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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following findings:
(1) In 1986, President Ronald Reagan signed the Air Carrier Access Act of 1986 (Public Law 99–435; 100 Stat. 1080), adding a provision now codified in section 41705 of title 49, United States Code (in this section referred to as the “ACAA”), prohibiting disability-based discrimination in air transportation.

(2) Despite the effort, individuals, including veterans, with disabilities continue to experience significant barriers to and with traveling in air transportation, such as—

(A) damaged assistive devices;

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

(C) delayed assistance;

(D) treatment of service animals;

(E) inadequate disability cultural competency; and

(F) a lack of suitable seating accommodations.

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

(1) Access for individuals with disabilities in air transportation must move into the 21st century. Otherwise, individuals with disabilities will be left
behind and unable to compete in today’s job market
or enjoy the opportunities available to other citizens
of the United States.

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

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

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

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

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

(C) better access to airport facilities, in-
cluding the provision of visually and tactiley
accessible announcements and full and equal access to aural communications.

(5) Legislation is necessary to ensure that individuals with disabilities have adequate remedies available when air carriers violate the ACAA (including regulations prescribed under the ACAA).

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

SEC. 3. DEFINITIONS.

In this Act:

(1) ACCESS BOARD.—The term “Access Board” means the Architectural and Transportation Barriers Compliance Board.

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

(3) DISABILITY.—The term “disability” has the meaning given that term in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102), including the meaning under that section as amended by the ADA Amendments Act of 2008 (Public Law 110–325; 122 Stat. 3553).
(4) Secretary.—The term “Secretary” means the Secretary of Transportation.

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

(a) In General.—Section 41705 of title 49, United States Code, is amended to read as follows:

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

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

“(b) Prohibited Actions.—

“(1) In General.—An air carrier may not—

“(A) directly or through a contractual, licensing, or other arrangement, discriminate in the full and equal enjoyment (within the meaning of that term under section 302(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12182(a))) of air transportation;

“(B) deny the opportunity of an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, to participate in or benefit from the goods,
services, facilities, advantages, accommodations, or other opportunities provided by the air carrier;

“(C) afford an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, with the opportunity to participate in or benefit from a good, service, facility, advantage, accommodation, or other opportunity that is not equal to a good, service, facility, advantage, accommodation, or other opportunity afforded to other individuals;

“(D) subject to paragraph (2), 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 a good, service, facility, privilege, advantage, accommodation, or other opportunity provided to other individuals;

“(E) deny any goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual because of the known disability of another individual with
whom the individual is known to have a relationship or association;

“(F) impose or apply eligibility criteria that screen out or have the effect of screening out individuals with disabilities or a class of individuals with disabilities from fully enjoying any good, service, facility, privilege, advantage, accommodation, or other opportunity provided by the air carrier, unless the air carrier can demonstrate that such criteria are necessary for the provision of the good, service, facility, privilege, advantage, accommodation, or other opportunity;

“(G) directly or through a contractual, licensing, or other arrangement, use standards or criteria or methods of administration—

“(i) that have the effect of discriminating on the basis of disability; or

“(ii) that perpetuate the discrimination of others who are subject to common administrative control;

“(H) purchase or lease an aircraft that does not comply with this section and regulations 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 that is as effective as the good, service, facility, privilege,
advantage, accommodation, or other opportunity provided to other individuals.

“(B) Acceptance.—An individual or a class of individuals shall retain the authority to decide whether to accept or refuse a good, service, facility, privilege, advantage, accommodation, or other opportunity referred to in subparagraph (A).

“(C) Selection of goods, etc., provided to others.—If, in accordance with subparagraph (A), an air carrier provides to an individual or a class of individuals 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, the air carrier may not deny to an individual with a disability the opportunity to participate in the good, service, facility, privilege, advantage, accommodation, or other opportunity provided to such other individuals.

“(e) Required actions.—An air carrier shall—

“(1) afford goods, services, facilities, privileges, advantages, accommodations, and other opportuni-
ties to an individual with a disability in the most in-
tegrated setting appropriate to the needs of the indi-
vidual;

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

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

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

“(B) result in an undue burden to the air
carrier; and
“(4)(A) remove architectural barriers to equal access by individuals with disabilities to goods, services, facilities, privileges, advantages, accommodations, or other opportunities provided by the air carrier, and communication barriers to such access that are structural in nature, in facilities of the air carrier (whether owned or leased by the air carrier) that were constructed before or altered after the date of the enactment of the Air Carrier Access Amendments Act of 2021, and remove physical and communication barriers to such access in aircraft manufactured before such date of enactment and used by an air carrier for transporting individuals, if the removal of such barriers is readily achievable; or

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

“(d) COMPLAINTS.—

“(1) IN GENERAL.—The Secretary of Transportation shall ensure that individuals with disabilities traveling in air transportation are able—
“(A) to file complaints with the Department of Transportation in response to disability-related discrimination prohibited under this section or regulations prescribed under this section; and

“(B) to receive assistance from the Department through a toll-free hotline telephone number or comparable electronic means of communication.

“(2) NOTICE TO PASSENGERS WITH DISABILITIES.—Each air carrier shall include on its publicly available Internet website, any related mobile device application, and online service—

“(A) the hotline telephone number established under section 42302 or the telephone number for the Aviation Consumer Protection Division of the Department of Transportation and the Department’s disability assistance hotline telephone number or a comparable electronic means of communication;

“(B) notice that a consumer can file a disability-related complaint with the Aviation Consumer Protection Division;

“(C) an active link to the Internet website of the Aviation Consumer Protection Division
for a consumer to file a disability-related complaint; and

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

“(3) INVESTIGATION OF COMPLAINTS.—

“(A) IN GENERAL.—The Secretary shall—

“(i) investigate each complaint of a violation of this section or a regulation prescribed under this section;

“(ii) provide, in writing, to the individual that filed the complaint and the air carrier alleged to have violated this section or a regulation prescribed under this section, the determination of the Secretary with respect to—

“(I) whether the air carrier violated this section or a regulation prescribed under this section;

“(II) the facts underlying the complaint; and

“(III) any action the Secretary is taking in response to the complaint; and
“(iii) assess civil penalties under section 46301 for each violation of this section (with each individual act of discrimination prohibited under subsection (a), (b), or (c) considered a separate violation of this section).

“(B) Referral.—If the Secretary has reasonable cause to believe that any air carrier or group of air carriers is engaged in a pattern or practice of discrimination under this section, or any person or group of persons has been discriminated against under this section and such discrimination raises an issue of general public importance, the Secretary shall, after the assessment of civil penalties, refer the matter to the Attorney General for further action.

“(C) Publication of data.—The Secretary shall publish disability-related complaint data in a manner comparable to other aviation consumer complaint data.

“(D) Review and report.—The Secretary shall regularly review all complaints received by air carriers alleging discrimination on the basis of disability and shall report annually
to Congress on the disposition of such complaints.

“(e) Civil Action.—

“(1) Aggrieved Persons.—

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

“(B) Available relief.—If a court finds in favor of the plaintiff in a civil action brought under subparagraph (A), the court may award to the plaintiff equitable and legal relief, including compensatory and punitive damages, and shall, in addition to any such relief, award reasonable attorney’s fees, reasonable expert fees, and cost of the action to the plaintiff.

“(C) Exhaustion of Administrative Remedies.—Any person aggrieved by the violation by an air carrier of this section or a regulation prescribed under this section shall not be required to exhaust administrative remedies before bringing a civil action under subparagraph (A).
“(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to invalidate or limit other Federal or State laws affording to people with disabilities greater legal rights or protections than those granted by this section.

“(2) ENFORCEMENT BY ATTORNEY GENERAL.—

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

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

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

“(ii) award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved by the violation by an air carrier of this section or a regulation prescribed
under this section, when requested by the
Attorney General; and
“(iii) assess a civil penalty against the
air carrier.
“(f) RULE OF CONSTRUCTION.—Nothing in this sub-
chapter shall require an air carrier to permit an individual
to participate in or benefit from goods, services, facilities,
privileges, advantages, accommodations, or other opportu-
nities if the individual poses a significant risk to the health
or safety of others that cannot be eliminated by a modi-
fication of policies, practices, or procedures or by the pro-
vision of auxiliary aids or services.
“(g) DEFINITIONS.—In this section:
“(1) ACCESS BOARD.—The term ‘Access Board’
means the Architectural and Transportation Bar-
riers Compliance Board.
“(2) AIR CARRIER.—The term ‘air carrier’
means an air carrier or, subject to section 40105(b),
a foreign air carrier.
“(3) DISABILITY.—The term ‘disability’ has the
meaning given that term in section 3 of the Ameri-
cans with Disabilities Act of 1990 (42 U.S.C.
12102), including the meaning under that section as
amended by the ADA Amendments of 2008 (Public
“(4) Readily achievable.—The term ‘readily achievable’ means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

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

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

(b) Technical Assistance.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall ensure the availability and provision of appropriate technical assistance manuals to individuals and entities with rights or responsibilities under section 41705 of title 49, United States Code, as amended by subsection (c).

(c) Clerical Amendment.—The chapter analysis for chapter 417 of title 49, United States Code, is amended by striking the item relating to section 41705 and inserting the following:

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

SEC. 5. STANDARDS.

(a) Aircraft With New or Amended Type Certificates.—

(1) In general.—Not later than 18 months after the date of the enactment of this Act, the
cess Board shall, in consultation with the Secretary, prescribe regulations setting forth the minimum standards to ensure that aircraft with type certificates under part 21 of title 14, Code of Federal Regulations, issued or amended after the date the regulations are issued, and related boarding and deplaning equipment, are accessible, in terms of design for, transportation of, and communication to, individuals with disabilities, including individuals who use wheelchairs.

(2) COVERED AIRCRAFT, EQUIPMENT, AND FEATURES.—The standards issued under paragraph (1) shall address, at a minimum—

(A) boarding and deplaning equipment, including ensuring that there is a route accessible for individuals with disabilities;

(B) seating accommodations;

(C) lavatories;

(D) captioning and audio description of inflight entertainment and captioning of any other aural communication;

(E) individual video displays;

(F) visually and tactiley accessible announcements;
(G) adequate in-cabin stowage for assistive devices; and

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

(b) AIRCRAFT WITH AN EXISTING TYPE CERTIFICATE.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Access Board shall, in consultation with the Secretary, prescribe regulations setting forth minimum standards to ensure that barriers to the access of individuals with disabilities, including individuals who use wheelchairs, on aircraft with type certificates issued under part 21 of title 14, Code of Federal Regulations, before such date of enactment, are removed to meet basic accessibility needs of individuals with disabilities to the extent readily achievable.

(2) REMOVAL OF BARRIERS.—The standards issued under paragraph (1) shall apply at a minimum to stowage of wheelchairs in the cargo hold, captioning and audio description of in-flight entertainment and captioning of any other aural communication, visually and tactiley accessible announcements, individual video displays, and improved access to seating and lavatories in all aircraft.
(c) AIRPORT FACILITIES.—Not later than 1 year after the date of the enactment of this Act, the Access Board shall, in consultation with the Secretary, issue standards under section 41705 of title 49, United States Code (commonly known as the “Air Carrier Access Act”), that ensure all gates (including counters), ticketing areas, and customer service desks covered under such section at airports are accessible to and usable by all individuals with disabilities, including through the provision of visually and tactiley accessible announcements and full and equal access to aural communications.

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

(e) REGULATIONS.—Not later than 180 days after the Access Board issues standards under this section, the
Secretary shall prescribe such regulations as are necessary to implement those standards, including the requirement to maintain accessible features of aircraft, equipment, and facilities.