

110TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. HARKIN (for himself and Mr. HATCH) introduced the following bill; which  
was read twice and referred to the Committee on \_\_\_\_\_

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**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-

1 date for the elimination of discrimination against in-  
2 dividuals with disabilities” and provide broad cov-  
3 erage;

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

12 (3) while Congress expected that the definition  
13 of disability under the ADA would be interpreted  
14 consistently with how courts had applied the defini-  
15 tion of a handicapped individual under the Rehabili-  
16 tation Act of 1973, that expectation has not been  
17 fulfilled;

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

24 (5) the holding of the Supreme Court in Toyota  
25 Motor Manufacturing, Kentucky, Inc. v. Williams,

1       534 U.S. 184 (2002) further narrowed the broad  
2       scope of protection intended to be afforded by the  
3       ADA;

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

8           (7) in particular, the Supreme Court, in the  
9       case of *Toyota Motor Manufacturing, Kentucky, Inc.*  
10      *v. Williams*, 534 U.S. 184 (2002), interpreted the  
11      term “substantially limits” to require a greater de-  
12      gree of limitation than was intended by Congress;  
13      and

14           (8) Congress finds that the current Equal Em-  
15      ployment Opportunity Commission ADA regulations  
16      defining the term “substantially limits” as “signifi-  
17      cantly restricted” are inconsistent with congressional  
18      intent, by expressing too high a standard.

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

20           (1) to carry out the ADA’s objectives of pro-  
21      viding “a clear and comprehensive national mandate  
22      for the elimination of discrimination” and “clear,  
23      strong, consistent, enforceable standards addressing  
24      discrimination” by reinstating a broad scope of pro-  
25      tection to be available under the ADA;

1           (2) to reject the requirement enunciated by the  
2           Supreme Court in *Sutton v. United Air Lines, Inc.*,  
3           527 U.S. 471 (1999) and its companion cases that  
4           whether an impairment substantially limits a major  
5           life activity is to be determined with reference to the  
6           ameliorative effects of mitigating measures;

7           (3) to reject the Supreme Court’s reasoning in  
8           *Sutton v. United Air Lines, Inc.*, 527 U.S. 471  
9           (1999) with regard to coverage under the third  
10          prong of the definition of disability and to reinstate  
11          the reasoning of the Supreme Court in *School Board*  
12          *of Nassau County v. Arline*, 480 U.S. 273 (1987)  
13          which set forth a broad view of the third prong of  
14          the definition of handicap under the Rehabilitation  
15          Act of 1973;

16          (4) to reject the standards enunciated by the  
17          Supreme Court in *Toyota Motor Manufacturing,*  
18          *Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002),  
19          that the terms “substantially” and “major” in the  
20          definition of disability under the ADA “need to be  
21          interpreted strictly to create a demanding standard  
22          for qualifying as disabled,” and that to be substan-  
23          tially limited in performing a major life activity  
24          under the ADA “an individual must have an impair-  
25          ment that prevents or severely restricts the indi-

1       vidual from doing activities that are of central im-  
2       portance to most people’s daily lives”;

3           (5) to convey congressional intent that the  
4       standard created by the Supreme Court in the case  
5       of *Toyota Motor Manufacturing, Kentucky, Inc. v.*  
6       *Williams*, 534 U.S. 184 (2002) for “substantially  
7       limits”, and applied by lower courts in numerous de-  
8       cisions, has created an inappropriately high level of  
9       limitation necessary to obtain coverage under the  
10      ADA, to convey that it is the intent of Congress that  
11      the primary object of attention in cases brought  
12      under the ADA should be whether entities covered  
13      under the ADA have complied with their obligations,  
14      and to convey that the question of whether an indi-  
15      vidual’s impairment is a disability under the ADA  
16      should not demand extensive analysis; and

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

23   **SEC. 3. CODIFIED FINDINGS.**

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

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

3           “(1) physical or mental disabilities in no way  
4           diminish a person’s right to fully participate in all  
5           aspects of society, yet many people with physical or  
6           mental disabilities have been precluded from doing  
7           so because of discrimination; others who have a  
8           record of a disability or are regarded as having a  
9           disability also have been subjected to discrimina-  
10          tion;”;

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

12          (3) by redesignating paragraphs (8) and (9) as  
13          paragraphs (7) and (8), respectively.

14 **SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUC-**  
15 **TION.**

16          (a) DEFINITION OF DISABILITY.—Section 3 of the  
17 Americans with Disabilities Act of 1990 (42 U.S.C.  
18 12102) is amended to read as follows:

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

20          “As used in this Act:

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

23                       “(A) a physical or mental impairment that  
24                       substantially limits one or more major life ac-  
25                       tivities of such individual;

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

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

4 “(2) MAJOR LIFE ACTIVITIES.—

5 “(A) IN GENERAL.—For purposes of para-  
6 graph (1), major life activities include, but are  
7 not limited to, caring for oneself, performing  
8 manual tasks, seeing, hearing, eating, sleeping,  
9 walking, standing, lifting, bending, speaking,  
10 breathing, learning, reading, concentrating,  
11 thinking, communicating, and working.

12 “(B) MAJOR BODILY FUNCTIONS.—For  
13 purposes of paragraph (1), a major life activity  
14 also includes the operation of a major bodily  
15 function, including but not limited to, functions  
16 of the immune system, normal cell growth, di-  
17 gestive, bowel, bladder, neurological, brain, res-  
18 piratory, circulatory, endocrine, and reproduc-  
19 tive functions.

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

22 “(A) An individual meets the requirement  
23 of ‘being regarded as having such an impair-  
24 ment’ if the individual establishes that he or  
25 she has been subjected to an action prohibited

1           under this Act because of an actual or perceived  
2           physical or mental impairment whether or not  
3           the impairment limits or is perceived to limit a  
4           major life activity.

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

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

13                 “(A) The definition of disability in this Act  
14                 shall be construed in favor of broad coverage of  
15                 individuals under this Act, to the maximum ex-  
16                 tent permitted by the terms of this Act.

17                 “(B) The term ‘substantially limits’ shall  
18                 be interpreted consistently with the findings  
19                 and purposes of the ADA Amendments Act of  
20                 2008.

21                 “(C) An impairment that substantially lim-  
22                 its one major life activity need not limit other  
23                 major life activities in order to be considered a  
24                 disability.

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

4           “(E)(i) The determination of whether an  
5 impairment substantially limits a major life ac-  
6 tivity shall be made without regard to the ame-  
7 liorative effects of mitigating measures such  
8 as—

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

17           “(II) use of assistive technology;

18           “(III) reasonable accommodations or  
19 auxiliary aids or services; or

20           “(IV) learned behavioral or adaptive  
21 neurological modifications.

22           “(ii) The ameliorative effects of the  
23 mitigating measures of ordinary eyeglasses  
24 or contact lenses shall be considered in de-

1                   termining whether an impairment substan-  
2                   tially limits a major life activity.

3                   “(iii) As used in this subparagraph—

4                               “(I) the term ‘ordinary eye-  
5                               glasses or contact lenses’ means lenses  
6                               that are intended to fully correct vis-  
7                               ual acuity or eliminate refractive  
8                               error; and

9                               “(II) the term ‘low-vision devices’  
10                              means devices that magnify, enhance,  
11                              or otherwise augment a visual  
12                              image.”.

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

16 **“SEC. 4. ADDITIONAL DEFINITIONS.**

17           “As used in this Act:

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

20                               “(A) qualified interpreters or other effec-  
21                               tive methods of making aurally delivered mate-  
22                               rials available to individuals with hearing im-  
23                               pairments;

24                               “(B) qualified readers, taped texts, or  
25                               other effective methods of making visually deliv-

1           ered materials available to individuals with vis-  
2           ual impairments;

3                   “(C) acquisition or modification of equip-  
4           ment or devices; and

5                   “(D) other similar services and actions.

6                   “(2) STATE.—The term ‘State’ means each of  
7           the several States, the District of Columbia, the  
8           Commonwealth of Puerto Rico, Guam, American  
9           Samoa, the Virgin Islands of the United States, the  
10          Trust Territory of the Pacific Islands, and the Com-  
11          monwealth of the Northern Mariana Islands.”.

12          (c) AMENDMENT TO THE TABLE OF CONTENTS.—  
13          The table of contents contained in section 1(b) of the  
14          Americans with Disabilities Act of 1990 is amended by  
15          striking the item relating to section 3 and inserting the  
16          following items:

          “Sec. 3. Definition of disability.

          “Sec. 4. Additional definitions.”.

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

18               (a) ON THE BASIS OF DISABILITY.—Section 102 of  
19          the Americans with Disabilities Act of 1990 (42 U.S.C.  
20          12112) is amended—

21                   (1) in subsection (a), by striking “with a dis-  
22           ability because of the disability of such individual”  
23           and inserting “on the basis of disability”; and

1           (2) in subsection (b) in the matter preceding  
2           paragraph (1), by striking “discriminate” and in-  
3           serting “discriminate against a qualified individual  
4           on the basis of disability”.

5           (b) QUALIFICATION STANDARDS AND TESTS RE-  
6           LATED TO UNCORRECTED VISION.—Section 103 of the  
7           Americans with Disabilities Act of 1990 (42 U.S.C.  
8           12113) is amended by redesignating subsections (c) and  
9           (d) as subsections (d) and (e), respectively, and inserting  
10          after subsection (b) the following new subsection:

11          “(c) QUALIFICATION STANDARDS AND TESTS RE-  
12          LATED TO UNCORRECTED VISION.—Notwithstanding sec-  
13          tion 3(4)(E)(ii), a covered entity shall not use qualification  
14          standards, employment tests, or other selection criteria  
15          based on an individual’s uncorrected vision unless the  
16          standard, test, or other selection criteria, as used by the  
17          covered entity, is shown to be job-related for the position  
18          in question and consistent with business necessity.”.

19          (c) CONFORMING AMENDMENTS.—

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

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

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

3 (2) Section 104(a) of the Americans with Dis-  
4 abilities Act of 1990 (42 U.S.C. 12114(a)) is  
5 amended by striking “the term ‘qualified individual  
6 with a disability’ shall” and inserting “a qualified  
7 individual with a disability shall”.

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

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

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

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

18 “(f) FUNDAMENTAL ALTERATION.—Nothing in this  
19 Act alters the provision of section 302(b)(2)(A)(ii), speci-  
20 fying that reasonable modifications in policies, practices,  
21 or procedures shall be required, unless an entity can dem-  
22 onstrate that making such modifications in policies, prac-  
23 tices, or procedures, including academic requirements in  
24 postsecondary education, would fundamentally alter the

1 nature of the goods, services, facilities, privileges, advan-  
2 tages, or accommodations involved.

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

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

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

19 **“SEC. 506. RULE OF CONSTRUCTION REGARDING REGU-  
20 LATORY AUTHORITY.**

21 “The authority to issue regulations granted to the  
22 Equal Employment Opportunity Commission, the Attor-  
23 ney General, and the Secretary of Transportation under  
24 this Act includes the authority to issue regulations imple-  
25 menting the definitions of disability in section 3 (including

1 rules of construction) and the definitions in section 4, con-  
2 sistent with the ADA Amendments Act of 2008.”; and

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

6 (b) The table of contents contained in section 1(b)  
7 of the Americans with Disabilities Act of 1990 is amended  
8 by redesignating the items relating to sections 506  
9 through 514 as the items relating to sections 507 through  
10 515, respectively, and by inserting after the item relating  
11 to section 505 the following new item:

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

12 **SEC. 7. CONFORMING AMENDMENTS.**

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

15 (1) in paragraph (9)(B), by striking “a phys-  
16 ical” and all that follows through “major life activi-  
17 ties”, and inserting “the meaning given it in section  
18 3 of the Americans with Disabilities Act of 1990 (42  
19 U.S.C. 12102)”;

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

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

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