altered, in whole or in part on or after January 1, 1970, through the use of state, county, or municipal funds, or the funds of any political subdivision of the state" must be accessible.

TEX. REV. CIV. STAT. ANN. art. 9102, § 5(g) (Vernon Supp. 2002): Enforcement of the above provision is by the Commission of Licensing and Regulation.

TEX. HUM. RES. CODE ANN. § 121.003(a) (Vernon 1996): "Persons with disabilities have the same right as the able-bodied to the full use and enjoyment of any public facility in the state."

TEX. HUM. RES. CODE ANN. §121.002(5) (Vernon 1996): "Public facilities includes a street, highway, sidewalk, walkway, common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or any other public conveyance or mode of transportation; a hotel, motel, or other place of lodging; a public building maintained by any unit or subdivision of government; a building to which the general public is invited; a college dormitory or other educational facility; a restaurant or other place where food is offered for sale to the public; and any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited."

TEX. HUM. RES. CODE ANN. § 121.004(a), (b) (Vernon 1996): Enforcement is by a misdemeanor "punishable by a fine of not less than \$300 or more than \$1,000." In addition, "a person, firm, association, corporation, or other organization, or the agent of a person, firm, association, corporation, or other organization, who violates the provisions of Section 121.003 of this chapter is deemed to have deprived a person with a disability of his or her civil liberties. The person with a disability deprived of his or her civil liberties may maintain a cause of action for damages in a court of competent jurisdiction, and there is a conclusive presumption of damages in the amount of at least \$100 to the person with a disability."

## Utah

UTAH CODE ANN. § 13-7-1 (2001): The Utah public accommodation statute does not include disability as a covered category.

UTAH CODE ANN. § 26-29-1 (1998): Utah requires public buildings and facilities to be accessible to individuals with physical impairments.

UTAH CODE ANN. § 26-29-4 (1998): Depending on the source of funding, enforcement of the above provision is by the State Board of Education, the State Building Board, or the governing board of the county or municipality in which the building or facility is located.

UTAH CODE ANN. § 26-30-1 (2001): This section provides that



"[t]he blind, visually impaired, hearing impaired, or otherwise physically disabled person has the same rights and privileges in the use of highways, streets, sidewalks, walkways, public buildings, public facilities, and other public areas as able-bodied persons[;] . . . has equal rights to accommodations, advantages, and facilities offered by common carriers, including air carriers, railroad carriers, motor buses, motor vehicles, water carriers, and all other modes of public conveyance in this state[; and] . . . has equal rights to accommodations, advantages, and facilities offered by hotels, motels, lodges, and all other places of public accommodation in this state, and to places of amusement or resort to which the public is invited."

UTAH CODE ANN. § 26-30-4 (2001): A violation of the above provision is a misdemeanor.

### Vermont

VT. STAT. ANN. tit. 9, § 4502(c) (1993): "No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability . . . ."

VT. STAT. ANN. tit. 9, § 4501(1) (1993): A "public accommodation" is defined as "any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public." It is not clear whether public entities are covered by this rule but reference to "school" may suggest that the legislature expected public entities to be covered.

VT. STAT. ANN. tit. 21, §§ 273-76 (Supp. 2001): These provisions contain various building code rules and adopt the ADAAG.

### Virginia

VA. CODE ANN. § 51.5-40 (Michie 1998): "No otherwise qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial assistance or under any program or activity conducted by or on behalf of any state agency."

VA. CODE ANN. § 51.5-44 (Michie 2001): "A. A person with a disability has the same rights as other persons to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

B. A person with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, subways, boats or any other public conveyances or modes of transportation, restaurants, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited subject only to the conditions and limitations established by law and applicable alike to all persons.

C. Each town, city or county, individually or through transportation district commissions, shall ensure that persons with disabilities have access to the public transportation within its jurisdiction by either (i) use of the same transportation facilities or carriers available to the general public or (ii) provision of paratransit or special transportation services for persons with disabilities or (iii) both. All persons with disabilities in the jurisdiction's service area who, by reason of their disabilities, are unable to use the service for the general public shall be eligible to use such paratransit or special transportation service. No fee that exceeds the fee charged to the general public shall be charged a person with a disability for the use of the same transportation facilities or carriers available to the general public. Paratransit or special transportation service for persons with disabilities may charge fees to such persons comparable to the fees charged to the general public for similar service in the jurisdiction service area, taking into account especially the type, length and time of trip. Any variance between special service and regular service fares shall be justifiable in terms of actual differences between the two kinds of service provided.

D. Nothing in this title shall be construed to require retrofitting of any public transit equipment or to require the retrofitting, renovation, or alteration of buildings or places to a degree more stringent than that required by the applicable building code in effect at the time the building permit for such building or place is issued.

E. Every totally or partially blind person shall have the right to be accompanied by a dog, in harness, trained as a guide dog, every deaf or hearing-impaired person shall have the right to be accompanied by a dog trained as a hearing dog on a blaze orange leash, and every mobility-impaired person shall have the right to be accompanied by a dog, in a harness or backpack, trained as a service dog in any of the places listed in subsection B without being required to pay an extra charge for the dog; provided that he shall be liable for any damage done to the

premises or facilities by such dog. The provisions of this section shall apply to persons accompanied by a dog that is in training, at least six months of age, and is (i) in harness, provided such person is an experienced trainer of guide dogs; (ii) on a blaze orange leash, provided such person is an experienced trainer of hearing dogs; (iii) in a harness or backpack, provided such person is an experienced trainer of service dogs; or (iv) wearing a jacket identifying the recognized guide, hearing or service dog organization, provided such person is an experienced trainer of the organization identified on the jacket.

As used in this chapter, "hearing dog" means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond.

As used in this chapter, "service dog" means a dog trained to accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or other such activities of service or support.

As used in this chapter, "mobility-impaired person" means any person who has completed training to use a dog for service or support because he is unable to move about without the aid of crutches, a wheelchair or any other form of support or because of limited functional ability to ambulate, climb, descend, sit, rise or perform any related function."

## Washington

WASH. REV. CODE ANN. § 19.27.031 (West 1999): This provision contains state building code rules requiring accessibility.

WASH. REV. CODE ANN. § 49.60.215 (West 2002): "It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sex, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a disabled person except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds

for refusal and shall not constitute an unfair practice.”

WASH. REV. CODE ANN. § 49.60.040(1) (West 2002): The term “person” includes “any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.”

WASH. REV. CODE ANN. § 49.60.250(5) (West 2002): Damages available in court may be awarded in an administrative process, except that damages for humiliation and mental suffering cannot exceed \$10,000.

WASH. REV. CODE ANN. § 49.60.030(2) (West 2002): This provision allows for a civil suit to recover actual damages (no limits stated) and the costs of a suit, including attorney’s fees. Actual damages includes emotional distress and mental anguish damages. *Negron v. Snoqualmie Valley Hosp.*, 936 P.2d 55, 60 (Wash. App. 1997).

“Services” discrimination is not covered by the state statute. *Fell v. Spokane Transit Auth.*, 911 P.2d 1319, 1329 (Wash. 1996) (“What must be very clear, however, is that the statutory mandate to provide access to places of public accommodation is not a mandate to provide services. While entitlement to services may be in the ADA, the Legislature has not enacted a counterpart to the ADA in Washington creating such entitlements.”). *Id.* A federal district court reached a similar conclusion in a case brought under both the ADA and the Washington Law Against Discrimination. *Matthews v. NCAA*, 79 F. Supp. 2d 1199 (E.D. Wash. 1999). The court noted that the parties’ briefs in the case ignored the state statute and focused on the ADA’s applicability and requirements, but stated that “this provision is similar to the relevant portion of the ADA, and many of the concerns raised by application of the ADA also apply to the Washington statute.” *Id.* at 1203 n.2. In *Matthews*, the plaintiff argued that a place of public accommodation “includes not only physical structures and locations, but also services and other intangibles.” *Id.* at 1205. The court rejected this argument, stating that “[t]raditionally, places of public accommodation are considered to be physical ‘places.’” *Id.* (citing *Elitt v. USA Hockey*, 922 F. Supp. 217, 223 (E.D. Mo. 1996); *Brown v. 1995 Tenet ParaAmerica Bicycle Challenge*, 959 F. Supp. 496, 499 (N.D. Ill. 1997); *Stoutenborough v. National Football League, Inc.*, 59 F.3d 580, 583 (6th Cir. 1995)).

WASH. REV. CODE ANN. § 70.84.010 (West 1992): “(1) It is the policy of this state to encourage and enable the blind, the visually

handicapped, the hearing impaired, and the otherwise physically disabled to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."

### West Virginia

W. VA. CODE ANN. § 5-11-9(6) (Michie 1999): It is unlawful for "any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to . . . [r]efuse, withhold from or deny to any individual because of his or her disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of the place of public accommodations."

W. VA. CODE ANN. § 5-11-3(j) (Michie 1999): This section defines a place of public accommodation as "any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private."

W. VA. CODE ANN. § 5-15-4 (Michie 1999): "(a) Blind and disabled persons shall have the same right as persons with normal sight to the full and free use of the highways, roads, streets, sidewalks, walkways, public buildings, public facilities and other public places.

(b) Blind and disabled persons are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, restaurants, other places of public accommodation,



amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(c) Every blind person, every deaf person and every person who is physically disabled because of any neurological, muscular or skeletal disorder that causes weakness or inability to perform any physical function shall have the right to be accompanied by a guide or support dog, wearing a harness, especially trained for the purpose, which serves as a guide, leader, listener or support in any of the places, accommodations or conveyances specified in subsection (b) of this section without being required to pay an extra charge for the admission of such guide or support dog, but the blind, deaf or disabled person shall, upon request, present for inspection credentials issued by an accredited school for training guide or support dogs. The blind, deaf or disabled person shall be liable for any damage done by such guide or support dog to the premises or facilities or to persons using such premises or facilities: Provided, That the blind, deaf or disabled person shall not be liable for any damage done by such guide or support dog to any person or the property of person who has contributed to or caused the dog's behavior by inciting or provoking such behavior. Such dog shall not occupy a seat in any public conveyance and shall be upon a leash while using the facilities of a common carrier."

### Wisconsin

63 Wis. Op. Att'y Gen. 87 (1974): "Although the state and federal constitutions do not demand state remedial measures to insure that public buildings and seats of government be constructed and maintained so as to be accessible to the physically handicapped, the legislature has an affirmative duty to address this problem and assure equal access to all constituted classes of citizens including the physically handicapped."

WIS. STAT. ANN. § 101.13(2)(d) (West 1997): "Any place of employment or public building, unless exempted by rule of the department, the initial construction of which is commenced on or after May 27, 1976, shall be designed and constructed so as to provide reasonable means of access."

WIS. STAT. ANN. § 101.13(1) (West 1997): "Access" is defined as: "the physical characteristics of a place which allow persons with functional limitations caused by impairments of sight, hearing, coordination or perception or persons with semiambulatory or nonambulatory disabilities to enter, circulate within and leave a place of employment or



public building and to use the public toilet facilities and passenger elevators in the place of employment or public building without assistance."

WIS. STAT. ANN. § 101.13(6)(g) (West 1997): "The owner of any public building who fails to comply with this subsection may be compelled to meet its requirements in a circuit court suit by any interested person. Such person shall be reimbursed, if successful, for all costs and disbursements plus such actual attorney fees as may be allowed by the court."

WIS. STAT. ANN. § 106.52 (1), (3) (West Supp. 2001): It is unlawful for a "place of accommodation or amusement" to "[d]eny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of . . . disability" or "[d]irectly or indirectly publish, circulate, display or mail any written communication which the communicator knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of . . . disability . . . or that the patronage of a person is unwelcome, objectionable or unacceptable for [that reason]." The definition of "public accommodation" does not specify that it covers state facilities, though.

WIS. STAT. ANN. § 174.056 (West 1997): This provision requires that dogs for the blind, deaf, and mobility-impaired are admitted to public places.

WIS. STAT. ANN. § 346.503 (West 1999): This statute requires parking spaces for vehicles displaying special registration plates or special identification cards.

## Wyoming

WYO. STAT. ANN. § 6-9-101 (Michie 2001): "(a) All persons of good deportment are entitled to the full and equal enjoyment of all accommodations, advantages, facilities and privileges of all places or agencies which are public in nature, or which invite the patronage of the public, without any distinction, discrimination or restriction on account of race, religion, color, sex or national origin.

(b) A person who intentionally violates this section commits a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both."

WYO. STAT. ANN. § 16-6-501(a)-(b) (Michie 2001): "The plans and specifications for the construction of or additions to all buildings for general public use built by the state or any governmental subdivision, school district or other public administrative body within the state, shall provide facilities and features conforming with the specifications set forth in the publication entitled 'American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped' (U.S. Patent No. A117.1-1961) as approved October 31, 1961, by the American Standards Association, now called the American National Standards Institute, Inc. . . . Every curb or sidewalk to be constructed or reconstructed in Wyoming, where both are provided and intended for public use, whether constructed with public or private funds, shall provide a ramp at points of intersection between pedestrian and motorized lines of travel and no less than two (2) curb ramps per lineal block. Design for curb ramps shall take into consideration the needs of all physically handicapped persons including blind pedestrians."

WYO. STAT. ANN. § 35-13-201 (a) (Michie 2001): "Any blind, visually impaired, deaf, hearing impaired person or [otherwise disabled] person with a disability, subject to the conditions and limitations established by law and applicable alike to all persons . . . [s]hall be afforded full and equal accommodations, advantages, facilities and privileges of all hotels, motels, lodging places, restaurants, public elevators, places of public accommodation, amusement or resort and other places to which the general public is invited . . . ."

WYO. STAT. ANN. § 35-13-203 (Michie 2001): A violation of the above provision is a misdemeanor with a fine of no more than \$750.