



ICSC Office of Global Public Policy

Issue Brief: ADA Notification Act

The Issue:

The intent and spirit of the *Americans with Disabilities Act of 1990* is unfortunately being abused by a growing number of unscrupulous attorneys who are filing, or threatening to file, lawsuits against property owners for minor access violations. These attorneys have created a cottage industry of inspecting various shopping centers, stores and restaurants in order to locate minor, easily-correctable ADA infractions, such as those relating to parking lot striping and signs, bathroom dispensers, ramps and braille signage.

While most provisions of the Act require a plaintiff to notify and provide the owner an opportunity to correct an alleged violation(s) before a lawsuit can go forward, the section of the Act relating to public access to private property does not contain such notice or opportunity to correct. Taking advantage of this loophole, some attorneys (without giving property owners an opportunity to fix the alleged violations) are filing, or threatening to file, lawsuits that usually lead to cash settlements – since the owners want to avoid the time, expense and hassle of litigation and the potential negative publicity associated with it. To make matters worse, many of these owners thought their properties were ADA-compliant based on assurances by state or local inspectors and/or outside consultants.

The Supreme Court, in *Buckhannon v. West Virginia Dept. of Health and Human Resources* (2001), held that a business is not liable for attorneys' fees if it voluntarily corrects an ADA violation before the case gets to court. Despite this ruling, federal legislation is still needed to thwart the filing of minor ADA access cases.

In 2007, Congressman Ric Keller (R-FL-8th) introduced H.R. 3479, the "ADA Notification Act of 2007" in the House. The bill amends Title III of the Americans with Disabilities Act to require that before commencing a civil action with respect of a place of public accommodation or commercial facility, that a 90-day window of opportunity is provided to correct alleged violations. H.R. 3479 incorporates important changes from previous versions of the bill introduced in past Congresses. Namely, the bill expands the notification requirement to state courts as well as federal courts. Secondly, there are exceptions to the notification requirement in instances where preliminary injunctive relief or temporary restraining orders are sought in either federal or state courts. Thirdly, H.R. 3479 drops provisions that sanctioned attorneys in and disallowed attorney fees if they failed to provide an opportunity for correction of an alleged violation.

Our Position:

ICSC and others in the business community are committed to finding a solution, legislative or otherwise, that will curtail the abuse of ADA while at the same time preserve the rights of the disabled community. ICSC recommends that its members take appropriate measures to comply with Federal, state and local ADA access laws in order to better serve people with disabilities and to reduce the risk of related lawsuits.

Opposing Argument:

Some disabled rights advocates say that property owners should not be given additional time to correct alleged violations since they have had over a decade to bring their properties into compliance with existing ADA laws.

Response: In some cases property owners may be unaware that their properties contain minor ADA violations since they have passed state or local inspections. We believe a compromise must be reached that balances the spirit of ADA with a common sense and fair approach to correcting alleged violations. Under current law, unscrupulous attorneys and others are benefitting rather than those ADA was meant to protect.

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