

110TH CONGRESS
2^D SESSION

H. R. 3195

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.

110TH CONGRESS
2^D SESSION

H. R. 3195

AN ACT

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