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. SENSENBERGER, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. BACHUS, Ms. BALDWIN, Mr. BERNAN, Mr. BILBRAY, Mr. BISHOP of New York, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BOSWELL, Mr. BOUCHER, Ms. CORINNE BROWN of Florida, Mr. BUTTERFIELD, Mr. CALIERT, 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. CUMMINS, 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. FREELINGHUYSEN, 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. KING, 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. ROTHEM, 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. VISCOSKY, 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.

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 2007”.

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 and vigorous and effective remedies without unnecessary and obstructive defenses;

(2) decisions and opinions of the Supreme Court have unduly narrowed the broad scope of pro-
tection afforded in the ADA, eliminating protection for a broad range of individuals who Congress intended to protect;

(3) in enacting the ADA, Congress recognized that physical and mental impairments are natural parts of the human experience that in no way diminish a person’s right to fully participate in all aspects of society, but Congress also recognized that people with physical or mental impairments having the talent, skills, abilities, and desire to participate in society are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(4) Congress modeled the ADA definition of disability on that of section 504 of the Rehabilitation Act of 1973, which, through the time of the ADA’s enactment, had been construed broadly to encompass both actual and perceived limitations, and limitations imposed by society;

(5) the broad conception of the definition had been underscored by the Supreme Court’s statement in its decision in School Board of Nassau County v. Arline, 480 U.S. 273, 284 (1987), that the section 504 definition “acknowledged that society’s accumulated myths and fears about disability and disease
are as handicapping as are the physical limitations that flow from actual impairment’’;

(6) in adopting the section 504 concept of disability in the ADA, Congress understood that adverse action based on a person’s physical or mental impairment is often unrelated to the limitations caused by the impairment itself;

(7) instead of following congressional expectations that disability would be interpreted broadly in the ADA, the Supreme Court has ruled, in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184, 197 (2002), that the elements of the definition “need to be interpreted strictly to create a demanding standard for qualifying as disabled,” and, consistent with that view, has narrowed the application of the definition in various ways; and

(8) contrary to explicit congressional intent expressed in the ADA committee reports, the Supreme Court has eliminated from the Act’s coverage individuals who have mitigated the effects of their impairments through the use of such measures as medication and assistive devices.

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

(1) to effect the ADA’s objectives of providing “a clear and comprehensive national mandate for the
elimination of discrimination” and “clear, strong, consistent, enforceable standards addressing discrimina-
tion” by restoring the broad scope of protec-
tion available under the ADA;

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

(3) to reinstate original congressional intent re-
garding the definition of disability by clarifying that
ADA protection is available for all individuals who
are subjected to adverse treatment based on actual
or perceived impairment, or record of impairment, or
are adversely affected by prejudiced attitudes, such
as myths, fears, ignorance, or stereotypes concerning
disability or particular disabilities, or by the failure
to remove societal and institutional barriers, includ-
ing communication, transportation, and architectural
barriers, and the failure to provide reasonable modi-
fications to policies, practices, and procedures, rea-
sonable accommodations, and auxiliary aids and services.

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 are natural parts of the human experience that in no way diminish a person’s right to fully participate in all aspects of society, yet people with physical or mental disabilities having the talent, skills, abilities, and desires to participate in society frequently are 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 amending paragraph (7) to read as follows:

“(7) individuals with disabilities have been subject to a history of purposeful unequal treatment, have had restrictions and limitations imposed upon them because of their disabilities, and have been relegated to positions of political powerlessness in society; classifications and selection criteria that exclude
persons with disabilities should be strongly
disfavored, subjected to skeptical and meticulous ex-
amination, and permitted only for highly compelling
reasons, and never on the basis of prejudice, igno-
rance, myths, irrational fears, or stereotypes about
disability;”.

SEC. 4. DISABILITY DEFINED.

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

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

lows:

“(2) DISABILITY.—

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

“(i) a physical or mental impairment;

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

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

“(B) RULE OF CONSTRUCTION.—

“(i) The determination of whether an
individual has a physical or mental impair-
ment shall be made without considering
the impact of any mitigating measures the
individual may or may not be using or
whether or not any manifestations of an impairment are episodic, in remission, or latent.

“(ii) The term ‘mitigating measures’ means any treatment, medication, device, or other measure used to eliminate, mitigate, or compensate for the effect of an impairment, and includes prescription and other medications, personal aids and devices (including assistive technology devices and services), reasonable accommodations, or auxiliary aids and services.

“(iii) Actions taken by a covered entity with respect to an individual because of that individual’s use of a mitigating measure or because of a side effect or other consequence of the use of such a measure shall be considered actions taken on the basis of a disability under this Act.”.

(2) by redesignating paragraph (3) as paragraph (7) and inserting after paragraph (2) the following:

“(3) PHYSICAL IMPAIRMENT.—The term ‘physical impairment’ means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss
affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine.

“(4) MENTAL IMPAIRMENT.—The term ‘mental impairment’ means any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

“(5) RECORD OF PHYSICAL OR MENTAL IMPAIRMENT.—The term ‘record of physical or mental impairment’ means having a history of, or having been misclassified as having, a physical or mental impairment.

“(6) REGARDED AS HAVING A PHYSICAL OR MENTAL IMPAIRMENT.—The term ‘regarded as having a physical or mental impairment’ means being perceived or treated as having a physical or mental impairment whether or not the individual has an impairment.”.

SEC. 5. DISCRIMINATION 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 “against a qualified individual with a disability because of the disability of such individual” and inserting “against an individual on the basis of disability”; and

(2) in subsection (b), in the matter preceding paragraph (1), by striking “discriminate” and inserting “discriminate against an individual on the basis of disability”.

SEC. 6. QUALIFIED INDIVIDUAL.

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

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

“(2) an alleged application”.

SEC. 7. RULE OF CONSTRUCTION.

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

“(e) BROAD CONSTRUCTION.—In order to ensure that this Act achieves its purpose of providing a comprehensive prohibition of discrimination on the basis of disability, the provisions of this Act shall be broadly construed to advance their remedial purpose.
“(f) REGULATIONS.—In order to provide for consistent and effective standards among the agencies responsible for enforcing this Act, the Attorney General shall promulgate regulations and guidance in alternate accessible formats implementing the provisions herein. The Equal Employment Opportunity Commission and Secretary of Transportation shall then issue appropriate implementing directives, whether in the nature of regulations or policy guidance, consistent with the requirements prescribed by the Attorney General.

“(g) DEFERENCE TO REGULATIONS AND GUIDANCE.—Duly issued Federal regulations and guidance for the implementation of this Act, including provisions implementing and interpreting the definition of disability, shall be entitled to deference by administrative bodies or officers and courts hearing any action brought under this Act.”