

Calendar No. 927

110TH CONGRESS
2D SESSION

S. 3406

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

IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

Mr. HARKIN (for himself, Mr. HATCH, Mr. KENNEDY, Mr. ENZI, Mr. SPECTER, Mr. OBAMA, Mr. MCCAIN, Mr. DODD, Mr. GREGG, Mrs. CLINTON, Mr. ALEXANDER, Mr. JOHNSON, Mr. ROBERTS, Mr. KERRY, Mr. COLEMAN, Mr. FEINGOLD, Ms. SNOWE, Mr. LEAHY, Mr. BURR, Mr. BROWN, Mr. SMITH, Mr. DURBIN, Ms. MURKOWSKI, Mr. LAUTENBERG, Mr. WARNER, Mr. SANDERS, Mr. BROWNBACK, Mr. REED, Mr. MARTINEZ, Ms. MIKULSKI, Mr. ISAKSON, Mr. CASEY, Mr. CRAIG, Mrs. MURRAY, Mr. BENNETT, Ms. LANDRIEU, Ms. COLLINS, Mr. BIDEN, Mr. ALLARD, Mr. NELSON of Florida, Mr. SUNUNU, Mr. CARDIN, Mr. THUNE, Mr. LEVIN, Mr. BARRASSO, Mrs. MCCASKILL, Mr. CRAPO, Mr. SCHUMER, Mr. STEVENS, Mr. SALAZAR, Mr. VOINOVICH, Mr. TESTER, Mr. COCHRAN, Mr. REID, Mr. LUGAR, Mr. CHAMBLISS, Mrs. DOLE, Mrs. BOXER, Mrs. FEINSTEIN, Ms. KLOBUCHAR, Ms. STABENOW, Mr. KOHL, Mrs. LINCOLN, Mr. MENENDEZ, and Mr. WYDEN) introduced the following bill; which was read the first time

AUGUST 1, 2008

Read the second time and placed on the calendar

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 man-
11 date for the elimination of discrimination against in-
12 dividuals with disabilities” and provide broad cov-
13 erage;

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

22 (3) while Congress expected that the definition
23 of disability under the ADA would be interpreted
24 consistently with how courts had applied the defini-
25 tion of a handicapped individual under the Rehabili-

1 tation Act of 1973, that expectation has not been
2 fulfilled;

3 (4) the holdings of the Supreme Court in *Sut-*
4 *ton v. United Air Lines, Inc.*, 527 U.S. 471 (1999)
5 and its companion cases have narrowed the broad
6 scope of protection intended to be afforded by the
7 ADA, thus eliminating protection for many individ-
8 uals whom Congress intended to protect;

9 (5) the holding of the Supreme Court in *Toyota*
10 *Motor Manufacturing, Kentucky, Inc. v. Williams*,
11 534 U.S. 184 (2002) further narrowed the broad
12 scope of protection intended to be afforded by the
13 ADA;

14 (6) as a result of these Supreme Court cases,
15 lower courts have incorrectly found in individual
16 cases that people with a range of substantially lim-
17 iting impairments are not people with disabilities;

18 (7) in particular, the Supreme Court, in the
19 case of *Toyota Motor Manufacturing, Kentucky, Inc.*
20 *v. Williams*, 534 U.S. 184 (2002), interpreted the
21 term “substantially limits” to require a greater de-
22 gree of limitation than was intended by Congress;
23 and

24 (8) Congress finds that the current Equal Em-
25 ployment Opportunity Commission ADA regulations

1 defining the term “substantially limits” as “signifi-
2 cantly restricted” are inconsistent with congressional
3 intent, by expressing too high a standard.

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

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

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

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

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

13 (5) to convey congressional intent that the
14 standard created by the Supreme Court in the case
15 of *Toyota Motor Manufacturing, Kentucky, Inc. v.*
16 *Williams*, 534 U.S. 184 (2002) for “substantially
17 limits”, and applied by lower courts in numerous de-
18 cisions, has created an inappropriately high level of
19 limitation necessary to obtain coverage under the
20 ADA, to convey that it is the intent of Congress that
21 the primary object of attention in cases brought
22 under the ADA should be whether entities covered
23 under the ADA have complied with their obligations,
24 and to convey that the question of whether an indi-

1 vidual’s impairment is a disability under the ADA
2 should not demand extensive analysis; and

3 (6) to express Congress’ expectation that the
4 Equal Employment Opportunity Commission will re-
5 vise that portion of its current regulations that de-
6 fines the term “substantially limits” as “signifi-
7 cantly restricted” to be consistent with this Act, in-
8 cluding the amendments made by this Act.

9 **SEC. 3. CODIFIED FINDINGS.**

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

12 (1) by amending paragraph (1) to read as fol-
13 lows:

14 “(1) physical or mental disabilities in no way
15 diminish a person’s right to fully participate in all
16 aspects of society, yet many people with physical or
17 mental disabilities have been precluded from doing
18 so because of discrimination; others who have a
19 record of a disability or are regarded as having a
20 disability also have been subjected to discrimina-
21 tion;”;

22 (2) by striking paragraph (7); and

23 (3) by redesignating paragraphs (8) and (9) as
24 paragraphs (7) and (8), respectively.

1 **SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUC-**
 2 **TION.**

3 (a) DEFINITION OF DISABILITY.—Section 3 of the
 4 Americans with Disabilities Act of 1990 (42 U.S.C.
 5 12102) is amended to read as follows:

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

7 “As used in this Act:

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

10 “(A) a physical or mental impairment that
 11 substantially limits one or more major life ac-
 12 tivities of such individual;

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

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

16 “(2) MAJOR LIFE ACTIVITIES.—

17 “(A) IN GENERAL.—For purposes of para-
 18 graph (1), major life activities include, but are
 19 not limited to, caring for oneself, performing
 20 manual tasks, seeing, hearing, eating, sleeping,
 21 walking, standing, lifting, bending, speaking,
 22 breathing, learning, reading, concentrating,
 23 thinking, communicating, and working.

24 “(B) MAJOR BODILY FUNCTIONS.—For
 25 purposes of paragraph (1), a major life activity
 26 also includes the operation of a major bodily

1 function, including but not limited to, functions
2 of the immune system, normal cell growth, di-
3 gestive, bowel, bladder, neurological, brain, res-
4 piratory, circulatory, endocrine, and reproduc-
5 tive functions.

6 “(3) REGARDED AS HAVING SUCH AN IMPAIR-
7 MENT.—For purposes of paragraph (1)(C):

8 “(A) An individual meets the requirement
9 of ‘being regarded as having such an impair-
10 ment’ if the individual establishes that he or
11 she has been subjected to an action prohibited
12 under this Act because of an actual or perceived
13 physical or mental impairment whether or not
14 the impairment limits or is perceived to limit a
15 major life activity.

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

20 “(4) RULES OF CONSTRUCTION REGARDING
21 THE DEFINITION OF DISABILITY.—The definition of
22 ‘disability’ in paragraph (1) shall be construed in ac-
23 cordance with the following:

24 “(A) The definition of disability in this Act
25 shall be construed in favor of broad coverage of

1 individuals under this Act, to the maximum ex-
2 tent permitted by the terms of this Act.

3 “(B) The term ‘substantially limits’ shall
4 be interpreted consistently with the findings
5 and purposes of the ADA Amendments Act of
6 2008.

7 “(C) An impairment that substantially lim-
8 its one major life activity need not limit other
9 major life activities in order to be considered a
10 disability.

11 “(D) An impairment that is episodic or in
12 remission is a disability if it would substantially
13 limit a major life activity when active.

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

19 “(I) medication, medical supplies,
20 equipment, or appliances, low-vision de-
21 vices (which do not include ordinary eye-
22 glasses or contact lenses), prosthetics in-
23 cluding limbs and devices, hearing aids and
24 cochlear implants or other implantable

1 hearing devices, mobility devices, or oxygen
 2 therapy equipment and supplies;

3 “(II) use of assistive technology;

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

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

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

13 “(iii) As used in this subparagraph—

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

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

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

24 **“SEC. 4. ADDITIONAL DEFINITIONS.**

25 “As used in this Act:

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

3 “(A) qualified interpreters or other effec-
4 tive methods of making aurally delivered mate-
5 rials available to individuals with hearing im-
6 pairments;

7 “(B) qualified readers, taped texts, or
8 other effective methods of making visually deliv-
9 ered materials available to individuals with vis-
10 ual impairments;

11 “(C) acquisition or modification of equip-
12 ment or devices; and

13 “(D) other similar services and actions.

14 “(2) STATE.—The term ‘State’ means each of
15 the several States, the District of Columbia, the
16 Commonwealth of Puerto Rico, Guam, American
17 Samoa, the Virgin Islands of the United States, the
18 Trust Territory of the Pacific Islands, and the Com-
19 monwealth of the Northern Mariana Islands.”.

20 (c) AMENDMENT TO THE TABLE OF CONTENTS.—
21 The table of contents contained in section 1(b) of the
22 Americans with Disabilities Act of 1990 is amended by
23 striking the item relating to section 3 and inserting the
24 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
3 the Americans with Disabilities Act of 1990 (42 U.S.C.
4 12112) 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 in-
10 serting “discriminate against a qualified individual
11 on the basis of disability”.

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

18 “(c) QUALIFICATION STANDARDS AND TESTS RE-
19 LATED TO UNCORRECTED VISION.—Notwithstanding sec-
20 tion 3(4)(E)(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
24 covered entity, is shown to be job-related for the position
25 in question and consistent with business necessity.”.

26 (c) CONFORMING AMENDMENTS.—

1 (1) Section 101(8) of the Americans with Dis-
 2 abilities Act of 1990 (42 U.S.C. 12111(8)) is
 3 amended—

4 (A) in the paragraph heading, by striking
 5 “WITH A DISABILITY”; and

6 (B) by striking “with a disability” after
 7 “individual” both places it appears.

8 (2) Section 104(a) of the Americans with Dis-
 9 abilities Act of 1990 (42 U.S.C. 12114(a)) is
 10 amended by striking “the term ‘qualified individual
 11 with a disability’ shall” and inserting “a qualified
 12 individual with a disability shall”.

13 **SEC. 6. RULES OF CONSTRUCTION.**

14 (a) Title V of the Americans with Disabilities Act of
 15 1990 (42 U.S.C. 12201 et seq.) is amended—

16 (1) by adding at the end of section 501 the fol-
 17 lowing:

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

23 “(f) FUNDAMENTAL ALTERATION.—Nothing in this
 24 Act alters the provision of section 302(b)(2)(A)(ii), speci-
 25 fying that reasonable modifications in policies, practices,

1 or procedures shall be required, unless an entity can dem-
 2 onstrate that making such modifications in policies, prac-
 3 tices, or procedures, including academic requirements in
 4 postsecondary education, would fundamentally alter the
 5 nature of the goods, services, facilities, privileges, advan-
 6 tages, or accommodations involved.

7 “(g) CLAIMS OF NO DISABILITY.—Nothing in this
 8 Act shall provide the basis for a claim by an individual
 9 without a disability that the individual was subject to dis-
 10 crimination because of the individual’s lack of disability.

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

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

1 **“SEC. 506. RULE OF CONSTRUCTION REGARDING REGU-**
 2 **LATORY AUTHORITY.**

3 “The authority to issue regulations granted to the
 4 Equal Employment Opportunity Commission, the Attor-
 5 ney General, and the Secretary of Transportation under
 6 this Act includes the authority to issue regulations imple-
 7 menting the definitions of disability in section 3 (including
 8 rules of construction) and the definitions in section 4, con-
 9 sistent with the ADA Amendments Act of 2008.”; and

10 (3) in section 511 (as redesignated by para-
 11 graph (2)) (42 U.S.C. 12211), in subsection (c), by
 12 striking “511(b)(3)” and inserting “512(b)(3)”.

13 (b) The table of contents contained in section 1(b)
 14 of the Americans with Disabilities Act of 1990 is amended
 15 by redesignating the items relating to sections 506
 16 through 514 as the items relating to sections 507 through
 17 515, respectively, and by inserting after the item relating
 18 to section 505 the following new item:

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

19 **SEC. 7. CONFORMING AMENDMENTS.**

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

22 (1) in paragraph (9)(B), by striking “a phys-
 23 ical” and all that follows through “major life activi-
 24 ties”, and inserting “the meaning given it in section

1 3 of the Americans with Disabilities Act of 1990 (42
2 U.S.C. 12102)”; and

3 (2) in paragraph (20)(B), by striking “any per-
4 son who” and all that follows through the period at
5 the end, and inserting “any person who has a dis-
6 ability as defined in section 3 of the Americans with
7 Disabilities Act of 1990 (42 U.S.C. 12102).”.

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

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

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110TH CONGRESS
2^D Session
S. 3406

A BILL

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Americans with Disabilities Act of 1990.

August 1, 2008

Read the second time and placed on the calendar