

Eye on Washington by Nicholas F. Benton

New law would help protect disabled

Congress, backed by Bush administration, is ready to enact sweeping new anti-discrimination legislation.

One of the first items of business to be taken up by Congress when it convenes in January will be to pass the "Americans with Disabilities Act" (ADA), which will extend anti-discrimination protections for persons with physical disabilities.

The bill passed the Senate last September, and the House Education and Labor Committee approved an amended version of it by a 35-0 vote on Nov. 14, but Congress recessed before voting final approval. The bill is avidly supported by advocacy organizations of the disabled, and the Bush administration.

The bill would extend anti-discrimination protections for the handicapped beyond those employers who have federal contracts or receive federal assistance in excess of \$2,500, which was all its predecessor, the Rehabilitation Act of 1973, covered. The new bill mandates anti-discrimination practices to be extended to all employers "engaged in any industry affecting commerce."

According to a report on the ADA bill published by the Senate Labor and Human Resources Committee last fall, "The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life." It is the concept of "bringing into the mainstream of life" those with disabilities which is key to the bill.

A generation of disabled Americans was placed in the educational mainstream by the Education for All

Handicapped Children Act of 1975, and it is now "coming of age," as 150,000 "well educated and ready to work" disabled persons are poised to enter the labor market every year. Through the ADA, advocates propose, more handicapped "will be fully-empowered in the 1990s."

Statistics show that 58% of all disabled men and 80% of all disabled women currently are not working. It costs an estimated \$45,000 in public funds annually to support one non-working disabled person, and therefore the administration supports it as "cost effective."

Major provisions of the bill require private employers to make "reasonable accommodation" for known physical and mental impairments of otherwise qualified workers, provided this does not cause "undue hardship to the employer." For example, employers can make physical changes in the workplace to make jobs accessible, or utilize part-time or flex-time scheduling options.

The ADA bill contains an "accessibility requirement" which mandates "businesses serving the public [to] make their establishments accessible to disabled persons." It mandates the removal of physical barriers "when that is readily achievable," which would add an estimated 1% to construction costs.

Another feature of the bill broadens the definition of "who constitutes a disabled person." A Supreme Court decision in *School Board of Nassau County, Florida v. Arline* (1987) ruled that a woman testing positive for a contagious disease was a handi-

capped person. The Supreme Court defined physical impairment as any "physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; meic and lymphatic; skin; and endocrine."

Further, the Court added that "Society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment. Few aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness."

The ADA bill incorporates this standard, and the Senate report remarked that "this new approach is necessary given the widespread negative attitudes towards the physically impaired, including those with such diseases as AIDS, epilepsy, cerebral palsy, diabetes," and so on.

While a distinction is warranted between contagious and non-contagious disabilities to protect the safety of others, the Senate report abounded with grim testimony of discrimination based on little more than the perceived discomfort of "having to gaze upon a physically-deformed person." One example cited was the case of a New Jersey zoo keeper who refused to admit children with Downs Syndrome because he feared "they would upset the chimpanzees."

Another case, evaluated by the Supreme Court in *Alexander v. Choate* (1985), referenced a "cerebral palsied child, who was not a physical threat and was academically competitive," who was excluded from a public school "because his teacher claimed his physical appearance 'produced a nauseating effect' on his classmates."