



**Frequently Asked Questions on our opposition to the
ADA Education and Reform Act of 2017**

What are “ADA notification” bills?

How can people with disabilities enforce their rights under Title III of the ADA?

Is it difficult for businesses to comply with the ADA?

Can someone be awarded money (damages) as a part of a lawsuit filed under the ADA?

What if the changes required to become ADA compliant are too expensive for a small business?

What resources are available to make it easier for businesses to comply with the ADA?

Aren't “serial plaintiffs,” and “drive-by” and “frivolous” lawsuits a huge problem?

To the extent that “drive-by” and “frivolous” lawsuits do exist, how can they be stopped without a law like H.R. 620?

How many lawsuits are filed in a given year under Title III of the ADA?

Q: What are “ADA notification” bills?

A: Typically “ADA notification” bills delay the requirement for businesses to comply with Title III of the ADA until they are first notified of a potential violation. Such a requirement unfairly shifts the burden of responsibility from the business onto the person whose rights to equal access have been violated. Notification usually requires that the person with a disability submit a letter that specifically lays out the violation (including the specific provisions of the ADA which were violated), the date and time that the person tried to access the public accommodation, and other specific details. ADA notification bills also often contain a “cure” element that forms the “notice and cure” part of such a bill. Generally the “cure” part refers to a legally defined timeframe during which the business will be allowed to fix an access barrier and come into compliance with the ADA.

Q: How can people with disabilities enforce their rights under Title III of the Americans with Disabilities Act (ADA)?

A: Under current law, people with disabilities have three options when they encounter an access barrier that violates their rights under Title III of the ADA. Those options are: 1) Contact the owner of the business where the access barrier exists and determine a private resolution that is

satisfactory to both sides; 2) File a complaint with the Department of Justice; 3) File a lawsuit that seeks a resolution of the access barrier (injunctive relief).

Q: Is it difficult for businesses to comply with the ADA?

A: No. Places of public accommodation have had twenty-seven years to become familiar with the ADA and what they need to do in order to comply with it. There are other requirements to which businesses must comply with (zoning ordinances, health and safety codes, tax obligations, etc.). The regulations of the ADA should be no different.

Q: Can someone be awarded money (damages) as a part of a lawsuit filed under the ADA?

A: No. The ADA does not permit monetary damages to be sought or awarded under Title III. A plaintiff can only ask for the violation to be resolved and for the reimbursement of any attorney's fees they had to pay as a result of the lawsuit.

Some states, such as California and Florida, have passed their own provisions at the state level that do allow monetary damages to be awarded under ADA lawsuits. It is important to note that bills like H.R. 620 will have no effect on state laws.

Q: What if the changes required to become ADA compliant are too expensive for a small business?

A: The ADA itself recognizes that some things may be too costly or too difficult for a business, especially a smaller business, to change. The "readily achievable" standard in the ADA essentially states that any alteration or accommodation that a business is asked to make in order to comply with the ADA must be relatively cheap and relatively easy.

Q: What resources are available to make it easier for businesses to comply with the ADA?

A: There are myriad resources that businesses can use when they need direction on how to comply with the ADA. For example, the Department of Health and Human Services (DHHS) funds the ADA National Network, ten regional ADA centers around the country that exist for the sole purpose of providing technical assistance and free resources to businesses. The Department of Justice (DOJ) also provides a hotline that businesses can call to receive no-cost access to ADA experts who can advise them on how to comply with the ADA. DOJ also hosts an ADA website with a variety of free resources and tools that businesses can refer to, as well as performing technical assistance trainings, webinars, and other assistive functions.

Q: Aren't "serial plaintiffs," and "drive-by" and "frivolous" lawsuits a huge problem?

A: No. There are a small number of unscrupulous attorneys who attempt to exploit the ADA for personal gain. According to a report analyzing all ADA Title III lawsuits in 2016, there were just twelve entities that filed one hundred or more such lawsuits, which is the commonly accepted standard of a "serial plaintiff." Some of those may have been illegitimate suits but many of them were not. There is virtually no empirical evidence to indicate how many Title III suits are "frivolous" and how many of them are legitimate.

Q: To the extent that “drive-by” and “frivolous” lawsuits do exist, how can they be stopped without a law like H.R. 620?

A: There are a number of different ways that bad actors who try to exploit the ADA can be held accountable without undermining the ADA. For example, if a lawyer is filing frivolous lawsuits or submitting illegitimate demand letters, that person can be reported to a state bar association. The state bar association, or judges themselves, in any given state can punish lawyers who engage in unscrupulous practices, including by levying sanctions and disbarment. If this kind of activity on the part of an attorney reaches a certain threshold, it can be reported to law enforcement entities and that person can be held to account under criminal charges. For example, a demand letter that threatens a lawsuit under the ADA unless the business in question pays out a preemptive cash settlement without addressing the alleged ADA violation could be ground for criminal charges.

If a Title III lawsuit is genuinely “frivolous,” then civil courts have the ability to say so and levy sanctions against the plaintiff and the plaintiff’s lawyer. In such an instance, the business being sued would be able to recover any money spent on legal fees.

Q: How many lawsuits are filed in a given year under Title III of the ADA?

A: In 2016, there were approximately 6,600 lawsuits filed under Title III of the ADA. However, that number represents only a small portion of the access barriers encountered by people with disabilities every day. The vast majority of these barriers either go unreported, or rarely proceed to the degree that a lawsuit is filed.