



Webinar Series

United Spinal Association

Save the ADA!—Oppose H.R. 620

**“The ADA Education and
Reform Act of 2017”**

Speakers:

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What is “Notification”?

- Notification as a concept has been around for more than a decade. No bills have passed, but business community support has gradually increased. Bills pending in Congress including H.R. 620 are the latest iteration.
- Opponents in the disability and civil rights communities believe that the type of notification required under this bill would harm access by removing the incentive for businesses to comply without being notified, among many other harms.

H.R. 620 is the ADA Education and Reform Act of 2017

- Would require a person with a disability to provide notice to a public accommodation regarding an architectural barrier under the ADA prior to filing a lawsuit. The notice must identify the specific provisions of the ADA violated.
- Further, before a lawsuit may be filed, the public accommodation must be given 180 days after receipt of the notice to make substantial progress in removing the barrier.

Structure & Importance of Title 3

- What is Title 3?
- What is a place of public accommodation?

How Title 3 was designed to work

- The ADA structure is premised on the expectation that the barriers will have been removed when people show up at a public accommodation, ...
- ... and that people can seek immediate relief, though they can't be compensated for the period of time when they were excluded. No money damages, only injunctive relief—fixing the access problem.
- Title 3 has been in effect for nearly 27 years. Its access requirements have been in effect for almost as long, and have undergone only one significant change.

Business Groups' Arguments for Notification Proposals

The business groups claim:

- It's onerous for small businesses to understand access requirements and obligations
- So-called "drive-by" lawsuits where individuals do not patronize the businesses in question
- Demands for payment rather than access

Disability Groups' Concerns about Notification Proposals, including H.R. 620

- Would weaken the ADA, a critical source of rights for people with disabilities to businesses such as stores, restaurants, hotels, etc.
- Would turn people with disabilities into second-class citizens.
- Would undermine the very principles of an inclusive society that America is all about.
- Applies to both businesses of any size, including large

Disability Groups' Concerns: No Incentive to Comply

- Today, businesses have an obligation to make themselves accessible, and there's a consequence if they don't.
- Under H.R. 620, there would be no consequence, and thus, no incentive to comply with the ADA
- Businesses could take a wait-and-see attitude.

Disability Groups' Concerns: Real Life Impacts

- H.R. 620 ignores the everyday experiences of millions of people with disabilities who cannot shop, transact personal business, or enjoy recreation ...
- ... Who cannot do what most people can take for granted
- ... because so many public accommodations across the country have ignored the reasonable requirements of the ADA.

Disability Groups' Concerns: Burdens People with Disabilities

- Requires a person with a disability who encounters an access barrier to send a written notice with ***the exact provisions of the ADA*** that are being violated.
- The ADA should not place the heaviest burden for ending discrimination on the very people the law is supposed to protect!
- People with disabilities should not have to consult a lawyer on a routine basis to be able to use places of public accommodation.

Disability Groups' Concerns: Extensive Enforcement Delays

- Gives the business owner 60 days to even acknowledge that there is a problem—and then another 120 days to begin to fix it.
- No other civil rights group is forced to wait 180 days to enforce their civil rights.
- Even then, the business would face no consequence for violating the law for months, years, or decades, if it takes advantage of the months-long period to remedy the violation before a lawsuit is permitted.

Disability Groups' Concerns: Extensive Enforcement Delays, cont'd.

... Once notice is received, the legislation would grant the business up to six months to make “substantial progress” in removing the barrier described in the notice. This means a business could spend years without actually removing barriers to come into compliance with longstanding access standards, and face no penalty, so long as “substantial progress” can be claimed. Even our largest and most ubiquitous corporations—from Wal-Mart to Starbucks—would be entitled to these exemptions. (From a letter to the California Congressional delegation)

Disability Groups' Responses to Bus. Arguments:

ADA is Not Burdensome

- The ADA is very carefully crafted to take the needs of business owners into account.
- Remember that existing businesses are only required to provide access when doing so is readily achievable—“cheap and easy.”
- But H.R. 620 changes the careful compromise originally designed by a bipartisan Congress in 1990, and wreaks havoc with the entire ADA scheme.

Disability Groups' Concerns: Compliance is Part of the Cost of Doing Business

- Establishing & running a business necessitates compliance with many laws & rules—this is the cost of doing business.
- Legislatures would not delay or eliminate consequences for small businesses that failed to meet health & safety codes, and other requirements.
- Violating the rights of people with disabilities should be treated no differently.

Disability Groups' Concerns: No Money Damages in Title 3

- Supporters of this bill have raised concerns about money damage awards.
 - But that has nothing to do with the ADA, because the ADA does not allow money damages. Such damages are only available under a handful of state laws.
 - Amending the ADA, a federal law, will do nothing to prevent any damage awards that are allowed under state laws.

Disability Groups' Concerns: Existing Tools for Any Frivolous Lawsuits

- Supporters of this bill cite “frivolous lawsuits” and “serial litigants.”
- But the vast majority of ADA attorneys & plaintiffs are seeking structural solutions to fix real denials of access.
 - For the rare few who may file fraudulent claims or engage in unscrupulous practices, courts & state bar associations already have extensive power to deal with any frivolous litigants or their attorneys.
- Use those existing legal mechanisms when needed, rather than denying the civil rights established by the ADA!

Disability Groups' Concerns: Extensive Technical Assistance Available

- Many businesses are unaware of the already extensive efforts to educate business owners about their ADA obligations.
- This includes the in-depth DOJ ADA website, <http://ada.gov/>, with extensive DOJ technical assistance materials
 - The DOJ ADA hotline: 800-514-0301 (voice) or 800-514-0383 (TTY)
 - The ten regional ADA Centers that receive funding from the federal government to provide in-depth resources & training in every state (www.adata.org).

Disability Groups' Concerns:

Tax credit & deduction

- There are also tax credits to help businesses remove barriers, including a small business tax credit.
- The tax credit goes up to \$5,000 per year for architectural and communication barrier removal. See the IRS for more details.
- The tax deduction is for architectural barrier removal, up to \$15,000 per year.

Disability Groups' Concerns: Importance of ADA Standards

- The ADA accessibility standards are extremely important.
- They are not minor details or picky rules, but rather, are essential to ensure true accessibility.
 - A few steps to enter, or a too-narrow doorway, can be the difference between accessing a business or not.
 - A too-short bathroom grab bar can be the difference between using a restroom, or being forced to go without a restroom.

If You Want to Speak Out On an Issue, How Do You Do It?

- You can contact your elected officials, including your members of Congress, and express your opinion.
- You can write blog posts for websites and send op eds and letters to the editor of your local newspaper.
- You can follow issues via social media platforms like Twitter and Facebook, share your opinion, and connect with others who share that opinion.

How Do You Contact Members of Congress?

- If you need to find out who are your members of Congress, you can visit www.house.gov or www.senate.gov.
- You can also visit websites like contactingcongress.org. This allows you to insert your zip code to find many simple methods for contacting your members of Congress via e-mail, phone, Facebook, Twitter, fax, etc.
- You can also call the U.S. Capitol Switchboard at (202) 224-3121 to be connected to your member of Congress.

What Can You Say to Communicate Your Opinion?

- Inform your elected official of your position.
- Explain your position.
- Personalize the communication by talking about how the issue impacts you and your family.

QUESTIONS?



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