

**Examining Legislation to Promote the Effective Enforcement of the ADA's Public
Accommodation Provisions**

U.S. House Judiciary Committee, Subcommittee on Constitution and Civil Justice
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Mr. Chairman and distinguished Members of the Subcommittee on the Constitution and Civil Justice, thank you for the opportunity to testify today on the need for legislation to promote the effective enforcement of the Americans with Disabilities Act (ADA) regulations on businesses.

As you know, the Americans with Disabilities Act is undoubtedly one of the most important pieces of civil rights legislation. We can all agree that providing all Americans with access to public accommodations is an invaluable legislative objective.

2015 was the 25th anniversary of the passage of the ADA. Since its enactment, our nation has taken great strides to remove unnecessary obstacles that complicate the lives of the disabled as they go about their daily routines. However, more can and should be done to ensure that the ADA is applied in ways that continue to improve the lives of the disabled, as it was intended, while protecting well-intended businesses from unwarranted, frivolous lawsuits.

The purpose of the ADA is to ensure access for the disabled to public accommodation and provide appropriate remedial action for those who have suffered harm as a result of non-compliance. Although there are times when litigation by harmed individuals is necessary, there are an increasing number of lawsuits brought under the ADA that are based upon a desire to achieve financial settlements rather than to achieve the appropriate modifications for access. These lawsuits filed by serial litigants, often referred to as “drive-by lawsuits,” place exorbitant legal fees on small businesses, and often times business owners are unaware of the specific nature of the allegations brought against them.

In early 2011, frivolous ADA lawsuits against small businesses reached an all-time high throughout California, and as a result, my good friend and colleague, former Congressman Dan Lungren (R-CA), championed the issue and introduced the original ACCESS Act (H.R. 3356) in the 112th Congress. I was pleased to have been afforded the opportunity to take over the legislation for reintroduction beginning in the 113th Congress. In January 2015, I reintroduced the legislation as H.R. 241, the ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act.

H.R. 241 is a cost-free and commonsense piece of legislation that would alleviate the financial burden small businesses are facing, while still fulfilling the purpose of the ADA. Any person aggrieved by a violation of the ADA would provide the owner or operator with a written notice of the violation, specific enough to allow such owner or operator to identify the barrier to their access. Within 60 days the owner or operator would be required to provide the aggrieved person with a description outlining improvements that would be made to address the barrier. The owner or operator would then have 120 days to make the improvement. The failure to meet any of these conditions would allow the lawsuit to go forward.

More than ever, it is important that the committee act to markup this legislation. These abuses of the intention of the law must be stopped.

Every year, I take time to meet with representatives from each city within California’s 42nd Congressional District. During my meetings in February, an alarming trend became apparent. Small business owners are not the only victims of these drive by lawsuits, but also several cities that I represent have seen a rising number of lawsuits as a result of ADA violations in city parks and facilities. In one instance, a city park had not yet been opened to the public. These cities

were not given an opportunity to respond and address the issue before they entered into litigation, at a cost to local taxpayers.

In a separate instance, an individual utilized the “google street view” feature to “drive” through southern California to determine if small businesses had violated the ADA from the comfort of their own home. The use of the ADA by unscrupulous individuals and trial lawyers to fleece small business owners must be put to an end.

I think we can all agree that we must ensure that individuals with disabilities are afforded the same access and opportunities as those without disabilities. Frivolous lawsuits do not accomplish this goal. Allowing small business owners and cities alike to fix ADA violations within 120 days, rather than waiting for lengthy legal battles to play out, is a more thoughtful, timely, and reasonable approach.

While the ADA is a national law, California has become ground zero for ADA violation lawsuits. In fact, California is home to more federal disability lawsuits than the next four states combined. A 2014 report determined that since 2005, more than 10,000 federal ADA lawsuits had been filed in the five states with the highest disabled populations; 7,188 of which were filed in California. Violating the ADA in California carries a minimum \$4,000 penalty in addition to the plaintiff’s legal fees. As of 2014, according to the US Census Bureau, 31 individuals made up at least 56% of federal disability lawsuits in California. Those figures and the real life toll it takes on small business owners, are why I introduced this legislation to allow for a “fix-it” period.

However, it is clear that this is not just a major problem in California. The introduction of similar legislation by the gentleman from Texas, Representative Ted Poe, shows just that. His legislation authorizes a training and education component for the affected community and certified access specialists, which I would welcome and embrace as an amendment to my bill.

This is also a bipartisan issue supported by states. I was pleased to see that California SB 269, the text of which I would like to submit for the record as well as a related article, passed unanimously in the State Assembly and Senate, and was signed into law by Governor Jerry Brown on May 10th, 2016. SB 269 was authored by a friend of mine, Democratic State Senator, Gen. Richard Roth. The legislation is similar to the ACCESS Act in that it allows businesses to take immediate steps to become accessible by providing them with 120 days, from receipt of a Certified Access Specialist report, to resolve any identified violations without being subject to litigation costs or statutory penalties. I worry that with California acting to curb these lawsuits, some of these serial litigants will try their trade in other states.

Without question, the ACCESS Act will ensure that the ADA is used for its true purpose of guaranteed accessibility to public accommodations for all Americans while eliminating abusive, costly and unnecessary lawsuits for small business owners.

Once again, I appreciate your time today and stand ready to assist the committee in any way possible to ensure this legislation moves forward.