

Union Calendar No. 465

110TH CONGRESS
2D SESSION

H. R. 3195

[Report No. 110–730, Parts I and II]

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 23, 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 *italic*]

JUNE 23, 2008

Reported from the Committee on the Judiciary with an amendment

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

JUNE 23, 2008

Additional sponsors: Mr. BONNER, Mr. SESTAK, Mr. BRADY of Pennsylvania, Mr. HARE, Mr. MOLLOHAN, Mr. KAGEN, Mr. HINCHEY, Mr. EDWARDS, Ms. LINDA T. SÁNCHEZ of California, Ms. GINNY BROWN-WAITE of Florida, Mr. OLVER, Mr. CASTLE, Mr. GILLMOR, Mr. PASTOR, Mr. GENE GREEN of Texas, Mr. LYNCH, Mr. CARNAHAN, Mr. ORTIZ, Mr. KUCINICH, Mr. GUTIERREZ, Ms. BERKLEY, Mr. DOYLE, Mr. SERRANO, Mr. DOGGETT, Ms. MOORE of Wisconsin, Mr. BRALEY of Iowa, Mr. MICHAUD, Mr. SIRES, Mr. MURPHY of Connecticut, Ms. CARSON, Mr. WU, Mr. PASCRELL, Ms. HERSETH SANDLIN, Mr. ABERCROMBIE, Mr. REYES, Mr. HODES, Mr. PETERSON of Minnesota, Ms. HOOLEY, Mr. PRICE of North Carolina, Ms. HARMAN, Mr. POMEROY, Mr. GORDON of Tennessee, Mr. SAXTON, Mr. BACA, Mr. ELLISON, Mr. HILL, Mr. CROWLEY, Mr. HALL of Texas, Mrs. DAVIS of California, Mr. ARCURI, Mrs. CAPPS, Mr. SCHIFF, Mr. WILSON of Ohio, Mr. SPRATT, Mr. LINCOLN DIAZ-BALART of Florida, Mrs. NAPOLITANO, Mr. JACKSON of Illinois, Ms. WATERS, Mr. ELLSWORTH, Mr. KLEIN of Florida, Mr. MURTHA, Mr. WEXLER, Ms. LEE, Mr. FATTAH, Mr. ALTMIRE, Mr. RUSH, Ms. CLARKE, Mr. MEEK of Florida, Mr. DAVIS of Alabama, Mr. HOEKSTRA, Mr. ROSS, Ms. ESHOO, Ms. CASTOR, Mr. THOMPSON of California, Mr. WEINER, Mr. PALLONE, Mr. LARSEN of Washington, Ms. JACKSON-LEE of Texas, Ms. PRYCE of Ohio, Mr. LARSON of Connecticut, Mr. UDALL of Colorado, Mr. RYAN of Ohio, Mr. LINCOLN DAVIS of Tennessee, Ms. ROSLEHTINEN, Ms. HIRONO, Mrs. MILLER of Michigan, Mr. BUCHANAN, Mr. LOBIONDO, Mr. YARMUTH, Mr. LIPINSKI, Mr. GONZALEZ, Mr.

McNERNEY, Mr. BECERRA, Mr. PORTER, Ms. SCHWARTZ, Mr. CAPUANO, Mr. GERLACH, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. FORTUÑO, Ms. TSONGAS, Mrs. DRAKE, Mr. BLUNT, Mrs. SCHMIDT, Mr. HIGGINS, Mr. WELLER of Illinois, Mr. SALAZAR, Mr. CARSON, Mr. SHERMAN, Mr. SESSIONS, Mr. LAMPSON, and Mrs. GILLIBRAND

JUNE 23, 2008

Committees on Transportation and Infrastructure and Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[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*
11 *for the elimination of discrimination against individ-*
12 *uals with disabilities” and provide broad coverage;*

13 *(2) in enacting the ADA, Congress recognized*
14 *that physical and mental disabilities in no way di-*
15 *minish a person’s right to fully participate in all as-*

1 *pects of society, but that people with physical or men-*
2 *tal disabilities are frequently precluded from doing so*
3 *because of prejudice, antiquated attitudes, or the fail-*
4 *ure to remove societal and institutional barriers;*

5 *(3) while Congress expected that the definition of*
6 *disability under the ADA would be interpreted con-*
7 *sistently with how courts had applied the definition*
8 *of handicap under the Rehabilitation Act of 1973,*
9 *that expectation has not been fulfilled;*

10 *(4) the holdings of the Supreme Court in Sutton*
11 *v. United Airlines, Inc., 527 U.S. 471 (1999) and its*
12 *companion cases, and in Toyota Motor Manufac-*
13 *turing, Kentucky, Inc. v. Williams, 534 U.S. 184*
14 *(2002) have narrowed the broad scope of protection*
15 *intended to be afforded by the ADA, thus eliminating*
16 *protection for many individuals whom Congress in-*
17 *tended to protect; and*

18 *(5) as a result of these Supreme Court cases,*
19 *lower courts have incorrectly found in individual*
20 *cases that people with a range of substantially lim-*
21 *iting impairments are not people with disabilities.*

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

23 *(1) to carry out the ADA’s objectives of pro-*
24 *viding “a clear and comprehensive national mandate*
25 *for the elimination of discrimination” and “clear,*

1 *strong, consistent, enforceable standards addressing*
2 *discrimination” by reinstating a broad scope of pro-*
3 *tection to be available under the ADA;*

4 *(2) to reject the requirement enunciated by the*
5 *Supreme Court in Sutton v. United Airlines, Inc.,*
6 *527 U.S. 471 (1999) and its companion cases that*
7 *whether an impairment substantially limits a major*
8 *life activity is to be determined with reference to the*
9 *ameliorative effects of mitigating measures;*

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

18 *(4) to reject the standards enunciated by the Su-*
19 *preme Court in Toyota Motor Manufacturing, Ken-*
20 *tucky, Inc. v. Williams, 534 U.S. 184 (2002), that the*
21 *terms “substantially” and “major” in the definition*
22 *of disability under the ADA “need to be interpreted*
23 *strictly to create a demanding standard for quali-*
24 *fying as disabled,” and that to be substantially lim-*
25 *ited in performing a major life activity under the*

1 *ADA “an individual must have an impairment that*
2 *prevents or severely restricts the individual from*
3 *doing activities that are of central importance to most*
4 *people’s daily lives”;* and

5 *(5) to provide a new definition of “substantially*
6 *limits” to indicate that Congress intends to depart*
7 *from the strict and demanding standard applied by*
8 *the Supreme Court in Toyota Motor Manufacturing,*
9 *Kentucky, Inc. v. Williams and by numerous lower*
10 *courts.*

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

12 *Section 2(a) of the Americans with Disabilities Act of*
13 *1990 (42 U.S.C. 12101) is amended—*

14 *(1) by amending paragraph (1) to read as fol-*
15 *lows:*

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

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

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. 12102)*
 5 *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 (4)).*

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

18 *“(3) MAJOR LIFE ACTIVITIES.—*

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

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

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

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

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

24 “(5) *RULES OF CONSTRUCTION REGARDING THE*
 25 *DEFINITION OF DISABILITY.*—The definition of ‘dis-

1 *ability’ in paragraph (1) shall be construed in ac-*
2 *cordance with the following:*

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

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

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

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

17 “(I) *medication, medical supplies,*
18 *equipment, or appliances, low-vision devices*
19 *(which do not include ordinary eyeglasses*
20 *or contact lenses), prosthetics including*
21 *limbs and devices, hearing aids and coch-*
22 *lear implants or other implantable hearing*
23 *devices, mobility devices, or oxygen therapy*
24 *equipment and supplies;*

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

1 “(III) reasonable accommodations or
2 auxiliary aids or services; or

3 “(IV) learned behavioral or adaptive
4 neurological modifications.

5 “(ii) The ameliorative effects of the miti-
6 gating measures of ordinary eyeglasses or contact
7 lenses shall be considered in determining whether
8 an impairment substantially limits a major life
9 activity.

10 “(iii) As used in this subparagraph—

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

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

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

21 **“SEC. 4. ADDITIONAL DEFINITIONS.**

22 “As used in this Act:

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

1 “(A) qualified interpreters or other effective
2 methods of making aurally delivered materials
3 available to individuals with hearing impair-
4 ments;

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

9 “(C) acquisition or modification of equip-
10 ment or devices; and

11 “(D) other similar services and actions.

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

18 (c) AMENDMENT TO THE TABLE OF CONTENTS.—The
19 table of contents contained in section 1(b) of the Americans
20 with Disabilities Act of 1990 is amended by striking the
21 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-
24 ered entity, is shown to be job-related for the position in
25 question and consistent with business necessity.”.

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

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

6 (2) by striking “with a disability” after “indi-
 7 vidual” both places it appears.

8 **SEC. 6. RULES OF CONSTRUCTION.**

9 *Title V of the Americans with Disabilities Act of 1990*
 10 *(42 U.S.C. 12201)* is amended—

11 (1) by adding at the end of section 501 the fol-
 12 lowing:

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

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

22 “(g) *REASONABLE ACCOMMODATIONS AND MODIFICA-*
 23 *TIONS.*—A covered entity under title I, a public entity
 24 under title II, and any person who owns, leases (or leases
 25 to), or operates a place of public accommodation under title

1 *III, need not provide a reasonable accommodation or a rea-*
 2 *sonable modification to policies, practices, or procedures to*
 3 *an individual who meets the definition of disability in sec-*
 4 *tion 3(1) solely under subparagraph (C).”;*

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

8 **“SEC. 506. RULE OF CONSTRUCTION REGARDING REGU-**
 9 **LATORY AUTHORITY.**

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

15 (3) *in the table of contents contained in section*
 16 *1(b), by redesignating the items relating to sections*
 17 *506 through 514 as sections 507 through 515, respec-*
 18 *tively, and by inserting after the item relating to sec-*
 19 *tion 505 the following new item:*

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

20 **SEC. 7. CONFORMING AMENDMENTS.**

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

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

1 3 of the Americans with Disabilities Act of 1990”;
2 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.”.

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

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

11 **SECTION 1. SHORT TITLE.**

12 **This Act may be cited as the “ADA Amend-**
13 **ments Act of 2008”.**

14 **SEC. 2. FINDINGS AND PURPOSES.**

15 **(a) FINDINGS.—Congress finds that—**

16 **(1) in enacting the Americans with**
17 **Disabilities Act of 1990 (ADA), Congress**
18 **intended that the Act “provide a clear**
19 **and comprehensive national mandate for**
20 **the elimination of discrimination against**
21 **individuals with disabilities” and provide**
22 **broad coverage;**

23 **(2) in enacting the ADA, Congress rec-**
24 **ognized that physical and mental disabil-**
25 **ities in no way diminish a person’s right**

1 to fully participate in all aspects of soci-
2 ety, but that people with physical or men-
3 tal disabilities are frequently precluded
4 from doing so because of prejudice, anti-
5 quated attitudes, or the failure to remove
6 societal and institutional barriers;

7 (3) while Congress expected that the
8 definition of disability under the ADA
9 would be interpreted consistently with
10 how courts had applied the definition of
11 handicap under the Rehabilitation Act of
12 1973, that expectation has not been ful-
13 filled;

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

24 (5) as a result of these Supreme Court
25 cases, lower courts have incorrectly

1 **found in individual cases that people**
2 **with a range of substantially limiting im-**
3 **pairments are not people with disabil-**
4 **ities.**

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

7 **(1) to carry out the ADA’s objectives**
8 **of providing “a clear and comprehensive**
9 **national mandate for the elimination of**
10 **discrimination” and “clear, strong, con-**
11 **sistent, enforceable standards addressing**
12 **discrimination” by reinstating a broad**
13 **scope of protection to be available under**
14 **the ADA;**

15 **(2) to reject the requirement enun-**
16 **ciated by the Supreme Court in Sutton v.**
17 **United Airlines, Inc., 527 U.S. 471 (1999)**
18 **and its companion cases that whether an**
19 **impairment substantially limits a major**
20 **life activity is to be determined with ref-**
21 **erence to the ameliorative effects of miti-**
22 **gating measures;**

23 **(3) to reject the Supreme Court’s rea-**
24 **soning in Sutton v. United Airlines, Inc.,**
25 **527 U.S. 471 (1999) with regard to cov-**

1 erage under the third prong of the defini-
2 tion of disability and to reinstate the rea-
3 soning of the Supreme Court in *School*
4 *Board of Nassau County v. Arline*, 480
5 U.S. 273 (1987) which set forth a broad
6 view of the third prong of the definition
7 of handicap under the Rehabilitation Act
8 of 1973;

9 (4) to reject the standards enunciated
10 by the Supreme Court in *Toyota Motor*
11 *Manufacturing, Kentucky, Inc. v. Wil-*
12 *liams*, 534 U.S. 184 (2002), that the terms
13 “substantially” and “major” in the defini-
14 tion of disability under the ADA “need to
15 be interpreted strictly to create a de-
16 manding standard for qualifying as dis-
17 abled,” and that to be substantially lim-
18 ited in performing a major life activity
19 under the ADA “an individual must have
20 an impairment that prevents or severely
21 restricts the individual from doing activi-
22 ties that are of central importance to
23 most people’s daily lives”; and

24 (5) to provide a new definition of
25 “substantially limits” to indicate that

1 Congress intends to depart from the
2 strict and demanding standard applied
3 by the Supreme Court in *Toyota Motor*
4 *Manufacturing, Kentucky, Inc. v. Wil-*
5 *liams* and by numerous lower courts.

6 SEC. 3. CODIFIED FINDINGS.

7 Section 2(a) of the Americans with Dis-
8 abilities Act of 1990 (42 U.S.C. 12101) is
9 amended—

10 (1) by amending paragraph (1) to
11 read as follows:

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

21 (2) by striking paragraph (7).

22 SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUC-
23 TION.

24 (a) DEFINITION OF DISABILITY.—Section 3 of
25 the Americans with Disabilities Act of 1990

1 (42 U.S.C. 12102) is amended to read as fol-
2 lows:

3 “SEC. 3. DEFINITION OF DISABILITY.

4 “As used in this Act:

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

7 “(A) a physical or mental impair-
8 ment that substantially limits one or
9 more major life activities of such in-
10 dividual;

11 “(B) a record of such an impair-
12 ment; or

13 “(C) being regarded as having
14 such an impairment (as described in
15 paragraph (4)).

16 “(2) SUBSTANTIALLY LIMITS.—The term
17 ‘substantially limits’ means materially re-
18 stricts.

19 “(3) MAJOR LIFE ACTIVITIES.—

20 “(A) IN GENERAL.—For purposes of
21 paragraph (1), major life activities in-
22 clude, but are not limited to, caring
23 for oneself, performing manual tasks,
24 seeing, hearing, eating, sleeping,
25 walking, standing, lifting, bending,

1 speaking, breathing, learning, read-
2 ing, concentrating, thinking, commu-
3 nicating and working.

4 “(B) MAJOR BODILY FUNCTIONS.—
5 For purposes of paragraph (1), a
6 major life activity also includes the
7 operation of a major bodily function,
8 including but not limited to, func-
9 tions of the immune system, normal
10 cell growth, digestive, bowel, bladder,
11 neurological, brain, respiratory, cir-
12 culatory, endocrine, and reproductive
13 functions.

14 “(4) REGARDED AS HAVING SUCH AN IM-
15 PAIRMENT.—For purposes of paragraph
16 (1)(C):

17 “(A) An individual meets the re-
18 quirement of ‘being regarded as hav-
19 ing such an impairment’ if the indi-
20 vidual establishes that he or she has
21 been subjected to an action prohib-
22 ited under this Act because of an ac-
23 tual or perceived physical or mental
24 impairment whether or not the im-

1 pairment limits or is perceived to
2 limit a major life activity.

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

9 “(5) RULES OF CONSTRUCTION REGARD-
10 ING THE DEFINITION OF DISABILITY.—The
11 definition of ‘disability’ in paragraph (1)
12 shall be construed in accordance with the
13 following:

14 “(A) To achieve the remedial pur-
15 poses of this Act, the definition of
16 ‘disability’ in paragraph (1) shall be
17 construed broadly.

18 “(B) An impairment that substan-
19 tially limits one major life activity
20 need not limit other major life activi-
21 ties in order to be considered a dis-
22 ability.

23 “(C) An impairment that is epi-
24 sodic or in remission is a disability if

1 it would substantially limit a major
2 life activity when active.

3 “(D)(i) The determination of
4 whether an impairment substantially
5 limits a major life activity shall be
6 made without regard to the ameliorative
7 effects of mitigating measures
8 such as—

9 “(I) medication, medical sup-
10 plies, equipment, or appliances,
11 low-vision devices (which do not
12 include ordinary eyeglasses or
13 contact lenses), prosthetics in-
14 cluding limbs and devices, hear-
15 ing aids and cochlear implants or
16 other implantable hearing de-
17 vices, mobility devices, or oxygen
18 therapy equipment and supplies;

19 “(II) use of assistive tech-
20 nology;

21 “(III) reasonable accommoda-
22 tions or auxiliary aids or services;
23 or

1 “(IV) learned behavioral or
2 adaptive neurological modifica-
3 tions.

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

10 “(iii) As used in this subpara-
11 graph—

12 “(I) the term ‘ordinary eye-
13 glasses or contact lenses’ means
14 lenses that are intended to fully
15 correct visual acuity or eliminate
16 refractive error; and

17 “(II) the term ‘low-vision de-
18 vices’ means devices that mag-
19 nify, enhance, or otherwise aug-
20 ment a visual image.”.

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

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

2 **“As used in this Act:**

3 **“(1) AUXILIARY AIDS AND SERVICES.—**

4 **The term ‘auxiliary aids and services’ in-**
5 **cludes—**

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

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

16 **“(C) acquisition or modification of**
17 **equipment or devices; and**

18 **“(D) other similar services and ac-**
19 **tions.**

20 **“(2) STATE.—The term ‘State’ means**
21 **each of the several States, the District of**
22 **Columbia, the Commonwealth of Puerto**
23 **Rico, Guam, American Samoa, the Virgin**
24 **Islands, the Trust Territory of the Pacific**
25 **Islands, and the Commonwealth of the**
26 **Northern Mariana Islands.”.**

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

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

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

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

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

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

20 **(b) QUALIFICATION STANDARDS AND TESTS**
21 **RELATED TO UNCORRECTED VISION.—Section**
22 **103 of the Americans with Disabilities Act of**
23 **1990 (42 U.S.C. 12113) is amended by redesign-**
24 **ating subsections (c) and (d) as subsections**

1 (d) and (e), respectively, and inserting after
2 subsection (b) the following new subsection:

3 “(c) **QUALIFICATION STANDARDS AND TESTS**
4 **RELATED TO UNCORRECTED VISION.**—Notwith-
5 standing section 3(5)(D)(ii), a covered entity
6 shall not use qualification standards, employ-
7 ment tests, or other selection criteria based
8 on an individual’s uncorrected vision unless
9 the standard, test, or other selection criteria,
10 as used by the covered entity, is shown to be
11 job-related for the position in question and
12 consistent with business necessity.”.

13 (c) **CONFORMING AMENDMENT.**—Section
14 101(8) of the Americans with Disabilities Act
15 of 1990 (42 U.S.C. 12111(8)) is amended—

16 (1) in the paragraph heading, by
17 striking “WITH A DISABILITY”; and

18 (2) by striking “with a disability”
19 after “individual” both places it appears.

20 **SEC. 6. RULES OF CONSTRUCTION.**

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

23 (1) by adding at the end of section 501
24 the following:

1 “(e) **BENEFITS UNDER STATE WORKER’S COM-**
2 **PENSATION LAWS.—**Nothing in this Act alters
3 **the standards for determining eligibility for**
4 **benefits under State worker’s compensation**
5 **laws or under State and Federal disability**
6 **benefit programs.**

7 “(f) **CLAIMS OF NO DISABILITY.—**Nothing in
8 **this Act shall provide the basis for a claim by**
9 **a person without a disability that he or she**
10 **was subject to discrimination because of his**
11 **or her lack of disability.**

12 “(g) **REASONABLE ACCOMMODATIONS AND**
13 **MODIFICATIONS.—**A covered entity under title
14 **I, a public entity under title II, and any per-**
15 **son who owns, leases (or leases to), or oper-**
16 **ates a place of public accommodation under**
17 **title III, need not provide a reasonable accom-**
18 **modation or a reasonable modification to**
19 **policies, practices, or procedures to an indi-**
20 **vidual who meets the definition of disability**
21 **in section 3(1) solely under subparagraph**
22 **(C).”;**

23 (2) **by redesignating section 506**
24 **through 514 as sections 507 through 515,**

1 **respectively, and adding after section 505**
2 **the following:**

3 **“SEC. 506. RULE OF CONSTRUCTION REGARDING REGU-**
4 **LATORY AUTHORITY.**

5 **“The authority to issue regulations grant-**
6 **ed to the Equal Employment Opportunity**
7 **Commission, the Attorney General, and the**
8 **Secretary of Transportation under this Act in-**
9 **cludes the authority to issue regulations im-**
10 **plementing the definitions contained in sec-**
11 **tions 3 and 4.”; and**

12 **(3) in the table of contents contained**
13 **in section 1(b), by redesignating the**
14 **items relating to sections 506 through 514**
15 **as sections 507 through 515, respectively,**
16 **and by inserting after the item relating to**
17 **section 505 the following new item:**

“Sec. 506. Rule of construction regarding regulatory author-
 ity.”.

18 **SEC. 7. CONFORMING AMENDMENTS.**

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

21 **(1) in paragraph (9)(B), by striking “a**
22 **physical” and all that follows through**
23 **“major life activities”, and inserting “the**

1 **meaning given it in section 3 of the Amer-**
2 **icans with Disabilities Act of 1990”; and**

3 **(2) in paragraph (20)(B), by striking**
4 **“any person who” and all that follows**
5 **through the period at the end, and insert-**
6 **ing “any person who has a disability as**
7 **defined in section 3 of the Americans**
8 **with Disabilities Act of 1990.”.**

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

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

Union Calendar No. 465

110TH CONGRESS
2^D Session

H. R. 3195

[Report No. 110-730, Parts I and II]

A BILL

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

JUNE 23, 2008

Reported from the Committee on Education and Labor
with an amendment

JUNE 23, 2008

Reported from the Committee on the Judiciary with an
amendment

JUNE 23, 2008

Committees on Transportation and Infrastructure and
Energy and Commerce discharged; committed to the
Committee of the Whole House on the State of the
Union and ordered to be printed