

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RS22697>

February 2, 2009

Congressional Research Service

Report RS22697

*Federal Law on Parking Privileges for Persons with
Disabilities*

Carol Toland, American Law Division

November 10, 2008

Abstract. State law generally governs parking privileges for people with disabilities. However, federal regulations offer a uniform system of parking privileges, which includes model definitions and rules regarding license plates and placards, parking and parking space design, and interstate reciprocity. The federal government encourages states to adopt this uniform system. As a result, most states have incorporated at least some aspects of the uniform regulations into their handicapped parking laws. This report describes the federal role in parking privileges law, outlines the uniform system's model rules, and briefly discusses state responses to the model federal rules.

WikiLeaks



CRS Report for Congress

Federal Law on Parking Privileges for Persons with Disabilities

Carol Toland
Legislative Attorney
American Law Division

Summary

State law generally governs parking privileges for people with disabilities. However, federal regulations offer a uniform system of parking privileges, which includes model definitions and rules regarding license plates and placards, parking and parking space design, and interstate reciprocity. The federal government encourages states to adopt this uniform system. As a result, most states have incorporated at least some aspects of the uniform regulations into their handicapped parking laws. This report describes the federal role in parking privileges law, outlines the uniform system's model rules, and briefly discusses state responses to the model federal rules.¹

Federal Role

Parking privileges for individuals with disabilities is distinct from the subject of physical accessibility of parking spaces or structures. The federal role in ensuring physical parking space accessibility is significant: under the Americans with Disabilities Act (ADA), a broad nondiscrimination statute,² government entities, private businesses, and others³ must adhere to the ADA Standards for Accessible Design when re-striping existing or building new parking lots.⁴ The ADA standards mandate specific percentages of van-accessible parking spaces per parking facility and require accessible aisles between certain spaces.⁵ However, the ADA Standards for Accessible Design do not require governments or other entities to reserve accessible parking spaces or issue special license plates or placards for individuals with disabilities; nor does any other ADA regulation

¹ This report originally was prepared by Anna Henning, Law Clerk, American Law Division.

² 42 U.S.C. §§ 12101 *et. seq.* For a discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act: Statutory Language and Recent Issues*, by Nancy Lee Jones.

³ This requirement applies to public entities and all places of "public accommodation" as defined under the ADA. See 42 U.S.C. § 12181.

⁴ 28 C.F.R. § 36, app. A (2008).

⁵ *Id.*

mandate the provision of such parking privileges. Therefore, any federal action on parking privileges occurs separately from federal rules on physical parking space accessibility.

Congress first considered federal action on parking privileges for individuals with disabilities in the mid-1980s in response to complaints that some states did not honor parking placards for individuals with disabilities from other states. The first bills introduced during that period would have created federal guidelines and authorized penalties for states that failed to comply with those guidelines. Specifically, the initial bills proposed federal sanctions in the form of reduced highway apportionments for states that failed to recognize parking placards issued by other states or failed to implement federal rules.⁶ However, those early proposals were not reported out of their respective committees.

Since that time, the federal government has created guidelines for parking privileges. In 1988, Congress enacted legislation requiring the Department of Transportation to create a “uniform system” of parking privileges for people with disabilities.⁷ Accordingly, the Department of Transportation promulgated the “Uniform System for Parking for Persons with Disabilities.”⁸

However, Congress has never required states to comply with the Uniform System, nor has it authorized penalties for non-complying states.⁹ Rather, the enacted law and resulting federal guidelines are merely hortatory.¹⁰ The legislation required the department to “encourage adoption of such system by all the states,”¹¹ but it did not require states to adopt the federal guidelines. Thus, although the federal government has a strong advisory role, states have the ultimate responsibility for the development of parking privileges.

The Uniform System

The stated purpose of the Department of Transportation’s Uniform System for Parking for Persons with Disabilities is to provide “guidelines to States for the

⁶ See H.R. 1702, 98th Cong. (1983); see also Handicapped Parking Act, H.R. 3889, 99th Cong. (1985) and Handicapped Parking Act, S. 1936, 99th Cong. (1985).

⁷ P.L. 100-641, § 3, Nov. 9, 1988, 102 Stat. 3335 (codified as a note at 23 U.S.C. § 402). When introducing the legislation that created the Uniform System, Senator Durenburger stressed “the problems faced by disabled drivers because of State-by-State differences in handicapped parking policies.” 134 Cong. Rec. S32031 (daily ed. Oct. 20, 1988) (statement of Sen. Durenberger).

⁸ 23 C.F.R. § 1235.1 (2008).

⁹ At least one later bill proposed legislation that would require states to adopt the federal guidelines. See H.R. 2542, 102nd Cong. (1991). However, as amended and adopted, the legislation merely required a study on states’ progress in voluntarily adopting the federal guidelines. See Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, 105 Stat. 2032 (codified as a note at 23 U.S.C. § 402).

¹⁰ At least one federal court has addressed the issue of whether Congress intended the Uniform System to be merely hortatory. *McGarry v. Mo. Dept. of Rev.*, 7 F.Supp.2d 1022, 1026 (W.D. Mo. 1998). That court held that in contrast to the ADA, the Uniform System is a voluntary program that states can choose to adopt. *Id.*

¹¹ 23 U.S.C. § 402 (2008).

establishment of a uniform system.”¹² Thus, the Uniform System provides model definitions and rules regarding eligibility, application procedures, and issuance of special license plates and placards. It also contains information to aid states in developing reciprocal systems of parking privileges, including sample placards and a model rule regarding reciprocity.

The Uniform System is brief. It does not contain model rules regarding enforcement, nor does it provide model rules specifying lengths of time after which special plates or placards must be renewed or addressing whether eligible individuals must be primary users of vehicles with special license plates. Instead, it contains basic definitions and samples that the department encourages states to utilize as part of their own, more detailed, parking privilege systems.

Eligibility. One key provision in the Uniform System is the model definition of eligible individuals. Unlike the ADA, which protects every individual with a “disability,”¹³ the Uniform System extends parking privileges only to “persons with disabilities which impair or limit the ability to walk.”¹⁴ This definition includes people who (1) “cannot walk 200 feet without stopping to rest”; (2) cannot walk without the aid of another person or certain assistive devices; (3) have respiratory volumes of less than a certain amount due to lung disease; (4) “use portable oxygen”; (5) have cardiac conditions of a specified severity; or (6) “are severely limited in their ability to walk by a arthritic, neurological, or orthopedic condition.”¹⁵ Under the Uniform System, individuals’ fit within any of these categories must be “determined by a licensed physician.”¹⁶

Application Process. If an individual qualifies as a person with a disability which impairs or limits his or her ability to walk, then under the Uniform System’s model rules, he or she may submit an application for special license plates¹⁷ or a windshield placard, which entitle the individual to park in specially reserved parking spaces.¹⁸ A certification from a licensed physician must accompany an initial application for such

¹² 23 C.F.R. § 1235.1 (2008).

¹³ The ADA definition of “disability” is codified at 42 U.S.C. § 12102, as amended by P.L. 110-325, § 4. For information about the ADA definition, see CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by Nancy Lee Jones.

¹⁴ 23 C.F.R. § 1235 (2008). Note that some courts interpreting state statutes which incorporate the Uniform System definition of a person with a disability which impairs or limits the ability to walk have held that this Uniform System definition is no broader than the ADA definition of “disability”; i.e., some courts have held that the Uniform System definition does not apply to individuals who would not otherwise be covered under the ADA. *See, e.g., Duprey v. Conn. Dept. of Motor Vehicles*, 191 F.R.D. 329, 335-36 (D. Conn. 2000).

¹⁵ 23 C.F.R. § 1235.2(b) (2008).

¹⁶ *Id.*

¹⁷ The Uniform System defines “special license plate” as “a license plate that displays the International Symbol of Access (1) in a color that contrasts to the background, and (2) in the same size as the letters and/or numbers on the plate.” 23 C.F.R. § 1235.2(c) (2008).

¹⁸ 23 C.F.R. § 1235.3(a) (2008); 23 C.F.R. § 1235.4(a) (2008); 23 C.F.R. § 1235.5(a) (2008).

plates and placards.¹⁹ Under the Uniform System guidelines, states may not charge a higher fee for special license plates than they charge for regular license plates.²⁰

Placards. Together with special license plates, placards “shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk” under the Uniform System.²¹ The system delineates two types of windshield placards: removable windshield placards and temporary removable windshield placards. Removable windshield placards are appropriate for individuals who will qualify as persons with disabilities which impair or limit the ability to walk permanently or for at least six months. Temporary removable windshield placards are most appropriate for individuals who will have such an impairment or limitation for less than six months.²²

The Uniform System provides samples of each type of windshield placard.²³ The sample placards display the “international symbol of access,” which was adopted by the disability rights organization Rehabilitation International in 1969.²⁴ The symbol is a commonly recognized image of wheelchair and is best known as a white chair on blue background. The samples also include spaces in which to display names of issuing authorities and expiration dates for the placards.²⁵

Reciprocity. In addition to sample placards, which aid efforts for reciprocity among states indirectly by providing a commonly recognized symbol, the Uniform System includes a model rule that directly addresses reciprocity. It provides that states “shall recognize removable windshield placards, temporary removable windshield placards and special license plates which have been issued by issuing authorities of other States.”²⁶

State Responses

All states have laws governing parking privileges for individuals with disabilities, and nearly all states have adopted at least some portion of the Department of Transportation’s Uniform System. Most states extend privileges to visitors with placards

¹⁹ 23 C.F.R. § 1235.3(a) (2008); 23 C.F.R. § 1235.4(b) (2008); 23 C.F.R. § 1235.5(b) (2008).

²⁰ 23 C.F.R. § 1235.3(c) (2008). Several federal circuit courts have considered the constitutionality of a federal ban on state fees for parking placards, specifically in the context of an ADA regulation prohibiting states from charging fees to cover the cost of accessibility programs. The circuits have reached different conclusions. *Compare* *Brown v. North Carolina Div. of Motor Vehicles*, 166 F.3d 698, 709-10 (4th Cir. 1999) (upholding the ban) *with* *Neinast v. Texas*, 217 F.3d 275, 282 (5th Cir. 2000) (holding that the ban “exceeds the scope of Congress’ power to abrogate the states’ immunity.”)

²¹ 23 C.F.R. § 1235.6 (2008).

²² 23 C.F.R. § 1235.5(b) (2008) (requiring physicians’ certifications to specify the period of time the individuals will have such an impairment or limitation, “not to exceed six months.”).

²³ *See* 23 C.F.R. § 1235 (2008) at app. A and app. B.

²⁴ 23 C.F.R. § 1235.2(a) (2008).

²⁵ 23 C.F.R. § 1235 (2008) at app. A and app. B.

²⁶ 23 C.F.R. § 1235.8 (2008).

issued by other states. Also, most states issue placards closely resembling the Uniform System's sample placard.²⁷ However, other aspects of the state systems vary greatly.

Eligibility. Regarding eligibility, some states have incorporated the Uniform System's definition of an individual with a disability which limits or impairs the ability to walk word-for-word into their eligibility criteria.²⁸ Other states' eligibility criteria are entirely distinct from the Uniform System definition.²⁹ Between these two options, most states have incorporated the Uniform System's definition in their statutes but have modified or expanded it. For example, some states have added a category for blindness to the Uniform System definition.³⁰

Reciprocity. Most states extend parking privileges to individuals with special license plates or placards issued by other states. Many states even extend privileges to people with placards issued by other countries.³¹ The language in these reciprocity provisions differs from state to state. Some states codified most or all of the Uniform System's reciprocity provision.³² Other states adopted little or no language from the Uniform System but recognize out-of-state placards nonetheless.³³ A few states extend conditional privileges to out-of-state visitors; for example, North Dakota extends privileges only to people from states that also extend privileges to traveling North Dakotans.³⁴

However, even states that extend parking privileges to out-of-state visitors have rules that out-of-state visitors might not know to follow. For example, Iowa requires that placards be displayed only when individuals with disabilities are actually utilizing reserved parking spaces.³⁵

²⁷ For more information regarding states' placard designs, see State's Listings of Disabled Placards, License Plates, ID Cards, Motorcycle Plates, [<http://www.handiplate.com/primary.htm>].

²⁸ *See, e.g.*, Miss. Code Ann. § 27-19-56(1) (2008) (codifying the word-for-word definition); Utah Code Ann. § 41-1a-420(2)(a)(i) (2008) (incorporating the Uniform System definition by reference).

²⁹ *See, e.g.*, Tenn. Code Ann. § 55-21-102 (2008) (defining "disabled driver" as a person who is disabled by paraplegia or amputation, disabled by virtue of having vision less than 20/200 with correcting glasses, or disabled by "other condition, certified to by a physician duly licensed to practice medicine, resulting in an equal degree of disability . . . so as not to be able to get about without great difficulty.")

³⁰ *See, e.g.*, Ohio Rev. Code Ann. § 4503.44(A)(1)(g) (2008).

³¹ *See, e.g.*, Conn. Gen. Stat. § 14-253a(e) (2008); Nev. Rev. Stat. § 484.408(5)(d) (2008).

³² *See, e.g.*, N.H. Rev. Stat. Ann. § 261.88(IX) (2008).

³³ *See, e.g.*, Mich. Comp. Laws § 257.675(6) (2008) (not incorporating any Uniform System language but providing that "a certificate of identification or windshield placard from another state . . . or special registration plates from another state issued for persons with disabilities is entitled to courtesy in the parking of a vehicle.")

³⁴ N.D. Cent. Code § 39-01-15(11) (2008).

³⁵ Iowa Code § 321L.2(4) (2008).

Application Process and Administration. The state laws are fairly similar regarding some application procedures and criteria for which the Uniform System provides model rules. For example, most states require eligible individuals to apply for both special license plates and either temporary or more permanent windshield placards. Likewise, most states issue special license plates or placards after receipt of an application containing certification by a physician, as the Uniform System suggests.

In contrast, states' laws are relatively different regarding administrative aspects of parking privileges that the Uniform System does not address. For example, state rules regarding the duration for which removable windshield placards will be valid — an aspect the Uniform System does not address — vary from just two years to indefinitely.³⁶

In sum, the Department of Transportation's Uniform System has increased uniformity in the state laws. Many states utilize uniform sample placards and have enacted statutes requiring reciprocal privileges for individuals bearing placards issued by other states. Nonetheless, the state systems differ in many aspects of parking privilege administration.

³⁶ See, e.g., Mo. Rev. Stat. § 301.142(11) (2008) (requiring placards to be renewed every four years); Iowa Code § 321L.2(1)(a)(3) (2008) (providing application criteria for “nonexpiring” windshield placards).