

Sec.
12103. Additional definitions.
SUBCHAPTER I—EMPLOYMENT

12111. Definitions.
12112. Discrimination.
12113. Defenses.
12114. Illegal use of drugs and alcohol.
12115. Posting notices.
12116. Regulations.
12117. Enforcement.

SUBCHAPTER II—PUBLIC SERVICES

PART A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

12131. Definitions.
12132. Discrimination.
12133. Enforcement.
12134. Regulations.

PART B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

SUBPART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

12141. Definitions.
12142. Public entities operating fixed route systems.
12143. Paratransit as a complement to fixed route service.
12144. Public entity operating a demand responsive system.
12145. Temporary relief where lifts are unavailable.
12146. New facilities.
12147. Alterations of existing facilities.
12148. Public transportation programs and activities in existing facilities and one car per train rule.
12149. Regulations.
12150. Interim accessibility requirements.

SUBPART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

12161. Definitions.
12162. Intercity and commuter rail actions considered discriminatory.
12163. Conformance of accessibility standards.
12164. Regulations.
12165. Interim accessibility requirements.

SUBCHAPTER III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

12181. Definitions.
12182. Prohibition of discrimination by public accommodations.
12183. New construction and alterations in public accommodations and commercial facilities.
12184. Prohibition of discrimination in specified public transportation services provided by private entities.
12185. Study.
12186. Regulations.
12187. Exemptions for private clubs and religious organizations.
12188. Enforcement.
12189. Examinations and courses.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

12201. Construction.
12202. State immunity.
12203. Prohibition against retaliation and coercion.
12204. Regulations by Architectural and Transportation Barriers Compliance Board.
12205. Attorney's fees.
12205a. Rule of construction regarding regulatory authority.
12206. Technical assistance.
12207. Federal wilderness areas.

Sec.
12208. Transvestites.
12209. Instrumentalities of Congress.
12210. Illegal use of drugs.
12211. Definitions.
12212. Alternative means of dispute resolution.
12213. Severability.

§ 12101. Findings and purpose

(a) Findings

The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of dis-

crimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101-336, §2, July 26, 1990, 104 Stat. 328; Pub. L. 110-325, §3, Sept. 25, 2008, 122 Stat. 3554.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-325, §3(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;”.

Subsec. (a)(7) to (9). Pub. L. 110-325, §3(2), (3), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: “individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-325 effective Jan. 1, 2009, see section 8 of Pub. L. 110-325, set out as a note under section 705 of Title 29, Labor.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-325, §1, Sept. 25, 2008, 122 Stat. 3553, provided that: “This Act [enacting sections 12103 and 12205a of this title, amending this section, sections 12102, 12111 to 12114, 12201, and 12206 to 12213 of this title, section 705 and former section 706 of Title 29, Labor, and enacting provisions set out as notes under this section and section 705 of Title 29] may be cited as the ‘ADA Amendments Act of 2008’.”

SHORT TITLE

Pub. L. 101-336, §1(a), July 26, 1990, 104 Stat. 327, provided that: “This Act [enacting this chapter and section 225 of Title 47, Telecommunications, amending section 706 of Title 29, Labor, and sections 152, 221, and 611 of Title 47, and enacting provisions set out as notes under sections 12111, 12131, 12141, 12161, and 12181 of this title] may be cited as the ‘Americans with Disabilities Act of 1990’.”

FINDINGS AND PURPOSES OF PUB. L. 110-325

Pub. L. 110-325, §2, Sept. 25, 2008, 122 Stat. 3553, provided that:

“(a) FINDINGS.—Congress finds that—

“(1) in enacting the Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. 12101 et seq.], Congress intended that the Act ‘provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities’ and provide broad coverage;

“(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

“(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], that expectation has not been fulfilled;

“(4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

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

“(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

“(7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term ‘substantially limits’ to require a greater degree of limitation than was intended by Congress; and

“(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term ‘substantially limits’ as ‘significantly restricted’ are inconsistent with congressional intent, by expressing too high a standard.

“(b) PURPOSES.—The purposes of this Act [see Short Title of 2008 Amendment note above] are—

“(1) to carry out the ADA’s objectives of providing ‘a clear and comprehensive national mandate for the elimination of discrimination’ and ‘clear, strong, consistent, enforceable standards addressing discrimination’ by reinstating a broad scope of protection to be available under the ADA;

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

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

“(4) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms ‘substantially’ and ‘major’ in the definition of disability under the ADA ‘need to be interpreted strictly to create a demanding standard for qualifying as disabled,’ and that to be substantially limited in performing a major life activity under the ADA ‘an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives’;

“(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toy-*

ota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for ‘substantially limits’, and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis; and

“(6) to express Congress’ expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term ‘substantially limits’ as ‘significantly restricted’ to be consistent with this Act, including the amendments made by this Act.”

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING DISABILITY-RELATED EMPLOYMENT INCENTIVES

Pub. L. 106-170, title III, §303(a), Dec. 17, 1999, 113 Stat. 1903, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other Federal laws, specifically addressing the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities; and that, not later than 3 years after Dec. 17, 1999, the Comptroller General was to transmit to the appropriate congressional committees a written report presenting the results of the study and any appropriate recommendations for legislative or administrative changes.

§ 12102. Definition of disability

As used in this chapter:

(1) Disability

The term “disability” means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he

or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

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

(4) Rules of construction regarding the definition of disability

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

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

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

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

(Pub. L. 101-336, §3, July 26, 1990, 104 Stat. 329; Pub. L. 110-325, §4(a), Sept. 25, 2008, 122 Stat. 3555.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104