

110TH CONGRESS  
1ST SESSION

# S. 1881

To amend the Americans with Disabilities Act of 1990 to restore the intent and protections of that Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 26, 2007

Mr. HARKIN (for himself and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Americans with Disabilities Act of 1990 to restore the intent and protections of that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Americans with Dis-  
5 abilities Act Restoration Act of 2007”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) in enacting the Americans with Disabilities  
9 Act of 1990, Congress intended that the Act “estab-

1       lish a clear and comprehensive prohibition of dis-  
2       crimination on the basis of disability”, and provide  
3       broad coverage and vigorous and effective remedies  
4       without unnecessary and obstructive defenses;

5           (2) decisions and opinions of the Supreme  
6       Court have unduly narrowed the broad scope of pro-  
7       tection afforded by the Americans with Disabilities  
8       Act of 1990, eliminating protection for a broad  
9       range of individuals whom Congress intended to pro-  
10      tect;

11          (3) in enacting the Americans with Disabilities  
12      Act of 1990, Congress recognized that physical and  
13      mental impairments are natural parts of the human  
14      experience that in no way diminish a person’s right  
15      to fully participate in all aspects of society, but Con-  
16      gress also recognized that people with physical or  
17      mental impairments having the talent, skills, abili-  
18      ties, and desire to participate in society are fre-  
19      quently precluded from doing so because of preju-  
20      dice, antiquated attitudes, or the failure to remove  
21      societal and institutional barriers;

22          (4)(A) Congress modeled the Americans with  
23      Disabilities Act of 1990 definition of disability on  
24      that of section 504 of the Rehabilitation Act of 1973  
25      (referred to in this section as “section 504”), which

1 had, prior to the date of enactment of the Americans  
2 with Disabilities Act of 1990, been construed broad-  
3 ly to encompass both actual and perceived limita-  
4 tions, and limitations imposed by society; and

5 (B) the broad conception of the definition con-  
6 tained in section 504 had been underscored by the  
7 Supreme Court’s statement in its decision in *School*  
8 *Board of Nassau County v. Arline*, 480 U.S. 273  
9 (1987), that the definition “acknowledged that soci-  
10 ety’s myths and fears about disability and disease  
11 are as handicapping as are the physical limitations  
12 that flow from actual impairment”;

13 (5) in adopting, in the Americans with Disabil-  
14 ities Act of 1990, the concept of disability expressed  
15 in section 504, Congress understood that adverse ac-  
16 tion based on a person’s physical or mental impair-  
17 ment is often unrelated to the limitations caused by  
18 the impairment itself;

19 (6) instead of following congressional expecta-  
20 tions that the term “disability” would be interpreted  
21 broadly in the Americans with Disabilities Act of  
22 1990, the Supreme Court has ruled, in *Toyota*  
23 *Motor Manufacturing, Kentucky, Inc. v. Williams*,  
24 534 U.S. 184 (2002), that the elements of the defi-  
25 nition “need to be interpreted strictly to create a de-

1 manding standard for qualifying as disabled” and,  
2 consistent with that view, has narrowed the applica-  
3 tion of the definition in various ways; and

4 (7) contrary to explicit congressional intent ex-  
5 pressed in the committee reports for the Americans  
6 with Disabilities Act of 1990, the Supreme Court  
7 has eliminated from the Act’s coverage individuals  
8 who have mitigated the effects of their impairments  
9 through the use of such measures as medication and  
10 assistive devices.

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

12 (1) to effect the Americans with Disabilities Act  
13 of 1990’s objectives of providing “a clear and com-  
14 prehensive national mandate for the elimination of  
15 discrimination” and “clear, strong, consistent, en-  
16 forceable standards addressing discrimination” by  
17 restoring the broad scope of protection available  
18 under the Americans with Disabilities Act of 1990;

19 (2) to respond to certain decisions of the Su-  
20 preme Court, including *Sutton v. United Air Lines,*  
21 *Inc.*, 527 U.S. 471 (1999), *Murphy v. United Parcel*  
22 *Service, Inc.*, 527 U.S. 516 (1999), *Albertson’s, Inc.*  
23 *v. Kirkingburg*, 527 U.S. 555 (1999), and *Toyota*  
24 *Motor Manufacturing, Kentucky, Inc. v. Williams*,  
25 534 U.S. 184 (2002), that have narrowed the class

1 of people who can invoke the protection from dis-  
2 crimination that the Americans with Disabilities Act  
3 of 1990 provides; and

4 (3) to reinstate the original congressional intent  
5 regarding the definition of disability in the Ameri-  
6 cans with Disabilities Act of 1990 by clarifying that  
7 the protection of that Act is available for all individ-  
8 uals who are—

9 (A) subjected to adverse treatment based  
10 on an actual or perceived impairment, or a  
11 record of impairment; or

12 (B) adversely affected—

13 (i) by prejudiced attitudes, such as  
14 myths, fears, ignorance, or stereotypes con-  
15 cerning disability or particular disabilities;  
16 or

17 (ii) by the failure to remove societal  
18 and institutional barriers, including com-  
19 munication, transportation, and architec-  
20 tural barriers, or the failure to provide rea-  
21 sonable modifications to policies, practices,  
22 and procedures, reasonable accommoda-  
23 tions, and auxiliary aids and services.

1 **SEC. 3. FINDINGS IN AMERICANS WITH DISABILITIES ACT**  
2 **OF 1990.**

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

5 (1) by striking paragraph (1) and inserting the  
6 following:

7 “(1)(A) physical and mental disabilities are nat-  
8 ural parts of the human experience that in no way  
9 diminish a person’s right to fully participate in all  
10 aspects of society; and

11 “(B)(i) people with physical or mental disabil-  
12 ities having the talent, skills, abilities, and desire to  
13 participate in society are frequently precluded from  
14 doing so because of discrimination; and

15 “(ii) other people who have a record of a dis-  
16 ability or are regarded as having a disability have  
17 also been subjected to discrimination;” and

18 (2) by striking paragraph (7) and inserting the  
19 following:

20 “(7)(A) individuals with disabilities have been  
21 subjected to a history of purposeful unequal treat-  
22 ment, have had restrictions and limitations imposed  
23 upon them because of their disabilities, and have  
24 been relegated to positions of political powerlessness  
25 in society; and

1           “(B) classifications and selection criteria that  
2           exclude individuals with disabilities should be strong-  
3           ly disfavored, subjected to skeptical and meticulous  
4           examination, and permitted only for highly compel-  
5           ling reasons, and never on the basis of prejudice,  
6           myths, irrational fears, ignorance, or stereotypes  
7           about disability;”.

8 **SEC. 4. DISABILITY DEFINED.**

9           Section 3 of the Americans with Disabilities Act of  
10          1990 (42 U.S.C. 12102) is amended—

11           (1) by striking paragraph (2) and inserting the  
12          following:

13           “(2) DISABILITY.—

14           “(A) IN GENERAL.—The term ‘disability’  
15          means—

16           “(i) a physical or mental impairment;

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

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

21           “(B) RULE OF CONSTRUCTION.—

22           “(i) DETERMINATION OF IMPAIR-  
23          MENT.—The determination of whether an  
24          individual has a physical or mental impair-  
25          ment shall be made without regard to—

1                   “(I) whether the individual uses  
2                   a mitigating measure;

3                   “(II) the impact of any miti-  
4                   gating measures the individual may or  
5                   may not be using;

6                   “(III) whether any manifestation  
7                   of the impairment is episodic; or

8                   “(IV) whether the impairment is  
9                   in remission or latent.

10                  “(ii) MITIGATING MEASURES.—The  
11                  term ‘mitigating measure’ means any  
12                  treatment, medication, device, or other  
13                  measure used to eliminate, mitigate, or  
14                  compensate for the effect of an impair-  
15                  ment, and includes prescription and other  
16                  medications, personal aids and devices (in-  
17                  cluding assistive technology devices and  
18                  services), reasonable accommodations, and  
19                  auxiliary aids and services.”; and

20                  (2) by redesignating paragraph (3) as para-  
21                  graph (7) and inserting after paragraph (2) the fol-  
22                  lowing:

23                  “(3) MENTAL IMPAIRMENT.—The term ‘men-  
24                  tal’, used with respect to an impairment, means any  
25                  mental or psychological disorder such as mental re-

1       tardation, organic brain syndrome, emotional or  
2       mental illness, or specific learning disability.

3               “(4) PHYSICAL IMPAIRMENT.—The term ‘phys-  
4       ical’, used with respect to an impairment, means any  
5       physiological disorder or condition, cosmetic dis-  
6       figurement, or anatomical loss affecting 1 or more of  
7       the following body systems:

8               “(A) Neurological.

9               “(B) Musculoskeletal.

10              “(C) Special sense organs.

11              “(D) Respiratory, including speech organs.

12              “(E) Cardiovascular.

13              “(F) Reproductive.

14              “(G) Digestive.

15              “(H) Genitourinary.

16              “(I) Hemic and lymphatic.

17              “(J) Skin.

18              “(K) Endocrine.

19              “(5) RECORD OF A PHYSICAL OR MENTAL IM-  
20       PAIRMENT.—The term ‘record of a physical or men-  
21       tal impairment’ means a history of, or a  
22       misclassification as having, a physical or mental im-  
23       pairment.

24              “(6) REGARDED AS HAVING A PHYSICAL OR  
25       MENTAL IMPAIRMENT.—The term ‘regarded as hav-

1       ing a physical or mental impairment’ means per-  
2       ceived or treated as having a physical or mental im-  
3       pairment, whether or not the individual involved has  
4       an impairment.”.

5       **SEC. 5. ADVERSE ACTION.**

6       The Americans with Disabilities Act of 1990 is  
7       amended by inserting after section 3 (42 U.S.C. 12102)  
8       the following:

9       **“SEC. 4. ADVERSE ACTION.**

10       “An adverse action taken by an entity covered under  
11       this Act against an individual because of that individual’s  
12       use of a mitigating measure or because of a side effect  
13       or other consequence of the use of such a measure shall  
14       constitute discrimination under this Act.”.

15       **SEC. 6. DISCRIMINATION ON THE BASIS OF DISABILITY.**

16       Section 102 of the Americans with Disabilities Act  
17       of 1990 (42 U.S.C. 12112) is amended—

18               (1) in subsection (a), by striking “against a  
19       qualified individual with a disability because of the  
20       disability of such individual” and inserting “against  
21       an individual on the basis of disability”; and

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

1 **SEC. 7. QUALIFIED INDIVIDUAL.**

2 Section 103(a) of the Americans with Disabilities Act  
3 of 1990 (42 U.S.C. 2113(a)) is amended by striking “that  
4 an alleged” and inserting “that—

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

8 “(2) an alleged”.

9 **SEC. 8. RULE OF CONSTRUCTION.**

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

13 “(e) BROAD CONSTRUCTION.—In order to ensure  
14 that this Act achieves the purpose of providing a com-  
15 prehensive prohibition of discrimination on the basis of  
16 disability and to advance the remedial purpose of this Act,  
17 the provisions of this Act shall be broadly construed.

18 “(f) REGULATIONS.—

19 “(1) IN GENERAL.—Not later than 180 days  
20 after the date of enactment of the Americans with  
21 Disabilities Act Restoration Act of 2007—

22 “(A) the Attorney General, the Equal Em-  
23 ployment Opportunity Commission, and the  
24 Secretary of Transportation shall issue regula-  
25 tions described in sections 106, 204, 223, 229,  
26 244, and 306, as appropriate, including regula-

1           tions that implement sections 3 and 4, to carry  
2           out the corresponding provisions of this Act, as  
3           this Act is amended by the Americans with Dis-  
4           abilities Act Restoration Act of 2007; and

5                   “(B) the Architectural and Transportation  
6           Barriers Compliance Board shall issue supple-  
7           mentary guidelines described in section 504, to  
8           supplement the existing Minimum Guidelines  
9           and Requirements for Accessible Design for  
10          purposes of titles II and III of this Act, as this  
11          Act is amended by the Americans with Disabil-  
12          ities Act Restoration Act of 2007.

13                   “(2) CONSTRUCTION.—Nothing in this sub-  
14          section shall be construed to limit the authority of  
15          an officer or agency described in paragraph (1) to  
16          issue regulations or guidelines under any other pro-  
17          vision of this Act, other than this subsection.

18                   “(g) DEFERENCE TO REGULATIONS AND GUID-  
19          ANCE.—Duly issued Federal regulations and guidance for  
20          the implementation of the Americans with Disabilities Act  
21          of 1990, including provisions implementing and inter-  
22          preting the definition of disability, shall be entitled to def-  
23          erence by administrative agencies or officers, and courts,  
24          deciding an issue in any action brought under this Act.”.

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