

110TH CONGRESS  
2D SESSION

# H. R. 3195

[Report No. 110-]

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

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2007

Mr. HOYER (for himself, Mr. SENSENBRENNER, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. BACHUS, Ms. BALDWIN, Mr. BERMAN, Mr. BILBRAY, Mr. BISHOP of New York, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BOSWELL, Mr. BOUCHER, Ms. CORRINE BROWN of Florida, Mr. BUTTERFIELD, Mr. CALVERT, Mr. CARDOZA, Mr. CARNEY, Mr. CHANDLER, Mr. CLAY, Mr. CLEAVER, Mr. CLYBURN, Mr. COBLE, Mr. COHEN, Mr. CONYERS, Mr. COSTA, Mr. COSTELLO, Mr. COURTNEY, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. TOM DAVIS of Virginia, Mr. DEFazio, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DINGELL, Mr. DREIER, Mr. EHLERS, Mr. EMANUEL, Mrs. EMERSON, Mr. ENGEL, Mr. ENGLISH of Pennsylvania, Mr. ETHERIDGE, Mr. FARR, Mr. FERGUSON, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FRANKS of Arizona, Mr. FRELINGHUYSEN, Mr. GALLEGLY, Ms. GIFFORDS, Mr. GRIJALVA, Mr. HALL of New York, Mr. HASTINGS of Florida, Mr. HINOJOSA, Mr. HOLDEN, Mr. HOLT, Mr. HONDA, Mr. ISRAEL, Mr. ISSA, Mr. JEFFERSON, Mr. JOHNSON of Georgia, Mrs. JONES of Ohio, Ms. KAPTUR, Mr. KENNEDY, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KING of New York, Mr. KIRK, Mr. KNOLLENBERG, Mr. LAHOOD, Mr. LANGEVIN, Mr. LANTOS, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LEWIS of California, Mr. LOEBSACK, Ms. ZOE LOFGREN of California, Mrs. LOWEY, Mrs. MALONEY of New York, Mr. MARKEY, Mr. MATHESON, Ms. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCOLLUM of Minnesota, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCHUGH, Mr. MCNULTY, Mr. MILLER of North Carolina, Mr. GEORGE MILLER of California, Mr. MORAN of Virginia, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. NUNES, Mr. OBERSTAR, Mr. PAYNE, Mr. PERLMUTTER, Mr. PETRI, Mr. RAHALL, Mr. RAMSTAD, Mr. RANGEL, Mr. RODRIGUEZ, Mr. ROSKAM, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. RYAN of Wisconsin, Ms. LORETTA SANCHEZ of California, Mr. SARBANES, Ms. SCHAKOWSKY, Mr. SCOTT of Virginia, Mr. SHAYS, Ms. SHEA-PORTER, Ms. SLAUGHTER,

Mr. SMITH of New Jersey, Ms. SOLIS, Mr. SOUDER, Mr. SPACE, Mr. STARK, Ms. SUTTON, Mrs. TAUSCHER, Mr. TIAHRT, Mr. TIERNEY, Mr. TOWNS, Mr. UDALL of New Mexico, Mr. VAN HOLLEN, Mr. VISCLOSKY, Mr. WALSH of New York, Ms. WASSERMAN SCHULTZ, Ms. WATSON, Mr. WAXMAN, Mr. WELCH of Vermont, Mr. WELDON of Florida, Ms. WOOLSEY, Mr. WYNN, Mr. YOUNG of Florida, Mr. YOUNG of Alaska, Mr. WALZ of Minnesota, Mr. MCCOTTER, and Mr. DICKS) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on the Judiciary, Transportation and Infrastructure, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE --, 2008

Reported from the Committee on Education and Labor with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on July 26, 2007]

---

## A BILL

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 mandate*

1       *for the elimination of discrimination against individ-*  
2       *uals with disabilities” and provide broad coverage;*

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

10          (3) *while Congress expected that the definition of*  
11       *disability under the ADA would be interpreted con-*  
12       *sistently with how courts had applied the definition*  
13       *of handicap under the Rehabilitation Act of 1973,*  
14       *that expectation has not been fulfilled;*

15          (4) *the holdings of the Supreme Court in Sutton*  
16       *v. United Airlines, Inc., 527 U.S. 471 (1999) and its*  
17       *companion cases, and in Toyota Motor Manufac-*  
18       *turing, Kentucky, Inc. v. Williams, 534 U.S. 184*  
19       *(2002) have narrowed the broad scope of protection*  
20       *intended to be afforded by the ADA, thus eliminating*  
21       *protection for many individuals whom Congress in-*  
22       *tended to protect; and*

23          (5) *as a result of these Supreme Court cases,*  
24       *lower courts have incorrectly found in individual*

1        *cases that people with a range of substantially lim-*  
2        *iting impairments are not people with disabilities.*

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

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

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

16           *(3) to reject the Supreme Court’s reasoning in*  
17        *Sutton v. United Airlines, Inc., 527 U.S. 471 (1999)*  
18        *with regard to coverage under the third prong of the*  
19        *definition of disability and to reinstate the reasoning*  
20        *of the Supreme Court in School Board of Nassau*  
21        *County v. Arline, 480 U.S. 273 (1987) which set forth*  
22        *a broad view of the third prong of the definition of*  
23        *handicap under the Rehabilitation Act of 1973;*

24           *(4) to reject the standards enunciated by the Su-*  
25        *preme Court in Toyota Motor Manufacturing, Ken-*

1        *tucky, Inc. v. Williams, 534 U.S. 184 (2002), that the*  
2        *terms “substantially” and “major” in the definition*  
3        *of disability under the ADA “need to be interpreted*  
4        *strictly to create a demanding standard for quali-*  
5        *fying as disabled,” and that to be substantially lim-*  
6        *ited in performing a major life activity under the*  
7        *ADA “an individual must have an impairment that*  
8        *prevents or severely restricts the individual from*  
9        *doing activities that are of central importance to most*  
10       *people’s daily lives”;* and

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

17        **SEC. 3. CODIFIED FINDINGS.**

18        *Section 2(a) of the Americans with Disabilities Act of*  
19        *1990 (42 U.S.C. 12101) is amended—*

20            *(1) by amending paragraph (1) to read as fol-*  
21        *lows:*

22            *“(1) physical or mental disabilities in no way*  
23        *diminish a person’s right to fully participate in all*  
24        *aspects of society, yet many people with physical or*  
25        *mental disabilities have been precluded from doing so*

1       *because of discrimination; others who have a record of*  
2       *a disability or are regarded as having a disability*  
3       *also have been subjected to discrimination;”;* and

4               (2) *by striking paragraph (7).*

5       **SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUC-**  
6                               **TION.**

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

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

11           *“As used in this Act:*

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

14                               *“(A) a physical or mental impairment that*  
15                               *substantially limits one or more major life ac-*  
16                               *tivities of such individual;*

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

18                               *“(C) being regarded as having such an im-*  
19                               *pairment (as described in paragraph (4)).*

20                   *“(2) SUBSTANTIALLY LIMITS.—The term ‘sub-*  
21                   *stantially limits’ means materially restricts.*

22                   *“(3) MAJOR LIFE ACTIVITIES.—*

23                               *“(A) IN GENERAL.—For purposes of para-*  
24                               *graph (1), major life activities include, but are*  
25                               *not limited to, caring for oneself, performing*

1           *manual tasks, seeing, hearing, eating, sleeping,*  
2           *walking, standing, lifting, bending, speaking,*  
3           *breathing, learning, reading, concentrating,*  
4           *thinking, communicating and working.*

5           “(B) *MAJOR BODILY FUNCTIONS.*—*For pur-*  
6           *poses of paragraph (1), a major life activity also*  
7           *includes the operation of a major bodily func-*  
8           *tion, including but not limited to, functions of*  
9           *the immune system, normal cell growth, diges-*  
10          *tive, bowel, bladder, neurological, brain, res-*  
11          *piratory, circulatory, endocrine, and reproduc-*  
12          *tive functions.*

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

15                 “(A) *An individual meets the requirement*  
16                 *of ‘being regarded as having such an impair-*  
17                 *ment’ if the individual establishes that he or she*  
18                 *has been subjected to an action prohibited under*  
19                 *this Act because of an actual or perceived phys-*  
20                 *ical or mental impairment whether or not the*  
21                 *impairment limits or is perceived to limit a*  
22                 *major life activity.*

23                 “(B) *Paragraph (1)(C) shall not apply to*  
24                 *impairments that are transitory and minor. A*  
25                 *transitory impairment is an impairment with*

1           *an actual or expected duration of 6 months or*  
2           *less.*

3           “(5) *RULES OF CONSTRUCTION REGARDING THE*  
4           *DEFINITION OF DISABILITY.—The definition of ‘dis-*  
5           *ability’ in paragraph (1) shall be construed in ac-*  
6           *cordance with the following:*

7                   “(A) *To achieve the remedial purposes of*  
8                   *this Act, the definition of ‘disability’ in para-*  
9                   *graph (1) shall be construed broadly.*

10                   “(B) *An impairment that substantially lim-*  
11                   *its one major life activity need not limit other*  
12                   *major life activities in order to be considered a*  
13                   *disability.*

14                   “(C) *An impairment that is episodic or in*  
15                   *remission is a disability if it would substantially*  
16                   *limit a major life activity when active.*

17                   “(D)(i) *The determination of whether an*  
18                   *impairment substantially limits a major life ac-*  
19                   *tivity shall be made without regard to the ame-*  
20                   *liorative effects of mitigating measures such as—*

21                           “(I) *medication, medical supplies,*  
22                           *equipment, or appliances, low-vision devices*  
23                           *(which do not include ordinary eyeglasses*  
24                           *or contact lenses), prosthetics including*  
25                           *limbs and devices, hearing aids and coch-*

1            *lear implants or other implantable hearing*  
2            *devices, mobility devices, or oxygen therapy*  
3            *equipment and supplies;*

4            *“(II) use of assistive technology;*

5            *“(III) reasonable accommodations or*  
6            *auxiliary aids or services; or*

7            *“(IV) learned behavioral or adaptive*  
8            *neurological modifications.*

9            *“(ii) The ameliorative effects of the miti-*  
10           *gating measures of ordinary eyeglasses or contact*  
11           *lenses shall be considered in determining whether*  
12           *an impairment substantially limits a major life*  
13           *activity.*

14           *“(iii) As used in this subparagraph—*

15           *“(I) the term ‘ordinary eyeglasses or*  
16           *contact lenses’ means lenses that are in-*  
17           *tended to fully correct visual acuity or*  
18           *eliminate refractive error; and*

19           *“(II) the term ‘low-vision devices’*  
20           *means devices that magnify, enhance, or*  
21           *otherwise augment a visual image.”.*

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

1 **“SEC. 4. ADDITIONAL DEFINITIONS.**

2 *“As used in this Act:*

3 *“(1) AUXILIARY AIDS AND SERVICES.—The term*  
4 *‘auxiliary aids and services’ includes—*

5 *“(A) qualified interpreters or other effective*  
6 *methods of making aurally delivered materials*  
7 *available to individuals with hearing impair-*  
8 *ments;*

9 *“(B) qualified readers, taped texts, or other*  
10 *effective methods of making visually delivered*  
11 *materials available to individuals with visual*  
12 *impairments;*

13 *“(C) acquisition or modification of equip-*  
14 *ment or devices; and*

15 *“(D) other similar services and actions.*

16 *“(2) STATE.—The term ‘State’ means each of the*  
17 *several States, the District of Columbia, the Common-*  
18 *wealth of Puerto Rico, Guam, American Samoa, the*  
19 *Virgin Islands, the Trust Territory of the Pacific Is-*  
20 *lands, and the Commonwealth of the Northern Mar-*  
21 *iana Islands.”.*

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

*“Sec. 3. Definition of disability.*

*“Sec. 4. Additional definitions.”.*

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

2 (a) *ON THE BASIS OF DISABILITY.*—Section 102 of the  
3 *Americans with Disabilities Act of 1990 (42 U.S.C. 12112)*  
4 *is amended—*

5 (1) *in subsection (a), by striking “with a dis-*  
6 *ability because of the disability of such individual”*  
7 *and inserting “on the basis of disability”; and*

8 (2) *in subsection (b) in the matter preceding*  
9 *paragraph (1), by striking “discriminate” and insert-*  
10 *ing “discriminate against a qualified individual on*  
11 *the basis of disability”.*

12 (b) *QUALIFICATION STANDARDS AND TESTS RELATED*  
13 *TO UNCORRECTED VISION.*—Section 103 of the *Americans*  
14 *with Disabilities Act of 1990 (42 U.S.C. 12113)* *is amended*  
15 *by redesignating subsections (c) and (d) as subsections (d)*  
16 *and (e), respectively, and inserting after subsection (b) the*  
17 *following new subsection:*

18 *“(c) QUALIFICATION STANDARDS AND TESTS RELATED*  
19 *TO UNCORRECTED VISION.*—*Notwithstanding section*  
20 *3(5)(D)(ii), a covered entity shall not use qualification*  
21 *standards, employment tests, or other selection criteria*  
22 *based on an individual’s uncorrected vision unless the*  
23 *standard, test, or other selection criteria, as used by the cov-*

1 *ered entity, is shown to be job-related for the position in*  
2 *question and consistent with business necessity.”.*

3 (c) *CONFORMING AMENDMENT.*—Section 101(8) of the  
4 *Americans with Disabilities Act of 1990 (42 U.S.C.*  
5 *12111(8)) is amended—*

6 (1) *in the paragraph heading, by striking “WITH*  
7 *A DISABILITY”;* and

8 (2) *by striking “with a disability” after “indi-*  
9 *vidual” both places it appears.*

10 **SEC. 6. RULES OF CONSTRUCTION.**

11 *Title V of the Americans with Disabilities Act of 1990*  
12 *(42 U.S.C. 12201) is amended—*

13 (1) *by adding at the end of section 501 the fol-*  
14 *lowing:*

15 “(e) *BENEFITS UNDER STATE WORKER’S COMPENSA-*  
16 *TION LAWS.*—*Nothing in this Act alters the standards for*  
17 *determining eligibility for benefits under State worker’s*  
18 *compensation laws or under State and Federal disability*  
19 *benefit programs.*

20 “(f) *CLAIMS OF NO DISABILITY.*—*Nothing in this Act*  
21 *shall provide the basis for a claim by a person without a*  
22 *disability that he or she was subject to discrimination be-*  
23 *cause of his or her lack of disability.*

24 “(g) *REASONABLE ACCOMMODATIONS AND MODIFICA-*  
25 *TIONS.*—*A covered entity under title I, a public entity*

1 *under title II, and any person who owns, leases (or leases*  
2 *to), or operates a place of public accommodation under title*  
3 *III, need not provide a reasonable accommodation or a rea-*  
4 *sonable modification to policies, practices, or procedures to*  
5 *an individual who meets the definition of disability in sec-*  
6 *tion 3(1) solely under subparagraph (C).”;*

7 *(2) by redesignating section 506 through 514 as*  
8 *sections 507 through 515, respectively, and adding*  
9 *after section 505 the following:*

10 **“SEC. 506. RULE OF CONSTRUCTION REGARDING REGU-**  
11 **LATORY AUTHORITY.**

12 *“The authority to issue regulations granted to the*  
13 *Equal Employment Opportunity Commission, the Attorney*  
14 *General, and the Secretary of Transportation under this*  
15 *Act includes the authority to issue regulations imple-*  
16 *menting the definitions contained in sections 3 and 4.”; and*

17 *(3) in the table of contents contained in section*  
18 *1(b), by redesignating the items relating to sections*  
19 *506 through 514 as sections 507 through 515, respec-*  
20 *tively, and by inserting after the item relating to sec-*  
21 *tion 505 the following new item:*

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

22 **SEC. 7. CONFORMING AMENDMENTS.**

23 *Section 7 of the Rehabilitation Act of 1973 (29 U.S.C.*  
24 *705) is amended—*

1           (1) *in paragraph (9)(B), by striking “a phys-*  
2           *ical” and all that follows through “major life activi-*  
3           *ties”, and inserting “the meaning given it in section*  
4           *3 of the Americans with Disabilities Act of 1990”;*  
5           *and*

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

11 **SEC. 8. EFFECTIVE DATE.**

12          *This Act and the amendments made by this Act shall*  
13          *become effective on January 1, 2009.*