

# Calendar No. 856

110TH CONGRESS  
2D SESSION

# H. R. 3195

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IN THE SENATE OF THE UNITED STATES

JUNE 26, 2008

Received and read the first time

JUNE 27, 2008

Read the second time and placed on the calendar

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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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “ADA Amendments Act  
5       of 2008”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress finds that—

8           (1) in enacting the Americans with Disabilities  
9       Act of 1990 (ADA), Congress intended that the Act  
10      “provide a clear and comprehensive national man-

1 date for the elimination of discrimination against in-  
2 dividuals with disabilities” and provide broad cov-  
3 erage;

4 (2) in enacting the ADA, Congress recognized  
5 that physical and mental disabilities in no way di-  
6 minish a person’s right to fully participate in all as-  
7 pects of society, but that people with physical or  
8 mental disabilities are frequently precluded from  
9 doing so because of prejudice, antiquated attitudes,  
10 or the failure to remove societal and institutional  
11 barriers;

12 (3) while Congress expected that the definition  
13 of disability under the ADA would be interpreted  
14 consistently with how courts had applied the defini-  
15 tion of handicap under the Rehabilitation Act of  
16 1973, that expectation has not been fulfilled;

17 (4) the holdings of the Supreme Court in Sut-  
18 ton v. United Airlines, Inc., 527 U.S. 471 (1999)  
19 and its companion cases, and in Toyota Motor Man-  
20 ufacturing, Kentucky, Inc. v. Williams, 534 U.S.  
21 184 (2002) have narrowed the broad scope of pro-  
22 tection intended to be afforded by the ADA, thus  
23 eliminating protection for many individuals whom  
24 Congress intended to protect; and

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

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

6                         (1) to carry out the ADA's objectives of pro-  
7                         viding “a clear and comprehensive national mandate  
8                         for the elimination of discrimination” and “clear,  
9                         strong, consistent, enforceable standards addressing  
10                         discrimination” by reinstating a broad scope of pro-  
11                         tection to be available under the ADA;

12                         (2) to reject the requirement enunciated by the  
13                         Supreme Court in Sutton v. United Airlines, Inc.,  
14                         527 U.S. 471 (1999) and its companion cases that  
15                         whether an impairment substantially limits a major  
16                         life activity is to be determined with reference to the  
17                         ameliorative effects of mitigating measures;

18                         (3) to reject the Supreme Court's reasoning in  
19                         Sutton v. United Airlines, Inc., 527 U.S. 471 (1999)  
20                         with regard to coverage under the third prong of the  
21                         definition of disability and to reinstate the reasoning  
22                         of the Supreme Court in School Board of Nassau  
23                         County v. Arline, 480 U.S. 273 (1987) which set  
24                         forth a broad view of the third prong of the defini-

1       tion of handicap under the Rehabilitation Act of  
2       1973;

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

15                   (5) to provide a new definition of “substantially  
16      limits” to indicate that Congress intends to depart  
17      from the strict and demanding standard applied by  
18      the Supreme Court in Toyota Motor Manufacturing,  
19      Kentucky, Inc. v. Williams and by numerous lower  
20      courts.

21 **SEC. 3. CODIFIED FINDINGS.**

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

24                   (1) by amending paragraph (1) to read as fol-  
25      lows:

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

9           (2) by striking paragraph (7).

10 **SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUC-**  
11 **TION.**

12       (a) **DEFINITION OF DISABILITY.**—Section 3 of the  
13 Americans with Disabilities Act of 1990 (42 U.S.C.  
14 12102) is amended to read as follows:

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

16       “As used in this Act:

17           “(1) **DISABILITY.**—The term ‘disability’ means,  
18 with respect to an individual—

19                  “(A) a physical or mental impairment that  
20 substantially limits one or more major life ac-  
21 tivities of such individual;

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

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

1           “(2) SUBSTANTIALLY LIMITS.—The term ‘sub-  
2 stantly limits’ means materially restricts.

3           “(3) MAJOR LIFE ACTIVITIES.—

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

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

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

21           “(A) An individual meets the requirement  
22 of ‘being regarded as having such an impair-  
23 ment’ if the individual establishes that he or  
24 she has been subjected to an action prohibited  
25 under this Act because of an actual or perceived

1 physical or mental impairment whether or not  
2 the impairment limits or is perceived to limit a  
3 major life activity.

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

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

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

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

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

22 “(D)(i) The determination of whether an  
23 impairment substantially limits a major life ac-  
24 tivity shall be made without regard to the ame-

1 liorative effects of mitigating measures such  
2 as—

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

11 “(II) use of assistive technology;

12 “(III) reasonable accommodations or  
13 auxiliary aids or services; or

14 “(IV) learned behavioral or adaptive  
15 neurological modifications.

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

21 “(iii) As used in this subparagraph—

22 “(I) the term ‘ordinary eyeglasses or  
23 contact lenses’ means lenses that are in-  
24 tended to fully correct visual acuity or  
25 eliminate refractive error; and

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

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

7     **“SEC. 4. ADDITIONAL DEFINITIONS.**

8     “As used in this Act:

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

11                         “(A) qualified interpreters or other effective  
12                         methods of making aurally delivered materials available to individuals with hearing impairments;

13                         “(B) qualified readers, taped texts, or  
14                         other effective methods of making visually delivered materials available to individuals with visual impairments;

15                         “(C) acquisition or modification of equipment or devices; and

16                         “(D) other similar services and actions.

17     “(2) STATE.—The term ‘State’ means each of  
18     the several States, the District of Columbia, the  
19     Commonwealth of Puerto Rico, Guam, American  
20     Samoa, the Virgin Islands, the Trust Territory of

1       the Pacific Islands, and the Commonwealth of the  
2       Northern Mariana Islands.”.

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

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

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

9       (a) ON THE BASIS OF DISABILITY.—Section 102 of  
10      the Americans with Disabilities Act of 1990 (42 U.S.C.  
11      12112) is amended—

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

15           (2) in subsection (b) in the matter preceding  
16       paragraph (1), by striking “discriminate” and in-  
17       serting “discriminate against a qualified individual  
18       on the basis of disability”.

19       (b) QUALIFICATION STANDARDS AND TESTS RE-  
20       LATED TO UNCORRECTED VISION.—Section 103 of the  
21      Americans with Disabilities Act of 1990 (42 U.S.C.  
22      12113) is amended by redesignating subsections (c) and  
23      (d) as subsections (d) and (e), respectively, and inserting  
24      after subsection (b) the following new subsection:

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

9       (c) CONFORMING AMENDMENT.—Section 101(8) of  
10 the Americans with Disabilities Act of 1990 (42 U.S.C.  
11 12111(8)) is amended—

12           (1) in the paragraph heading, by striking  
13       “WITH A DISABILITY”; and  
14           (2) by striking “with a disability” after “indi-  
15       vidual” both places it appears.

16 **SEC. 6. RULES OF CONSTRUCTION.**

17       Title V of the Americans with Disabilities Act of  
18 1990 (42 U.S.C. 12201) is amended—

19           (1) by adding at the end of section 501 the fol-  
20       lowing:

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

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

5       “(g) REASONABLE ACCOMMODATIONS AND MODI-  
6 FICATIONS.—A covered entity under title I, a public entity  
7 under title II, and any person who owns, leases (or leases  
8 to), or operates a place of public accommodation under  
9 title III, need not provide a reasonable accommodation or  
10 a reasonable modification to policies, practices, or proce-  
11 dures to an individual who meets the definition of dis-  
12 ability in section 3(1) solely under subparagraph (C).”;  
13              (2) by redesignating section 506 through 514  
14              as sections 507 through 515, respectively, and add-  
15              ing after section 505 the following:

16 **“SEC. 506. RULE OF CONSTRUCTION REGARDING REGU-**  
17 **LATORY AUTHORITY.**

18       “The authority to issue regulations granted to the  
19 Equal Employment Opportunity Commission, the Attor-  
20 ney General, and the Secretary of Transportation under  
21 this Act includes the authority to issue regulations imple-  
22 menting the definitions contained in sections 3 and 4.”;  
23 and

24              (3) in the table of contents contained in section  
25 1(b), by redesignating the items relating to sections

1       506 through 514 as sections 507 through 515, re-  
2       spectively, and by inserting after the item relating to  
3       section 505 the following new item:

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

#### **4 SEC. 7. CONFORMING AMENDMENTS.**

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

7                             (1) in paragraph (9)(B), by striking “a phys-  
8                             ical” and all that follows through “major life activi-  
9                             ties”, and inserting “the meaning given it in section  
10                            3 of the Americans with Disabilities Act of 1990”;  
11                            and

## 17 SEC. 8. EFFECTIVE DATE.

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

Passed the House of Representatives June 25, 2008.

Attest: LORRAINE C. MILLER

Clerk

By DEBORAH M. SPRIGGS.

*Deputy Clerk.*

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