

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3195
OFFERED BY MR. GEORGE MILLER**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “ADA Amendments Act
3 of 2008”.

4 SEC. 2. FINDINGS AND PURPOSES.

5 (a) FINDINGS.—Congress finds that—

6 (1) in enacting the Americans with Disabilities
7 Act of 1990 (ADA), Congress intended that the Act
8 “provide a clear and comprehensive national man-
9 date for the elimination of discrimination against in-
10 dividuals with disabilities” and provide broad cov-
11 erage;

12 (2) in enacting the ADA, Congress recognized
13 that physical and mental disabilities in no way di-
14 minish a person’s right to fully participate in all as-
15 pects of society, but that people with physical or
16 mental disabilities are frequently precluded from
17 doing so because of prejudice, antiquated attitudes,

1 or the failure to remove societal and institutional
2 barriers;

3 (3) while Congress expected that the definition
4 of disability under the ADA would be interpreted
5 consistently with how courts had applied the defini-
6 tion of handicap under the Rehabilitation Act of
7 1973, that expectation has not been fulfilled;

8 (4) the holdings of the Supreme Court in *Sut-*
9 *ton v. United Airlines, Inc.*, 527 U.S. 471 (1999)
10 and its companion cases, and in *Toyota Motor Man-*
11 *ufacturing, Kentucky, Inc. v. Williams*, 534 U.S.
12 184 (2002) have narrowed the broad scope of pro-
13 tection intended to be afforded by the ADA, thus
14 eliminating protection for many individuals whom
15 Congress intended to protect; and

16 (5) as a result of these Supreme Court cases,
17 lower courts have incorrectly found in individual
18 cases that people with a range of substantially lim-
19 iting impairments are not people with disabilities.

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

21 (1) to carry out the ADA’s objectives of pro-
22 viding “a clear and comprehensive national mandate
23 for the elimination of discrimination” and “clear,
24 strong, consistent, enforceable standards addressing

1 discrimination” by reinstating a broad scope of pro-
2 tection to be available under the ADA;

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

9 (3) to reject the Supreme Court’s reasoning in
10 *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999)
11 with regard to coverage under the third prong of the
12 definition of disability and to reinstate the reasoning
13 of the Supreme Court in *School Board of Nassau*
14 *County v. Arline*, 480 U.S. 273 (1987) which set
15 forth a broad view of the third prong of the defini-
16 tion of handicap under the Rehabilitation Act of
17 1973;

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

1 under the ADA “an individual must have an impair-
2 ment that prevents or severely restricts the indi-
3 vidual from doing activities that are of central im-
4 portance to most people’s daily lives”; and

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

11 **SEC. 3. CODIFIED FINDINGS.**

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

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

16 “(1) physical or mental disabilities in no way
17 diminish a person’s right to fully participate in all
18 aspects of society, yet many people with physical or
19 mental disabilities have been precluded from doing
20 so because of discrimination; others who have a
21 record of a disability or are regarded as having a
22 disability also have been subjected to discrimina-
23 tion;”; and

24 (2) by striking paragraph (7).

1 **SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUC-**
2 **TION.**

3 (a) DEFINITION OF DISABILITY.—Section 3 of the
4 Americans with Disabilities Act of 1990 (42 U.S.C.
5 12102) is amended to read as follows:

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

7 “As used in this Act:

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

10 “(A) a physical or mental impairment that
11 substantially limits one or more major life ac-
12 tivities of such individual;

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

14 “(C) being regarded as having such an im-
15 pairment (as described in paragraph (4)).

16 “(2) SUBSTANTIALLY LIMITS.—The term ‘sub-
17 stantially limits’ means materially restricts.

18 “(3) MAJOR LIFE ACTIVITIES.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (1), major life activities include, but are
21 not limited to, caring for oneself, performing
22 manual tasks, seeing, hearing, eating, sleeping,
23 walking, standing, lifting, bending, speaking,
24 breathing, learning, reading, concentrating,
25 thinking, communicating and working.

1 “(B) MAJOR BODILY FUNCTIONS.—For
2 purposes of paragraph (1), a major life activity
3 also includes the operation of a major bodily
4 function, including but not limited to, functions
5 of the immune system, normal cell growth, di-
6 gestive, bowel, bladder, neurological, brain, res-
7 piratory, circulatory, endocrine, and reproduc-
8 tive functions.

9 “(4) REGARDED AS HAVING SUCH AN IMPAIR-
10 MENT.—For purposes of paragraph (1)(C):

11 “(A) An individual meets the requirement
12 of ‘being regarded as having such an impair-
13 ment’ if the individual establishes that he or
14 she has been subjected to an action prohibited
15 under this Act because of an actual or perceived
16 physical or mental impairment whether or not
17 the impairment limits or is perceived to limit a
18 major life activity.

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

23 “(5) RULES OF CONSTRUCTION REGARDING
24 THE DEFINITION OF DISABILITY.—The definition of

1 ‘disability’ in paragraph (1) shall be construed in ac-
2 cordance with the following:

3 “(A) To achieve the remedial purposes of
4 this Act, the definition of ‘disability’ in para-
5 graph (1) shall be construed broadly.

6 “(B) An impairment that substantially lim-
7 its one major life activity need not limit other
8 major life activities in order to be considered a
9 disability.

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

13 “(D)(i) The determination of whether an
14 impairment substantially limits a major life ac-
15 tivity shall be made without regard to the ame-
16 liorative effects of mitigating measures such
17 as—

18 “(I) medication, medical supplies,
19 equipment, or appliances, low-vision de-
20 vices (which do not include ordinary eye-
21 glasses or contact lenses), prosthetics in-
22 cluding limbs and devices, hearing aids and
23 cochlear implants or other implantable
24 hearing devices, mobility devices, or oxygen
25 therapy equipment and supplies;

1 “(II) use of assistive technology;

2 “(III) reasonable accommodations or
3 auxiliary aids or services; or

4 “(IV) learned behavioral or adaptive
5 neurological modifications.

6 “(ii) The ameliorative effects of the miti-
7 gating measures of ordinary eyeglasses or con-
8 tact lenses shall be considered in determining
9 whether an impairment substantially limits a
10 major life activity.

11 “(iii) As used in this subparagraph—

12 “(I) the term ‘ordinary eyeglasses or
13 contact lenses’ means lenses that are in-
14 tended to fully correct visual acuity or
15 eliminate refractive error; and

16 “(II) the term ‘low-vision devices’
17 mean devices that magnify, enhance, or
18 otherwise augment a visual image.”.

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

22 **“SEC. 4. ADDITIONAL DEFINITIONS.**

23 “As used in this Act:

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

1 “(A) qualified interpreters or other effec-
2 tive methods of making aurally delivered mate-
3 rials available to individuals with hearing im-
4 pairments;

5 “(B) qualified readers, taped texts, or
6 other effective methods of making visually deliv-
7 ered materials available to individuals with vis-
8 ual impairments;

9 “(C) acquisition or modification of equip-
10 ment or devices; and

11 “(D) other similar services and actions.

12 “(2) STATE.—The term ‘State’ means each of
13 the several States, the District of Columbia, the
14 Commonwealth of Puerto Rico, Guam, American
15 Samoa, the Virgin Islands, the Trust Territory of
16 the Pacific Islands, and the Commonwealth of the
17 Northern Mariana Islands.”.

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

19 (a) ON THE BASIS OF DISABILITY.—Section 102 of
20 the Americans with Disabilities Act of 1990 (42 U.S.C.
21 12112) is amended—

22 (1) in subsection (a), by striking “with a dis-
23 ability because of the disability of such individual”
24 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(5)(D)(ii), a covered entity shall not use qualifica-
14 tion standards, employment tests, or other selection cri-
15 teria 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 AMENDMENT.—Section 101(8) of
20 the Americans with Disabilities Act of 1990 (42 U.S.C.
21 12111(8)) is amended—

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

24 (2) by striking “with a disability” after “indi-
25 vidual” both places it appears.

1 **SEC. 6. RULES OF CONSTRUCTION.**

2 Title V of the Americans with Disabilities Act of
3 1990 (42 U.S.C. 12201) is amended—

4 (1) by adding at the end of section 501 the fol-
5 lowing:

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

11 “(f) CLAIMS OF NO DISABILITY.—Nothing in this
12 Act shall provide the basis for a claim by a person without
13 a disability that he or she was subject to discrimination
14 because of his or her lack of disability.

15 “(g) REASONABLE ACCOMMODATIONS AND MODI-
16 FICATIONS.—A covered entity under title I, a public entity
17 under title II, and any person who owns, leases (or leases
18 to), or operates a place of public accommodation under
19 title III, need not provide a reasonable accommodation or
20 a reasonable modification to policies, practices, or proce-
21 dures to an individual who meets the definition of dis-
22 ability in section 3(1) solely under subparagraph (C).”;
23 and

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

1 **“SEC. 506. RULE OF CONSTRUCTION REGARDING REGU-**
2 **LATORY AUTHORITY.**

3 “The authority to issue regulations granted to the
4 Equal Employment Opportunity Commission, the Attor-
5 ney General, and the Secretary of Transportation under
6 this Act, includes the authority to issue regulations imple-
7 menting the definitions contained in sections 3 and 4.”.

8 **SEC. 7. CONFORMING AMENDMENTS.**

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

11 (1) in paragraph (9)(B), by striking “a phys-
12 ical” and all that follows through “major life activi-
13 ties”, and inserting “the meaning given it in section
14 3 of the Americans with Disabilities Act of 1990”;
15 and

16 (2) in paragraph (20)(B), by striking “any per-
17 son who” and all that follows through the period at
18 the end, and inserting “any person who has a dis-
19 ability as defined in section 3 of the Americans with
20 Disabilities Act of 1990.”.

21 **SEC. 8. EFFECTIVE DATE.**

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

