

## Comparison of the ADA (as construed by the courts) and the ADA Amendments Act in the House (H.R. 3195) and as passed by the Senate (S. 3406)

Issue	ADA (as construed by the courts)	H.R. 3195 (ADAAA – House Version)	S. 3406 (ADAAA -as passed)
<p><b>Scope of the Definition of Disability: In General</b></p>	<p>The ADA defines a “disability,” in part, as a physical or mental impairment that substantially limits a major life activity of an individual. (This is the first prong of the definition of disability.)</p> <p>In several cases, the Supreme Court has narrowly construed this definition in a way that has led lower courts to exclude a range of individuals from coverage, including individuals with diabetes, epilepsy, cancer, muscular dystrophy, and artificial limbs.</p>	<p>H.R. 3195 defines a “disability,” in part, as a physical or mental impairment that substantially limits a major life activity of an individual. (This is the first prong of the definition of disability.)</p> <p>To reject the Supreme Court’s interpretation of “substantially limits,” the term is defined as “materially restricts.”</p> <p>Findings and purposes make clear that the use of the term “materially restricts” conveys Congress’ intent to apply a less demanding standard than that applied by the courts, and to cover a broad range of individuals.</p> <p>A rule of construction provides that the definition of disability is to be construed broadly to achieve the remedial purposes of H.R. 3195.</p>	<p>S. 3406 retains the definition of “disability” as an impairment that substantially limits a major life activity.</p> <p>S. 3406 does not, however, provide a new definition for the term “substantially limits.” Instead, it rejects the Supreme Court’s interpretation of “substantially limits” by providing a rule of construction stating that the term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADAAA. S. 3406 includes the same findings and purposes of H.R. 3195, but adds additional findings and purposes to make clear that the definition of disability is intended to be a less demanding standard than that applied by the courts</p> <p>A rule of construction provides that the definition of disability shall be construed in favor of broad coverage of individuals, to the maximum extent permitted by the terms of the ADA.</p>

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<b>Mitigating Measures</b>	One way in which the Supreme Court narrowed the group of people covered under the ADA was by ruling, in the case of <i>Sutton v. United Airlines</i> , that mitigating measures (such as medication or devices) were to be taken into account in determining whether a person was substantially limited in a major life activity. Thus, if medication or devices enabled a person with an impairment to function well, that person was often held by a court not to have a disability under the ADA – even if the impairment was the basis for discrimination.	H.R. 3195 provides that the ameliorative effects of mitigating measures should not be considered in determining whether an individual has an impairment that substantially limits a major life activity.  An exception is made for “ordinary eyeglasses or contact lenses,” which may be taken into account.	The section on mitigating measures is the same in S. 3406 and H.R. 3195.
<b>“Substantially Limits”</b>	The Court held in <i>Toyota Motor Mfg. of Kentucky v. Williams</i> that an impairment “substantially limits” a “major life activity” if it “prevents or severely restricts the individual” from performing the activity. 534 U.S. 184, 198 (2002).	H.R. 3195 defines “substantially limits” as “materially restricts,” in order to reject the Supreme Court’s interpretation in <i>Williams</i> and to convey Congress’ intent that the courts should apply a less demanding standard.	S. 3406 requires that the term “substantially limits” be interpreted consistently with the findings and purposes of the Act. The findings of the Act state that the EEOC and the Supreme Court have incorrectly interpreted the term “substantially limits” to establish a greater degree of limitation than had been intended by Congress.

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<b>The “Major Life Activity” Requirement</b>	In the Williams case, the Supreme Court ruled that a “major life activity” must be an activity that is “of central importance to most people’s daily lives.” 534 U.S. 184	The ADAAA includes a non-exhaustive list of major life activities, such as seeing, hearing, eating, sleeping, walking, learning and concentrating. Major life activities also include the operation of “major bodily functions, such as the immune system, normal cell growth, and the endocrine system.	The section on “major life activities” is the same in S. 3406 and H.R. 3195.
<b>Episodic Conditions and Multiple Major Life Activities</b>	Some lower courts have held that individuals must be limited in more than one major life activity in order to have a disability under the law. Other courts have held that episodic or intermittent impairments, such as epilepsy or post-traumatic stress disorder, are not covered under the law.	H.R. 3195 makes clear that an impairment that substantially limits a major life activity need not also limit other major life activities in order to be considered a disability. In addition, H.R. 3195 clarifies that impairments that are episodic or in remission are considered disabilities if the impairment would substantially limit a major life activity when the condition is considered in its active state.	The sections on episodic conditions and multiple major life activities are the same in S. 3406 and H.R. 3195.
<b>Regarded as Having a Disability</b>	In the third prong of the definition of disability, the ADA covers people with impairments who are “regarded as” disabled. In the Sutton case, the Supreme Court established a very high requirement for an individual to show that he or she is substantially	H.R. 3195 provides that an individual can establish coverage under the “regarded as” prong by showing that he or she was subjected to an action prohibited by the ADA based on an actual or perceived impairment, regardless of whether the impairment limits a	The treatment of “regarded as” is the same in S. 3406 and H.R. 3195.

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	<p>limited in working – essentially requiring the individual to prove that the covered entity that engaged in the discrimination also believed that many other employers would have discriminated against that individual as well. More generally, lower courts have required individuals to show what was in a covered entity’s head in order to establish coverage under the “regarded as” prong.</p>	<p>major life activity. This reinstates the approach of the Supreme Court in the 1987 case of School Board of Nassau County v. Arline, 480 U.S. 273. Transitory and minor impairments are excluded from this coverage, and employers and other covered entities under the ADA have no duty to provide a reasonable accommodation or modification to individuals who fall solely under the “regarded as” prong.</p>	
<p><b>Findings and Narrow Construction</b></p>	<p>In the Sutton case, the Supreme Court based its narrow reading of the definition of disability in the ADA partly on the ADA’s findings that “some 43,000,000 Americans have one or more physical or mental disabilities” and that “individuals with disabilities are a discrete and insular minority.” Sutton, 527 U.S. at 484; 527 U.S. at 494 (Ginsburg, J. concurring).</p> <p>In the Williams case, the Court used the finding regarding 43 million Americans with disabilities to confirm its conclusion that the terms “substantially limits” and “major life activity” must be “interpreted strictly to create a</p>	<p>H.R. 3195 replaces the two findings used by the Supreme Court to narrow coverage under the ADA with findings and purposes indicative of the breadth of coverage intended by the ADA. The findings make clear that H.R. 3195 rejects the Court’s holdings in Sutton and Williams and reinstates a broad view of the definition of disability. Moreover, the rules of construction regarding the definition of a disability require that the term “substantially limits” be interpreted consistently with the findings and purposes of H.R. 3195.</p>	<p>S. 3406 adopts all of the findings and purposes of H.R. 3195. S.3406 then adds two new findings, stating that Williams interpreted the term “substantially limits” to require a greater degree of limitation than Congress had intended and that the EEOC’s regulations defining “substantially limits” as “significantly restricted” were inconsistent with congressional intent by expressing too high a standard. S. 3406 also adds two new purposes, conveying Congress’ expectation that the EEOC will revise that portion of its regulations that defined “substantially limits” as having too high a level of severity and conveying Congress’ intent that the</p>

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	demanding standard for qualifying as disabled.” 534 U.S. at 197.		primary object of courts’ attention in ADA cases should be whether covered entities have complied with their obligations and that the question of whether an individual’s impairment is a disability should not demand extensive analysis.
<b>Regulatory Authority</b>	In Sutton, the Court held that “no agency has been delegated authority to interpret the term ‘disability’” through regulations. 527 U.S. at 479.	Title V of the ADA (42 U.S.C. 12201) is amended to grant the EEOC, the Attorney General, and the Secretary of Transportation authority to issue regulations interpreting the definition of disability under the ADA.	The regulatory authority is the same in S. 3406 and H.R. 3195.
<b>Academic Requirements in Higher Education</b>	Higher education institutions are subject to the ADA’s requirements. For example, Title III of the ADA requires that universities make reasonable modifications in their policies, unless the university can demonstrate that making such modifications would “fundamentally alter” the nature of the educational service being offered.	Academic requirements are not addressed in H.R. 3195.	To address the concerns of higher education institutions, S. 3406 explicitly states that “nothing in this Act alters the [Title III fundamental alteration provision] specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or

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			accommodations involved.” This provision thus restates current law in order to clarify that the changes in the definition of disability do not change the “fundamental alteration” provision of the ADA.

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