

Calendar No. 856
110th CONGRESS
2d Session
H. R. 3195
IN THE SENATE OF THE UNITED STATES

June 26, 2008

Received and read the first time

June 27, 2008

Read the second time and placed on the calendar

AN ACT

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 Amendments 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 '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 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) Purposes- 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;'; and

(2) by striking paragraph (7).

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) Definition of Disability- Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

` SEC. 3. DEFINITION OF DISABILITY.

`As used in this Act:

`(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 (4)).

`(2) SUBSTANTIALLY LIMITS- The term `substantially limits' means materially restricts.

` (3) 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.

` (4) 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 Act 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.

` (5) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY- The definition of `disability' in paragraph (1) shall be construed in accordance with the following:

` (A) To achieve the remedial purposes of this Act, the definition of `disability' in paragraph (1) 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)(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.'.

(b) Conforming Amendment- The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

` SEC. 4. ADDITIONAL DEFINITIONS.

` As used in this Act:

`(1) AUXILIARY AIDS AND SERVICES- The term `auxiliary aids and services' includes—

`(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

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

`(C) acquisition or modification of equipment or devices; and

`(D) other similar services and actions.

`(2) STATE- The term `State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.'

(c) Amendment to the Table of Contents- The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by striking the item relating to section 3 and inserting the following items:

`Sec. 3. Definition of disability.

`Sec. 4. Additional definitions.'

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

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

(b) Qualification Standards and Tests Related to Uncorrected Vision- Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C.

12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection:

`(c) Qualification Standards and Tests Related to Uncorrected Vision- Notwithstanding section 3(5)(D)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision 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.'.

(c) Conforming Amendment- Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended—

(1) in the paragraph heading, by striking `WITH A DISABILITY'; and

(2) by striking `with a disability' after `individual' both places it appears.

SEC. 6. RULES OF CONSTRUCTION.

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

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

`(e) Benefits Under State Worker's Compensation Laws- 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.

`(f) Claims of No Disability- Nothing in this Act shall provide the basis for a claim by a person without a disability that he or she was subject to discrimination because of his or her lack of disability.

`(g) Reasonable Accommodations and Modifications- A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C).';

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

` SEC. 506. 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 sections 3 and 4.'; and

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

`Sec. 506. Rule of construction regarding regulatory authority.'.

SEC. 7. CONFORMING AMENDMENTS.

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

(1) in paragraph (9)(B), by striking `a physical' and all that follows through `major life activities', and inserting `the meaning given it in section 3 of the Americans with Disabilities Act of 1990'; and

(2) in paragraph (20)(B), by striking `any person who' and all that follows through the period at the end, and inserting `any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990.'.

SEC. 8. EFFECTIVE DATE.

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

Passed the House of Representatives June 25, 2008.