

## **A BILL**

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

**Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,**

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'ADA Restoration Act of 2008'.

#### **SEC. 2. FINDINGS AND PURPOSES**

(a) Findings- Congress finds that-

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act 'establish a clear and comprehensive prohibition of discrimination on the basis of disability' 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 handicap under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999) and its companion cases, and in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) 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; and

(5) 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.

(b) Purpose- The purposes of this Act 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 Airlines, 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 Airlines, 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'; and

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

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

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

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

(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) by striking paragraph (7).

### **SEC. 4. DISABILITY DEFINED.**

Section 3 (42 U.S.C. §12102) is amended:

By revising subsection (2) to read as follows:

(2) DISABILITY -

(i) IN GENERAL--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 an impairment that falls under (A) or (B).

By inserting after subsection (2) the following new subsections:

(3) SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY -- The term "substantially limits a major life activity" means materially restricts a major life activity.

(4) MAJOR LIFE ACTIVITIES--

(A) In General -- Major life activities include, but are not limited to, caring for oneself, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

(B) Major Bodily Functions -- A major life activity also includes the operation of a major bodily function. Major bodily functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

(5) REGARDED AS -

(a) In General -- Subject to subsection (b), an individual meets the requirement of "being regarded as having an impairment that falls under (A) or (B)" if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment, whether or not the impairment is perceived to substantially limit a major life activity.

(b) Transitory and Minor Impairments -- This subsection shall not apply to impairments that are transitory and minor. "Transitory" means an impairment with an actual or expected duration of six months or less.

(c) Reasonable Accommodation -- An employer is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under 2(C).

#### (6) STANDARDS FOR APPLYING THE DEFINITION OF DISABILITY -

(A) To achieve the remedial purposes of this Act, the definition of "disability" shall be construed broadly.

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

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

(D) (a) When determining whether an impairment substantially limits a major life activity, such determination 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, as defined in (b)), 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.

(b) The term "ordinary eye glasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error.

(c) Low vision devices are devices that magnify, enhance, or otherwise augment a visual image.

(E) 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.

(F) Nothing in this Act alters the standards for determining eligibility for benefits under state worker's compensation laws or under state and federal disability benefit programs.

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

(a) Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended--

(1) in subsection (a), by striking `with a disability because of the disability of such individual' and inserting `on the basis of disability'; and

(2) in subsection (b) -

(A) in the matter preceding paragraph (1), by striking `discriminate' and inserting `discriminate against a qualified individual on the basis of disability'.

(3) by inserting after subsection (b) the following new subsections:

(c) Notwithstanding section 6(E), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision or unaided hearing unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Nothing in this Act shall give rise to a claim by a person without a disability that he or she was discriminated against because of his or her lack of disability.

Section 101(8) is amended -

in the paragraph heading, by striking "WITH A DISABILITY"; and  
by striking "with a disability" after "individual" both places it appears.

#### **SEC. 6. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.**

Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201) is amended by adding at the end the following:

#### **SEC. 515. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.**

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act, includes the authority to issue regulations implementing the definitions contained in section 3.

#### **SEC. 7. EFFECTIVE DATE**

This Act shall become effective on January 1, 2009.