

117TH CONGRESS
1ST SESSION

S. 642

To protect the rights of passengers with disabilities in air transportation,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2021

Ms. BALDWIN (for herself, Mr. CASEY, Mr. BLUMENTHAL, Mr. MARKEY, Mr. MERKLEY, Ms. DUCKWORTH, and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the rights of passengers with disabilities in air
transportation, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Air Carrier Access
5 Amendments Act of 2021”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) In 1986, President Ronald Reagan signed
 2 the Air Carrier Access Act of 1986 (Public Law 99–
 3 435; 100 Stat. 1080), adding a provision now codi-
 4 fied in section 41705 of title 49, United States Code
 5 (in this section referred to as the “ACAA”), prohib-
 6 iting disability-based discrimination in air transpor-
 7 tation.

8 (2) Despite the effort, individuals, including
 9 veterans, with disabilities continue to experience sig-
 10 nificant barriers to and with traveling in air trans-
 11 portation, such as—

12 (A) damaged assistive devices;

13 (B) inaccessible aircraft, lavatories, and
 14 communication media;

15 (C) delayed assistance;

16 (D) treatment of service animals;

17 (E) inadequate disability cultural com-
 18 petency; and

19 (F) a lack of suitable seating accommoda-
 20 tions.

21 (b) SENSE OF CONGRESS.—The following is the sense
 22 of Congress:

23 (1) Access for individuals with disabilities in air
 24 transportation must move into the 21st century.

25 Otherwise, individuals with disabilities will be left

1 behind and unable to compete in today’s job market
2 or enjoy the opportunities available to other citizens
3 of the United States.

4 (2) Aircraft must be designed to accommodate
5 individuals with disabilities and air carriers must ac-
6 quire aircraft that meet broad accessibility stand-
7 ards.

8 (3) The ACAA must be updated to improve ac-
9 cess to air transportation for individuals with dis-
10 abilities. Legislation is necessary for the moderniza-
11 tion of standards and requirements that will
12 strengthen accessibility in air transportation, includ-
13 ing the accessibility of aircraft.

14 (4) The Department of Transportation and the
15 Architectural and Transportation Barriers Compli-
16 ance Board (in this section referred to as the “Ac-
17 cess Board”) must promulgate regulations to ensure
18 that all passengers with disabilities receive—

19 (A) prompt and effective boarding,
20 deplaning, and connections between flights;

21 (B) accommodations, including non-
22 standard accommodations, that safely facilitate
23 air travel; and

24 (C) better access to airport facilities, in-
25 cluding the provision of visually and tactilely

1 accessible announcements and full and equal ac-
2 cess to aural communications.

3 (5) Legislation is necessary to ensure that indi-
4 viduals with disabilities have adequate remedies
5 available when air carriers violate the ACAA (includ-
6 ing regulations prescribed under the ACAA).

7 (6) Unlike other civil rights statutes, the ACAA
8 does not contain a private right of action, which is
9 critical to the enforcement of civil rights statutes.
10 Legislation is necessary to correct this anomaly.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) ACCESS BOARD.—The term “Access Board”
14 means the Architectural and Transportation Bar-
15 riers Compliance Board.

16 (2) AIR CARRIER.—The term “air carrier”
17 means an air carrier or foreign air carrier (as those
18 terms are defined in section 40102 of title 49,
19 United States Code).

20 (3) DISABILITY.—The term “disability” has the
21 meaning given that term in section 3 of the Ameri-
22 cans with Disabilities Act of 1990 (42 U.S.C.
23 12102), including the meaning under that section as
24 amended by the ADA Amendments Act of 2008
25 (Public Law 110–325; 122 Stat. 3553).

1 (4) SECRETARY.—The term “Secretary” means
2 the Secretary of Transportation.

3 **SEC. 4. IMPROVING ACCESS TO AIR TRANSPORTATION FOR**
4 **INDIVIDUALS WITH DISABILITIES.**

5 (a) IN GENERAL.—Section 41705 of title 49, United
6 States Code, is amended to read as follows:

7 **“§ 41705. Accessibility of air transportation for indi-**
8 **viduals with disabilities**

9 “(a) IN GENERAL.—In providing air transportation,
10 an air carrier may not discriminate against an individual
11 on the basis of a disability, including by taking any of
12 the actions prohibited under subsection (b) or not taking
13 any of the actions required by subsection (c).

14 “(b) PROHIBITED ACTIONS.—

15 “(1) IN GENERAL.—An air carrier may not—

16 “(A) directly or through a contractual, li-
17 censing, or other arrangement, discriminate in
18 the full and equal enjoyment (within the mean-
19 ing of that term under section 302(a) of the
20 Americans with Disabilities Act of 1990 (42
21 U.S.C. 12182(a))) of air transportation;

22 “(B) deny the opportunity of an individual
23 or a class of individuals, on the basis of a dis-
24 ability or disabilities of the individual or class,
25 to participate in or benefit from the goods,

1 services, facilities, advantages, accommodations,
2 or other opportunities provided by the air car-
3 rier;

4 “(C) afford an individual or a class of indi-
5 viduals, on the basis of a disability or disabil-
6 ities of the individual or class, with the oppor-
7 tunity to participate in or benefit from a good,
8 service, facility, advantage, accommodation, or
9 other opportunity that is not equal to a good,
10 service, facility, advantage, accommodation, or
11 other opportunity afforded to other individuals;

12 “(D) subject to paragraph (2), provide an
13 individual or a class of individuals, on the basis
14 of a disability or disabilities of the individual or
15 class, with a good, service, facility, privilege, ad-
16 vantage, accommodation, or other opportunity
17 that is different or separate from a good, serv-
18 ice, facility, privilege, advantage, accommoda-
19 tion, or other opportunity provided to other in-
20 dividuals;

21 “(E) deny any goods, services, facilities,
22 privileges, advantages, accommodations, or
23 other opportunities to an individual because of
24 the known disability of another individual with

1 whom the individual is known to have a rela-
2 tionship or association;

3 “(F) impose or apply eligibility criteria
4 that screen out or have the effect of screening
5 out individuals with disabilities or a class of in-
6 dividuals with disabilities from fully enjoying
7 any good, service, facility, privilege, advantage,
8 accommodation, or other opportunity provided
9 by the air carrier, unless the air carrier can
10 demonstrate that such criteria are necessary for
11 the provision of the good, service, facility, privi-
12 lege, advantage, accommodation, or other op-
13 portunity;

14 “(G) directly or through a contractual, li-
15 censing, or other arrangement, use standards or
16 criteria or methods of administration—

17 “(i) that have the effect of discrimi-
18 nating on the basis of disability; or

19 “(ii) that perpetuate the discrimina-
20 tion of others who are subject to common
21 administrative control;

22 “(H) purchase or lease an aircraft that
23 does not comply with this section and regula-
24 tions prescribed under this section; or

“(I) refurbish an aircraft cabin in an aircraft manufactured before the date of the enactment of the Air Carrier Access Amendments Act of 2021, or purchase or lease such an aircraft, unless the aircraft, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with this section and upon issuance of regulations prescribed under this section.

“(2) EXCEPTION.—

“(A) IN GENERAL.—Subject to subparagraph (B), an air carrier may provide an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, with a good, service, facility, privilege, advantage, accommodation, or other opportunity that is different or separate from the good, service, facility, privilege, advantage, accommodation, or other opportunity provided to other individuals if doing so is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, accommodation, or other opportunity that is as effective as the good, service, facility, privilege,

1 advantage, accommodation, or other oppor-
2 tunity provided to other individuals.

3 “(B) ACCEPTANCE.—An individual or a
4 class of individuals shall retain the authority to
5 decide whether to accept or refuse a good, serv-
6 ice, facility, privilege, advantage, accommoda-
7 tion, or other opportunity referred to in sub-
8 paragraph (A).

9 “(C) SELECTION OF GOODS, ETC., PRO-
10 VIDED TO OTHERS.—If, in accordance with sub-
11 paragraph (A), an air carrier provides to an in-
12 dividual or a class of individuals a good, service,
13 facility, privilege, advantage, accommodation, or
14 other opportunity that is different or separate
15 from the good, service, facility, privilege, advan-
16 tage, accommodation, or other opportunity pro-
17 vided to other individuals, the air carrier may
18 not deny to an individual with a disability the
19 opportunity to participate in the good, service,
20 facility, privilege, advantage, accommodation, or
21 other opportunity provided to such other indi-
22 viduals.

23 “(c) REQUIRED ACTIONS.—An air carrier shall—

24 “(1) afford goods, services, facilities, privileges,
25 advantages, accommodations, and other opportuni-

1 ties to an individual with a disability in the most in-
2 tegrated setting appropriate to the needs of the indi-
3 vidual;

4 “(2) make reasonable modifications in policies,
5 practices, or procedures, when such modifications
6 are necessary to afford goods, services, facilities,
7 privileges, advantages, accommodations, or other op-
8 portunities to individuals with disabilities, unless the
9 air carrier can demonstrate that making such modi-
10 fications would fundamentally alter the nature of the
11 goods, services, facilities, privileges, advantages, ac-
12 commodations, or other opportunities;

13 “(3) take such measures as may be necessary
14 to ensure that no individual with a disability is ex-
15 cluded, denied services, segregated, or otherwise
16 treated differently from other individuals because of
17 the absence of auxiliary aids or services, unless the
18 air carrier can demonstrate that taking such meas-
19 ures would—

20 “(A) fundamentally alter the nature of a
21 good, service, facility, privilege, advantage, ac-
22 commodation, or other opportunity being of-
23 fered; or

24 “(B) result in an undue burden to the air
25 carrier; and

1 “(4)(A) remove architectural barriers to equal
2 access by individuals with disabilities to goods, serv-
3 ices, facilities, privileges, advantages, accommoda-
4 tions, or other opportunities provided by the air car-
5 rier, and communication barriers to such access that
6 are structural in nature, in facilities of the air car-
7 rier (whether owned or leased by the air carrier)
8 that were constructed before or altered after the
9 date of the enactment of the Air Carrier Access
10 Amendments Act of 2021, and remove physical and
11 communication barriers to such access in aircraft
12 manufactured before such date of enactment and
13 used by an air carrier for transporting individuals,
14 if the removal of such barriers is readily achievable;
15 or

16 “(B) if the air carrier can demonstrate that the
17 removal of a barrier described in subparagraph (A)
18 is not readily achievable, make such goods, services,
19 facilities, privileges, advantages, accommodations, or
20 other opportunities available through alternative
21 methods that are readily achievable.

22 “(d) COMPLAINTS.—

23 “(1) IN GENERAL.—The Secretary of Transpor-
24 tation shall ensure that individuals with disabilities
25 traveling in air transportation are able—

1 “(A) to file complaints with the Depart-
 2 ment of Transportation in response to dis-
 3 ability-related discrimination prohibited under
 4 this section or regulations prescribed under this
 5 section; and

6 “(B) to receive assistance from the De-
 7 partment through a toll-free hotline telephone
 8 number or comparable electronic means of com-
 9 munication.

10 “(2) NOTICE TO PASSENGERS WITH DISABIL-
 11 ITIES.—Each air carrier shall include on its publicly
 12 available Internet website, any related mobile device
 13 application, and online service—

14 “(A) the hotline telephone number estab-
 15 lished under section 42302 or the telephone
 16 number for the Aviation Consumer Protection
 17 Division of the Department of Transportation
 18 and the Department’s disability assistance hot-
 19 line telephone number or a comparable elec-
 20 tronic means of communication;

21 “(B) notice that a consumer can file a dis-
 22 ability-related complaint with the Aviation Con-
 23 sumer Protection Division;

24 “(C) an active link to the Internet website
 25 of the Aviation Consumer Protection Division

1 for a consumer to file a disability-related com-
2 plaint; and

3 “(D) notice that the consumer can file a
4 disability-related complaint with the air carrier
5 and the process and any timelines for filing
6 such a complaint.

7 “(3) INVESTIGATION OF COMPLAINTS.—

8 “(A) IN GENERAL.—The Secretary shall—

9 “(i) investigate each complaint of a
10 violation of this section or a regulation pre-
11 scribed under this section;

12 “(ii) provide, in writing, to the indi-
13 vidual that filed the complaint and the air
14 carrier alleged to have violated this section
15 or a regulation prescribed under this sec-
16 tion, the determination of the Secretary
17 with respect to—

18 “(I) whether the air carrier vio-
19 lated this section or a regulation pre-
20 scribed under this section;

21 “(II) the facts underlying the
22 complaint; and

23 “(III) any action the Secretary is
24 taking in response to the complaint;
25 and

1 “(iii) assess civil penalties under sec-
2 tion 46301 for each violation of this sec-
3 tion (with each individual act of discrimi-
4 nation prohibited under subsection (a), (b),
5 or (c) considered a separate violation of
6 this section).

7 “(B) REFERRAL.—If the Secretary has
8 reasonable cause to believe that any air carrier
9 or group of air carriers is engaged in a pattern
10 or practice of discrimination under this section,
11 or any person or group of persons has been dis-
12 criminated against under this section and such
13 discrimination raises an issue of general public
14 importance, the Secretary shall, after the as-
15 sessment of civil penalties, refer the matter to
16 the Attorney General for further action.

17 “(C) PUBLICATION OF DATA.—The Sec-
18 retary shall publish disability-related complaint
19 data in a manner comparable to other aviation
20 consumer complaint data.

21 “(D) REVIEW AND REPORT.—The Sec-
22 retary shall regularly review all complaints re-
23 ceived by air carriers alleging discrimination on
24 the basis of disability and shall report annually

1 to Congress on the disposition of such com-
2 plaints.

3 “(e) CIVIL ACTION.—

4 “(1) AGGRIEVED PERSONS.—

5 “(A) IN GENERAL.—Any person aggrieved
6 by the violation by an air carrier of this section
7 or a regulation prescribed under this section
8 may, during the 2-year period beginning on the
9 date of the violation, bring a civil action in an
10 appropriate district court of the United States.

11 “(B) AVAILABLE RELIEF.—If a court finds
12 in favor of the plaintiff in a civil action brought
13 under subparagraph (A), the court may award
14 to the plaintiff equitable and legal relief, includ-
15 ing compensatory and punitive damages, and
16 shall, in addition to any such relief, award rea-
17 sonable attorney’s fees, reasonable expert fees,
18 and cost of the action to the plaintiff.

19 “(C) EXHAUSTION OF ADMINISTRATIVE
20 REMEDIES.—Any person aggrieved by the viola-
21 tion by an air carrier of this section or a regu-
22 lation prescribed under this section shall not be
23 required to exhaust administrative remedies be-
24 fore bringing a civil action under subparagraph
25 (A).

1 “(D) RULE OF CONSTRUCTION.—Nothing
 2 in this paragraph shall be construed to invali-
 3 date or limit other Federal or State laws afford-
 4 ing to people with disabilities greater legal
 5 rights or protections than those granted by this
 6 section.

7 “(2) ENFORCEMENT BY ATTORNEY GEN-
 8 ERAL.—

9 “(A) IN GENERAL.—The Attorney General
 10 may bring a civil action on behalf of persons
 11 aggrieved by the violation by an air carrier of
 12 this section or a regulation prescribed under
 13 this section in any appropriate district court of
 14 the United States.

15 “(B) AUTHORITY OF COURT.—In a civil
 16 action under subparagraph (A), the court
 17 may—

18 “(i) grant any equitable relief that the
 19 court considers to be appropriate;

20 “(ii) award such other relief as the
 21 court considers to be appropriate, includ-
 22 ing monetary damages to persons ag-
 23 grieved by the violation by an air carrier of
 24 this section or a regulation prescribed

1 under this section, when requested by the
 2 Attorney General; and

3 “(iii) assess a civil penalty against the
 4 air carrier.

5 “(f) RULE OF CONSTRUCTION.—Nothing in this sub-
 6 chapter shall require an air carrier to permit an individual
 7 to participate in or benefit from goods, services, facilities,
 8 privileges, advantages, accommodations, or other opportu-
 9 nities if the individual poses a significant risk to the health
 10 or safety of others that cannot be eliminated by a modi-
 11 fication of policies, practices, or procedures or by the pro-
 12 vision of auxiliary aids or services.

13 “(g) DEFINITIONS.—In this section:

14 “(1) ACCESS BOARD.—The term ‘Access Board’
 15 means the Architectural and Transportation Bar-
 16 riers Compliance Board.

17 “(2) AIR CARRIER.—The term ‘air carrier’
 18 means an air carrier or, subject to section 40105(b),
 19 a foreign air carrier.

20 “(3) DISABILITY.—The term ‘disability’ has the
 21 meaning given that term in section 3 of the Ameri-
 22 cans with Disabilities Act of 1990 (42 U.S.C.
 23 12102), including the meaning under that section as
 24 amended by the ADA Amendments of 2008 (Public
 25 Law 110–325; 122 Stat. 3553).

1 “(4) READILY ACHIEVABLE.—The term ‘readily
2 achievable’ means easily accomplishable and able to
3 be carried out without much difficulty or expense. In
4 determining whether an action is readily achievable,
5 factors to be considered include—

6 “(A) the nature and cost of the action
7 needed; and

8 “(B) the overall financial resources of the
9 air carrier.”.

10 (b) TECHNICAL ASSISTANCE.—Not later than 180
11 days after the date of the enactment of this Act, the Sec-
12 retary shall ensure the availability and provision of appro-
13 priate technical assistance manuals to individuals and en-
14 tities with rights or responsibilities under section 41705
15 of title 49, United States Code, as amended by subsection
16 (c).

17 (c) CLERICAL AMENDMENT.—The chapter analysis
18 for chapter 417 of title 49, United States Code, is amend-
19 ed by striking the item relating to section 41705 and in-
20 serting the following:

“41705. Accessibility of air transportation for individuals with disabilities.”.

21 **SEC. 5. STANDARDS.**

22 (a) AIRCRAFT WITH NEW OR AMENDED TYPE CER-
23 TIFICATES.—

24 (1) IN GENERAL.—Not later than 18 months
25 after the date of the enactment of this Act, the Ac-

1 cess Board shall, in consultation with the Secretary,
2 prescribe regulations setting forth the minimum
3 standards to ensure that aircraft with type certifi-
4 cates under part 21 of title 14, Code of Federal
5 Regulations, issued or amended after the date the
6 regulations are issued, and related boarding and
7 deplaning equipment, are accessible, in terms of de-
8 sign for, transportation of, and communication to,
9 individuals with disabilities, including individuals
10 who use wheelchairs.

11 (2) COVERED AIRCRAFT, EQUIPMENT, AND FEA-
12 TURES.—The standards issued under paragraph (1)
13 shall address, at a minimum—

14 (A) boarding and deplaning equipment, in-
15 cluding ensuring that there is a route accessible
16 for individuals with disabilities;

17 (B) seating accommodations;

18 (C) lavatories;

19 (D) captioning and audio description of in-
20 flight entertainment and captioning of any
21 other aural communication;

22 (E) individual video displays;

23 (F) visually and tactilely accessible an-
24 nouncements;

1 (G) adequate in-cabin stowage for assistive
2 devices; and

3 (H) proper stowage of assistive devices in
4 the cargo hold to prevent damage.

5 (b) AIRCRAFT WITH AN EXISTING TYPE CERTIFI-
6 CATE.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of the enactment of this Act, the Access
9 Board shall, in consultation with the Secretary, pre-
10 scribe regulations setting forth minimum standards
11 to ensure that barriers to the access of individuals
12 with disabilities, including individuals who use
13 wheelchairs, on aircraft with type certificates issued
14 under part 21 of title 14, Code of Federal Regula-
15 tions, before such date of enactment, are removed to
16 meet basic accessibility needs of individuals with dis-
17 abilities to the extent readily achievable.

18 (2) REMOVAL OF BARRIERS.—The standards
19 issued under paragraph (1) shall apply at a min-
20 imum to stowage of wheelchairs in the cargo hold,
21 captioning and audio description of in-flight enter-
22 tainment and captioning of any other aural commu-
23 nication, visually and tactilely accessible announce-
24 ments, individual video displays, and improved ac-
25 cess to seating and lavatories in all aircraft.

1 (c) AIRPORT FACILITIES.—Not later than 1 year
2 after the date of the enactment of this Act, the Access
3 Board shall, in consultation with the Secretary, issue
4 standards under section 41705 of title 49, United States
5 Code (commonly known as the “Air Carrier Access Act”),
6 that ensure all gates (including counters), ticketing areas,
7 and customer service desks covered under such section at
8 airports are accessible to and usable by all individuals with
9 disabilities, including through the provision of visually and
10 tactilely accessible announcements and full and equal ac-
11 cess to aural communications.

12 (d) WEBSITES AND KIOSKS.—Not later than 1 year
13 after the date of the enactment of this Act, the Access
14 Board shall, in consultation with the Secretary, prescribe
15 regulations setting forth minimum standards to ensure
16 that individuals with disabilities are able to access kiosks
17 and websites in a manner that is equally as effective as
18 individuals without disabilities, with a substantially equiv-
19 alent ease of use. Such standards shall be consistent with
20 the standards set forth in the Web Content Accessibility
21 Guidelines 2.0 Level AA of the Web Accessibility Initiative
22 of the World Wide Web Consortium or any subsequent
23 version.

24 (e) REGULATIONS.—Not later than 180 days after
25 the Access Board issues standards under this section, the

- 1 Secretary shall prescribe such regulations as are necessary
- 2 to implement those standards, including the requirement
- 3 to maintain accessible features of aircraft, equipment, and
- 4 facilities.

