

110TH CONGRESS
1ST SESSION

H. R. 3195

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

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 Restoration Act
 5 of 2007”.

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 “establish a clear and comprehensive prohibition of
 11 discrimination on the basis of disability,” and pro-
 12 vide broad coverage and vigorous and effective rem-
 13 edies without unnecessary and obstructive defenses;

14 (2) decisions and opinions of the Supreme
 15 Court have unduly narrowed the broad scope of pro-

1 tection afforded in the ADA, eliminating protection
2 for a broad range of individuals who Congress in-
3 tended to protect;

4 (3) in enacting the ADA, Congress recognized
5 that physical and mental impairments are natural
6 parts of the human experience that in no way dimin-
7 ish a person’s right to fully participate in all aspects
8 of society, but Congress also recognized that people
9 with physical or mental impairments having the tal-
10 ent, skills, abilities, and desire to participate in soci-
11 ety are frequently precluded from doing so because
12 of prejudice, antiquated attitudes, or the failure to
13 remove societal and institutional barriers;

14 (4) Congress modeled the ADA definition of
15 disability on that of section 504 of the Rehabilita-
16 tion Act of 1973, which, through the time of the
17 ADA’s enactment, had been construed broadly to en-
18 compass both actual and perceived limitations, and
19 limitations imposed by society;

20 (5) the broad conception of the definition had
21 been underscored by the Supreme Court’s statement
22 in its decision in *School Board of Nassau County v.*
23 *Arline*, 480 U.S. 273, 284 (1987), that the section
24 504 definition “acknowledged that society’s accumu-
25 lated myths and fears about disability and disease

1 are as handicapping as are the physical limitations
2 that flow from actual impairment”;

3 (6) in adopting the section 504 concept of dis-
4 ability in the ADA, Congress understood that ad-
5 verse action based on a person’s physical or mental
6 impairment is often unrelated to the limitations
7 caused by the impairment itself;

8 (7) instead of following congressional expecta-
9 tions that disability would be interpreted broadly in
10 the ADA, the Supreme Court has ruled, in *Toyota*
11 *Motor Manufacturing, Kentucky, Inc. v. Williams*,
12 534 U.S. 184, 197 (2002), that the elements of the
13 definition “need to be interpreted strictly to create
14 a demanding standard for qualifying as disabled,”
15 and, consistent with that view, has narrowed the ap-
16 plication of the definition in various ways; and

17 (8) contrary to explicit congressional intent ex-
18 pressed in the ADA committee reports, the Supreme
19 Court has eliminated from the Act’s coverage indi-
20 viduals who have mitigated the effects of their im-
21 pairments through the use of such measures as
22 medication and assistive devices.

23 (b) PURPOSE.—The purposes of this Act are—

24 (1) to effect the ADA’s objectives of providing
25 “a clear and comprehensive national mandate for the

1 elimination of discrimination” and “clear, strong,
2 consistent, enforceable standards addressing dis-
3 crimination” by restoring the broad scope of protec-
4 tion available under the ADA;

5 (2) to respond to certain decisions of the Su-
6 preme Court, including *Sutton v. United Airlines,*
7 *Inc.*, 527 U.S. 471 (1999), *Murphy v. United Parcel*
8 *Service, Inc.*, 527 U.S. 516 (1999), *Albertson’s, Inc.*
9 *v. Kirkingburg*, 527 U.S. 555 (1999), and *Toyota*
10 *Motor Manufacturing, Kentucky, Inc. v. Williams*,
11 534 U.S. 184 (2002), that have narrowed the class
12 of people who can invoke the protection from dis-
13 crimination the ADA provides; and

14 (3) to reinstate original congressional intent re-
15 garding the definition of disability by clarifying that
16 ADA protection is available for all individuals who
17 are subjected to adverse treatment based on actual
18 or perceived impairment, or record of impairment, or
19 are adversely affected by prejudiced attitudes, such
20 as myths, fears, ignorance, or stereotypes concerning
21 disability or particular disabilities, or by the failure
22 to remove societal and institutional barriers, includ-
23 ing communication, transportation, and architectural
24 barriers, and the failure to provide reasonable modi-
25 fications to policies, practices, and procedures, rea-

1 sonable accommodations, and auxiliary aids and
2 services.

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

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

6 (1) by amending paragraph (1) to read as fol-
7 lows:

8 “(1) physical or mental disabilities are natural
9 parts of the human experience that in no way dimin-
10 ish a person’s right to fully participate in all aspects
11 of society, yet people with physical or mental disabili-
12 ties having the talent, skills, abilities, and desires to
13 participate in society frequently are precluded from
14 doing so because of discrimination; others who have
15 a record of a disability or are regarded as having a
16 disability also have been subjected to discrimina-
17 tion;”.

18 (2) by amending paragraph (7) to read as fol-
19 lows:

20 “(7) individuals with disabilities have been sub-
21 ject to a history of purposeful unequal treatment,
22 have had restrictions and limitations imposed upon
23 them because of their disabilities, and have been rel-
24 egated to positions of political powerlessness in soci-
25 ety; classifications and selection criteria that exclude

1 persons with disabilities should be strongly
2 disfavored, subjected to skeptical and meticulous ex-
3 amination, and permitted only for highly compelling
4 reasons, and never on the basis of prejudice, igno-
5 rance, myths, irrational fears, or stereotypes about
6 disability;”.

7 **SEC. 4. DISABILITY DEFINED.**

8 Section 3 of the Americans with Disabilities Act of
9 1990 (42 U.S.C. 12102) is amended—

10 (1) by amending paragraph (2) to read as fol-
11 lows:

12 “(2) DISABILITY.—

13 “(A) IN GENERAL.—The term ‘disability’
14 means, with respect to an individual—

15 “(i) a physical or mental impairment;

16 “(ii) a record of a physical or mental
17 impairment; or

18 “(iii) being regarded as having a
19 physical or mental impairment.

20 “(B) RULE OF CONSTRUCTION.—

21 “(i) The determination of whether an
22 individual has a physical or mental impair-
23 ment shall be made without considering
24 the impact of any mitigating measures the
25 individual may or may not be using or

1 whether or not any manifestations of an
2 impairment are episodic, in remission, or
3 latent.

4 “(ii) The term ‘mitigating measures’
5 means any treatment, medication, device,
6 or other measure used to eliminate, miti-
7 gate, or compensate for the effect of an
8 impairment, and includes prescription and
9 other medications, personal aids and de-
10 vices (including assistive technology devices
11 and services), reasonable accommodations,
12 or auxiliary aids and services.

13 “(iii) Actions taken by a covered enti-
14 ty with respect to an individual because of
15 that individual’s use of a mitigating meas-
16 ure or because of a side effect or other
17 consequence of the use of such a measure
18 shall be considered actions taken on the
19 basis of a disability under this Act.”.

20 (2) by redesignating paragraph (3) as para-
21 graph (7) and inserting after paragraph (2) the fol-
22 lowing:

23 “(3) PHYSICAL IMPAIRMENT.—The term ‘physi-
24 cal impairment’ means any physiological disorder or
25 condition, cosmetic disfigurement, or anatomical loss

1 affecting one or more of the following body systems:
2 neurological; musculoskeletal; special sense organs;
3 respiratory, including speech organs; cardiovascular;
4 reproductive; digestive; genito-urinary; hemic and
5 lymphatic; skin; and endocrine.

6 “(4) MENTAL IMPAIRMENT.—The term ‘mental
7 impairment’ means any mental or psychological dis-
8 order such as mental retardation, organic brain syn-
9 drome, emotional or mental illness, or specific learn-
10 ing disabilities.

11 “(5) RECORD OF PHYSICAL OR MENTAL IMPAIR-
12 MENT.—The term ‘record of physical or mental im-
13 pairment’ means having a history of, or having been
14 misclassified as having, a physical or mental impair-
15 ment.

16 “(6) REGARDED AS HAVING A PHYSICAL OR
17 MENTAL IMPAIRMENT.—The term ‘regarded as hav-
18 ing a physical or mental impairment’ means being
19 perceived or treated as having a physical or mental
20 impairment whether or not the individual has an im-
21 pairment.”.

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

23 Section 102 of the Americans with Disabilities Act
24 of 1990 (42 U.S.C. 12112) is amended—

1 (1) in subsection (a), by striking “against a
2 qualified individual with a disability because of the
3 disability of such individual” and inserting “against
4 an individual on the basis of disability”; and

5 (2) in subsection (b), in the matter preceding
6 paragraph (1), by striking “discriminate” and in-
7 serting “discriminate against an individual on the
8 basis of disability”.

9 **SEC. 6. QUALIFIED INDIVIDUAL.**

10 Section 103(a) of the Americans with Disabilities Act
11 of 1990 (42 U.S.C. 12113(a)) is amended by striking
12 “that an alleged application” and inserting “that—

13 “(1) the individual alleging discrimination
14 under this title is not a qualified individual with a
15 disability; or

16 “(2) an alleged application”.

17 **SEC. 7. RULE OF CONSTRUCTION.**

18 Section 501 of the Americans with Disabilities Act
19 of 1990 (42 U.S.C. 12201) is amended by adding at the
20 end the following:

21 “(e) BROAD CONSTRUCTION.—In order to ensure
22 that this Act achieves its purpose of providing a com-
23 prehensive prohibition of discrimination on the basis of
24 disability, the provisions of this Act shall be broadly con-
25 strued to advance their remedial purpose.

1 “(f) REGULATIONS.—In order to provide for con-
2 sistent and effective standards among the agencies respon-
3 sible for enforcing this Act, the Attorney General shall
4 promulgate regulations and guidance in alternate acces-
5 sible formats implementing the provisions herein. The
6 Equal Employment Opportunity Commission and Sec-
7 retary of Transportation shall then issue appropriate im-
8 plementing directives, whether in the nature of regulations
9 or policy guidance, consistent with the requirements pre-
10 scribed by the Attorney General.

11 “(g) DEFERENCE TO REGULATIONS AND GUID-
12 ANCE.—Duly issued Federal regulations and guidance for
13 the implementation of this Act, including provisions imple-
14 menting and interpreting the definition of disability, shall
15 be entitled to deference by administrative bodies or offi-
16 cers and courts hearing any action brought under this
17 Act.”.

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