To restore the intent of the Americans with Disabilities Act of 1990 to more fully remove the barriers that confront disabled Americans.

IN THE HOUSE OF REPRESENTATIVES

September 29, 2006

Mr. Sensenbrenner (for himself, Mr. Hoyer, and Mr. Conyers) introduced the following bill; which was referred to the Committee on Education and the Workforce, 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 of the Americans with Disabilities Act of 1990 to more fully remove the barriers that confront disabled Americans.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Americans with Dis-

abilities Act Restoration Act of 2006”.

SEC. 2. FINDINGS.

Congress finds the following:
(1) Physical and mental impairments are natural parts of the human condition as are race, gender, national origin, and sex.

(2) Discrimination results when individuals with actual or perceived physical or mental impairments are met with attitudinal, societal, and physical barriers in society.

(3) The use of mitigating measures by an individual does not change the fact that the individual has a physical or mental impairment, nor should the use of a mitigating measure by an individual insulate covered entities from liability for discriminatory practices and policies.

(4) The Americans with Disabilities Act of 1990 has not been interpreted by the courts, including the Supreme Court, as intended by Congress. The courts have significantly limited the intended reach of the Americans with Disabilities Act, allowing many individuals with actual or perceived impairments to be subject to discrimination.

(5) It is necessary to restore the intent of the Americans with Disabilities Act to fully remove the barriers that confront disabled Americans and to permit all people to fully participate in society.
SEC. 3. 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 follows:

“(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) a perceived physical or mental impairment.

“(B) Rule of construction.—The existence of a physical or mental impairment or record or perception of a physical or mental impairment shall be determined without taking into account an individual’s use of mitigating measures or whether the impairment is episodic, short term, or long term.”; and

(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, and 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) PERCEIVED PHYSICAL OR MENTAL IMPAIRMENT.—The term ‘perceived physical or mental impairment’ means not having an impairment as set forth in paragraph (2)(A)(i) or (ii), but being regarded as having, or treated as having, a physical or mental impairment.”.

SEC. 4. DISCRIMINATION ON THE BASIS OF DISABILITY.

The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended—
(1) in section 2(b), by striking “against individuals with disabilities” each place it appears and inserting “on the basis of disability”; and

(2) in section 102(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”.

SEC. 5. QUALIFIED INDIVIDUAL.

(a) DEFENSE.—Section 103, by redesignating subsections (a) through (d) as subsections (b) through (e), respectively, and inserting before such subsection (b) (as so redesignated) the following:

“(a) IN GENERAL.—It may be a defense to a charge of discrimination under this title that the individual with a disability alleging discrimination is not a qualified individual, as such term is defined in section 101(8).”.

(b) QUALIFIED INDIVIDUAL.—Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) is further amended—

(1) in section 101(8)—

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

(B) by striking “with a disability” after “individual” both places it appears;
(2) in section 102(b)(5), by striking “with a disability” after “individual” both places it appears; and

(3) in section 104—

(A) in subsection (a)—

(i) in the subsection heading, by striking “WITH A DISABILITY”; and

(ii) by striking “with a disability” after “individual”; and

(B) in subsection (b), in the matter preceding paragraph (1), by striking “with a disability”.

SEC. 6. 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 under section 2(b) 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.”.