



RESTORE THE INTEGRITY OF THE ADA

PLEASE ENACT H.R. 3765/S.3446 THIS YEAR

BACKGROUND



H.R. 3765, “The ADA Education and Reform Act of 2015,” sponsored by Congressman Ted Poe (R-TX) and its companion bill, S. 3446, sponsored by Senator Flake (R-AZ), await action by Congress. The legislation closes the loophole in the federal law that has unintentionally helped produce “drive-by” ADA Title III lawsuits while adding safeguards that incentivize the remedy of alleged violations – without taking away the right to pursue “bad actors” who ignore compliance.

Currently the House bill has 59 bipartisan cosponsors. The Senate bill was introduced on Sept. 28, 2016. These are “notice and cure” bills that require a plaintiff to give specific notice to the property owner about the alleged violation(s) so they know what they are looking for in terms of a barrier. The legislation also allows property owners up to 120 days to fix the alleged ADA violation before the clock starts running on attorney fees.

THE RISE OF “DRIVE-BY LAWSUITS”



“Drive-by” ADA lawsuits are the scourge of all types of private businesses open to the public. Since current law grants attorney’s fees to plaintiffs pursuing various claims, numerous law firms take advantage of this incentive by issuing demand letters or threatening property owners with lawsuits unless they pay a settlement consisting largely of those fees.

This “cash for compliance” phenomena has created a pervasive practice of inspecting shopping centers, theaters, stores and restaurants in order to allege minor, easily-correctable ADA infractions, such as those relating to parking lot striping and signs, bathroom dispensers and ramps. Many of these property owners reasonably believed their properties were ADA-compliant based on assurances by state or local inspectors and/or outside consultants. Despite the best efforts of some states to curb ADA lawsuit abuse through additional litigation protections (such as special rules in district courts) federal legislation is still needed.

IT’S TIME FOR CONGRESS TO RESTORE THE INTEGRITY OF THE ADA



ICSC vigorously supports the letter and spirit of the ADA and recognizes the tremendous positive impact the law, now nearly 26 years old, has had on society. Given this important milestone, it is timely that Congress act to restore the integrity of the ADA by providing clearer rules for identifying and correcting ADA access violations. We share the collective goals of more accessibility, full compliance – and we want it faster, with less cost and more resources devoted to this end – not diverted to enrich certain attorneys.



According to Seyfarth and Shaw LLP, for 2016, the number of ADA Title III lawsuits filed in federal court is already up 63% from last year’s mid-year number. To put the numbers into perspective, more lawsuits of this type were filed in federal court in the past six months than were filed in all of 2013. Importantly, these figures don’t take into account the vast number of potential suits, which are essentially settled before ever being filed. California still leads the country with the largest number of ADA Title III lawsuits (40%) but only 12% of the nation’s disabled population lives in the state.

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