

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3195

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## AN ACT

To restore the intent and protections of the Americans with  
Disabilities Act of 1990.

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

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “ADA Amendments Act  
3 of 2008”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5       (a) FINDINGS.—Congress finds that—

6           (1) in enacting the Americans with Disabilities  
7 Act of 1990 (ADA), Congress intended that the Act  
8 “provide a clear and comprehensive national man-  
9 date for the elimination of discrimination against in-  
10 dividuals with disabilities” and provide broad cov-  
11 erage;

12           (2) in enacting the ADA, Congress recognized  
13 that physical and mental disabilities in no way di-  
14 minish a person’s right to fully participate in all as-  
15 pects of society, but that people with physical or  
16 mental disabilities are frequently precluded from  
17 doing so because of prejudice, antiquated attitudes,  
18 or the failure to remove societal and institutional  
19 barriers;

20           (3) while Congress expected that the definition  
21 of disability under the ADA would be interpreted  
22 consistently with how courts had applied the defini-  
23 tion of handicap under the Rehabilitation Act of  
24 1973, that expectation has not been fulfilled;

25           (4) the holdings of the Supreme Court in *Sut-  
26 ton v. United Airlines, Inc.*, 527 U.S. 471 (1999)

1 and its companion cases, and in *Toyota Motor Man-*  
2 *ufacturing, Kentucky, Inc. v. Williams*, 534 U.S.  
3 184 (2002) have narrowed the broad scope of pro-  
4 tection intended to be afforded by the ADA, thus  
5 eliminating protection for many individuals whom  
6 Congress intended to protect; and

7 (5) as a result of these Supreme Court cases,  
8 lower courts have incorrectly found in individual  
9 cases that people with a range of substantially lim-  
10 iting impairments are not people with disabilities.

11 (b) PURPOSES.—The purposes of this Act are—

12 (1) to carry out the ADA’s objectives of pro-  
13 viding “a clear and comprehensive national mandate  
14 for the elimination of discrimination” and “clear,  
15 strong, consistent, enforceable standards addressing  
16 discrimination” by reinstating a broad scope of pro-  
17 tection to be available under the ADA;

18 (2) to reject the requirement enunciated by the  
19 Supreme Court in *Sutton v. United Airlines, Inc.*,  
20 527 U.S. 471 (1999) and its companion cases that  
21 whether an impairment substantially limits a major  
22 life activity is to be determined with reference to the  
23 ameliorative effects of mitigating measures;

24 (3) to reject the Supreme Court’s reasoning in  
25 *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999)

1 with regard to coverage under the third prong of the  
2 definition of disability and to reinstate the reasoning  
3 of the Supreme Court in *School Board of Nassau*  
4 *County v. Arline*, 480 U.S. 273 (1987) which set  
5 forth a broad view of the third prong of the defini-  
6 tion of handicap under the Rehabilitation Act of  
7 1973;

8 (4) to reject the standards enunciated by the  
9 Supreme Court in *Toyota Motor Manufacturing,*  
10 *Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002),  
11 that the terms “substantially” and “major” in the  
12 definition of disability under the ADA “need to be  
13 interpreted strictly to create a demanding standard  
14 for qualifying as disabled,” and that to be substan-  
15 tially limited in performing a major life activity  
16 under the ADA “an individual must have an impair-  
17 ment that prevents or severely restricts the indi-  
18 vidual from doing activities that are of central im-  
19 portance to most people’s daily lives”; and

20 (5) to provide a new definition of “substantially  
21 limits” to indicate that Congress intends to depart  
22 from the strict and demanding standard applied by  
23 the Supreme Court in *Toyota Motor Manufacturing,*  
24 *Kentucky, Inc. v. Williams* and by numerous lower  
25 courts.

1 **SEC. 3. CODIFIED FINDINGS.**

2 Section 2(a) of the Americans with Disabilities Act  
3 of 1990 (42 U.S.C. 12101) is amended—

4 (1) by amending paragraph (1) to read as fol-  
5 lows:

6 “(1) physical or mental disabilities in no way  
7 diminish a person’s right to fully participate in all  
8 aspects of society, yet many people with physical or  
9 mental disabilities have been precluded from doing  
10 so because of discrimination; others who have a  
11 record of a disability or are regarded as having a  
12 disability also have been subjected to discrimina-  
13 tion;” and

14 (2) by striking paragraph (7).

15 **SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUC-**  
16 **TION.**

17 (a) DEFINITION OF DISABILITY.—Section 3 of the  
18 Americans with Disabilities Act of 1990 (42 U.S.C.  
19 12102) is amended to read as follows:

20 **“SEC. 3. DEFINITION OF DISABILITY.**

21 “As used in this Act:

22 “(1) DISABILITY.—The term ‘disability’ means,  
23 with respect to an individual—

24 “(A) a physical or mental impairment that  
25 substantially limits one or more major life ac-  
26 tivities of such individual;

1           “(B) a record of such an impairment; or

2           “(C) being regarded as having such an im-  
3           pairment (as described in paragraph (4)).

4           “(2) SUBSTANTIALLY LIMITS.—The term ‘sub-  
5           stantially limits’ means materially restricts.

6           “(3) MAJOR LIFE ACTIVITIES.—

7           “(A) IN GENERAL.—For purposes of para-  
8           graph (1), major life activities include, but are  
9           not limited to, caring for oneself, performing  
10          manual tasks, seeing, hearing, eating, sleeping,  
11          walking, standing, lifting, bending, speaking,  
12          breathing, learning, reading, concentrating,  
13          thinking, communicating and working.

14          “(B) MAJOR BODILY FUNCTIONS.—For  
15          purposes of paragraph (1), a major life activity  
16          also includes the operation of a major bodily  
17          function, including but not limited to, functions  
18          of the immune system, normal cell growth, di-  
19          gestive, bowel, bladder, neurological, brain, res-  
20          piratory, circulatory, endocrine, and reproduc-  
21          tive functions.

22          “(4) REGARDED AS HAVING SUCH AN IMPAIR-  
23          MENT.—For purposes of paragraph (1)(C):

24                 “(A) An individual meets the requirement  
25                 of ‘being regarded as having such an impair-

1           ment’ if the individual establishes that he or  
2           she has been subjected to an action prohibited  
3           under this Act because of an actual or perceived  
4           physical or mental impairment whether or not  
5           the impairment limits or is perceived to limit a  
6           major life activity.

7           “(B) Paragraph (1)(C) shall not apply to  
8           impairments that are transitory and minor. A  
9           transitory impairment is an impairment with an  
10          actual or expected duration of 6 months or less.

11          “(5) RULES OF CONSTRUCTION REGARDING  
12          THE DEFINITION OF DISABILITY.—The definition of  
13          ‘disability’ in paragraph (1) shall be construed in ac-  
14          cordance with the following:

15                 “(A) To achieve the remedial purposes of  
16                 this Act, the definition of ‘disability’ in para-  
17                 graph (1) shall be construed broadly.

18                 “(B) An impairment that substantially lim-  
19                 its one major life activity need not limit other  
20                 major life activities in order to be considered a  
21                 disability.

22                 “(C) An impairment that is episodic or in  
23                 remission is a disability if it would substantially  
24                 limit a major life activity when active.

1           “(D)(i) The determination of whether an  
2           impairment substantially limits a major life ac-  
3           tivity shall be made without regard to the ame-  
4           liorative effects of mitigating measures such  
5           as—

6                   “(I) medication, medical supplies,  
7                   equipment, or appliances, low-vision de-  
8                   vices (which do not include ordinary eye-  
9                   glasses or contact lenses), prosthetics in-  
10                  cluding limbs and devices, hearing aids and  
11                  cochlear implants or other implantable  
12                  hearing devices, mobility devices, or oxygen  
13                  therapy equipment and supplies;

14                   “(II) use of assistive technology;

15                   “(III) reasonable accommodations or  
16                  auxiliary aids or services; or

17                   “(IV) learned behavioral or adaptive  
18                  neurological modifications.

19           “(ii) The ameliorative effects of the miti-  
20           gating measures of ordinary eyeglasses or con-  
21           tact lenses shall be considered in determining  
22           whether an impairment substantially limits a  
23           major life activity.

24                   “(iii) As used in this subparagraph—



1           “(I) the term ‘ordinary eyeglasses or  
2           contact lenses’ means lenses that are in-  
3           tended to fully correct visual acuity or  
4           eliminate refractive error; and

5           “(II) the term ‘low-vision devices’  
6           means devices that magnify, enhance, or  
7           otherwise augment a visual image.”.

8           (b) CONFORMING AMENDMENT.—The Americans  
9 with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)  
10 is further amended by adding after section 3 the following:

11 **“SEC. 4. ADDITIONAL DEFINITIONS.**

12           “As used in this Act:

13           “(1) AUXILIARY AIDS AND SERVICES.—The  
14           term ‘auxiliary aids and services’ includes—

15           “(A) qualified interpreters or other effec-  
16           tive methods of making aurally delivered mate-  
17           rials available to individuals with hearing im-  
18           pairments;

19           “(B) qualified readers, taped texts, or  
20           other effective methods of making visually deliv-  
21           ered materials available to individuals with vis-  
22           ual impairments;

23           “(C) acquisition or modification of equip-  
24           ment or devices; and

25           “(D) other similar services and actions.

1           “(2) STATE.—The term ‘State’ means each of  
 2           the several States, the District of Columbia, the  
 3           Commonwealth of Puerto Rico, Guam, American  
 4           Samoa, the Virgin Islands, the Trust Territory of  
 5           the Pacific Islands, and the Commonwealth of the  
 6           Northern Mariana Islands.”.

7           (c) AMENDMENT TO THE TABLE OF CONTENTS.—  
 8           The table of contents contained in section 1(b) of the  
 9           Americans with Disabilities Act of 1990 is amended by  
 10          striking the item relating to section 3 and inserting the  
 11          following items:

          “Sec. 3. Definition of disability.  
           “Sec. 4. Additional definitions.”.

12       **SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.**

13           (a) ON THE BASIS OF DISABILITY.—Section 102 of  
 14           the Americans with Disabilities Act of 1990 (42 U.S.C.  
 15           12112) is amended—

16           (1) in subsection (a), by striking “with a dis-  
 17           ability because of the disability of such individual”  
 18           and inserting “on the basis of disability”; and

19           (2) in subsection (b) in the matter preceding  
 20           paragraph (1), by striking “discriminate” and in-  
 21           serting “discriminate against a qualified individual  
 22           on the basis of disability”.

23           (b) QUALIFICATION STANDARDS AND TESTS RE-  
 24           LATED TO UNCORRECTED VISION.—Section 103 of the

1 Americans with Disabilities Act of 1990 (42 U.S.C.  
2 12113) is amended by redesignating subsections (c) and  
3 (d) as subsections (d) and (e), respectively, and inserting  
4 after subsection (b) the following new subsection:

5       “(c) QUALIFICATION STANDARDS AND TESTS RE-  
6 LATED TO UNCORRECTED VISION.—Notwithstanding sec-  
7 tion 3(5)(D)(ii), a covered entity shall not use qualifica-  
8 tion standards, employment tests, or other selection cri-  
9 teria based on an individual’s uncorrected vision unless the  
10 standard, test, or other selection criteria, as used by the  
11 covered entity, is shown to be job-related for the position  
12 in question and consistent with business necessity.”.

13       (c) CONFORMING AMENDMENT.—Section 101(8) of  
14 the Americans with Disabilities Act of 1990 (42 U.S.C.  
15 12111(8)) is amended—

16           (1) in the paragraph heading, by striking  
17       “WITH A DISABILITY”; and

18           (2) by striking “with a disability” after “indi-  
19       vidual” both places it appears.

20 **SEC. 6. RULES OF CONSTRUCTION.**

21       Title V of the Americans with Disabilities Act of  
22 1990 (42 U.S.C. 12201) is amended—

23           (1) by adding at the end of section 501 the fol-  
24       lowing:

1       “(e) BENEFITS UNDER STATE WORKER’S COM-  
2 PENSATION LAWS.—Nothing in this Act alters the stand-  
3 ards for determining eligibility for benefits under State  
4 worker’s compensation laws or under State and Federal  
5 disability benefit programs.

6       “(f) CLAIMS OF NO DISABILITY.—Nothing in this  
7 Act shall provide the basis for a claim by a person without  
8 a disability that he or she was subject to discrimination  
9 because of his or her lack of disability.

10       “(g) REASONABLE ACCOMMODATIONS AND MODI-  
11 FICATIONS.—A covered entity under title I, a public entity  
12 under title II, and any person who owns, leases (or leases  
13 to), or operates a place of public accommodation under  
14 title III, need not provide a reasonable accommodation or  
15 a reasonable modification to policies, practices, or proce-  
16 dures to an individual who meets the definition of dis-  
17 ability in section 3(1) solely under subparagraph (C).”;

18               (2) by redesignating section 506 through 514  
19 as sections 507 through 515, respectively, and add-  
20 ing after section 505 the following:

21 **“SEC. 506. RULE OF CONSTRUCTION REGARDING REGU-**  
22 **LATORY AUTHORITY.**

23       “The authority to issue regulations granted to the  
24 Equal Employment Opportunity Commission, the Attor-  
25 ney General, and the Secretary of Transportation under

1 this Act includes the authority to issue regulations imple-  
2 menting the definitions contained in sections 3 and 4.”;  
3 and

4 (3) in the table of contents contained in section  
5 1(b), by redesignating the items relating to sections  
6 506 through 514 as sections 507 through 515, re-  
7 spectively, and by inserting after the item relating to  
8 section 505 the following new item:

“Sec. 506. Rule of construction regarding regulatory authority.”.

9 **SEC. 7. CONFORMING AMENDMENTS.**

10 Section 7 of the Rehabilitation Act of 1973 (29  
11 U.S.C. 705) is amended—

12 (1) in paragraph (9)(B), by striking “a phys-  
13 ical” and all that follows through “major life activi-  
14 ties”, and inserting “the meaning given it in section  
15 3 of the Americans with Disabilities Act of 1990”;  
16 and

17 (2) in paragraph (20)(B), by striking “any per-  
18 son who” and all that follows through the period at  
19 the end, and inserting “any person who has a dis-  
20 ability as defined in section 3 of the Americans with  
21 Disabilities Act of 1990.”.

1 **SEC. 8. EFFECTIVE DATE.**

2       This Act and the amendments made by this Act shall  
3 become effective on January 1, 2009.

      Passed the House of Representatives June 25, 2008.

Attest:

*Clerk.*



110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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## AN ACT

To restore the intent and protections of the  
Americans with Disabilities Act of 1990.