

**May 19, 2016**

**Statement by:**

**Representative Poe on “H.R. 3765 ADA Education and Reform Act 2015”**

**Before the Subcommittee on Courts, Intellectual Property and the Internet**

**For the hearing “Examining Legislation to Promote the Effect Enforcement of the ADA’s Public Accommodation Provisions.”**

I would like to thank Chairman Franks and Ranking Member Cohen for inviting me to testify today on H.R. 3765, the ADA Education and Reform Act of 2015.

H.R. 3765 is a common sense, bipartisan bill that aims to ensure access to public accommodations for all citizens while curbing some of the abusive practices that have become common in recent years.

Within the past 10 years or so, there has been a strong uptick in frivolous lawsuits filed under the public accommodation section of the Americans with Disabilities Act (ADA). Let me be clear, these are often illegitimate lawsuits. These are individuals who are shaking down business, sometimes without even visiting the locations, by sending them phony demand letters alleging a violation of the ADA. Common practices include alleging that a pool does not have the proper pool lift (sometimes even at properties that do not even have a pool) or other vague alleged violation. Often, the businesses are so confused or frightened of litigation that they will simply pay instead of risking going to court. In these instances, the motivation is not to fix any alleged violations; it is to intimidate businesses into settlement.

Often, it is the same individuals or organizations who are making many of these claims. The business model has been working so well it has become a cottage industry. For example, in Florida, a plaintiff named Howard Cohan filed 529 such suits. He is not alone. In California, a plaintiff named Martin Vogel filed 124 suits. In Pennsylvania, a plaintiff named Christopher Mielo brought 21 lawsuits. In New York, a plaintiff named Zoltan Hirsch brought 24 lawsuits.

In 2015, Howard Cohen sued the Marquessa Hotel in Key West for an alleged violation at their pool despite the fact he had never been a registered guest at the hotel. ADA expert Bill Norkunas, who wrote the original ADA and helped the hotel fight this case, stated that Howard Cohan was essentially operating a “continuing criminal enterprise that boils down to extortion.”

Individuals like this are not out to provide public accommodation, they are out for their own profit.

H.R. 3765 takes a series of steps to help curb this abuse of the ADA and to ensure that all citizens have equal access to public accommodations. H.R. 3765 requires the Disability Rights Section of the Department of Justice to consult with property owners and the disability rights community and develop a program to educate State and local governments and property owners on effective and efficient strategies to promote access to facilities by disabled persons. This section is intended to promote compliance by getting business and the disability rights community all on the same page so that issues can be resolved quickly and easily without excessive litigation.

The bill also prohibits sending a demand letter for an alleged violation unless the letter includes specific information such as the circumstances under which an individual was actually denied access, the address of the property, and whether or not a request was made to remediate the alleged issue. This section will prevent scam artists like Howard Cohan from sending hundreds of demand letters to businesses he hasn't even visited in an attempt to solicit settlements. I am open to clarification with the language of this section if necessary.

Section 4 of the bill provides that after an owner and operator are given written notice of an alleged violation they have 60 days to respond in writing to that notice and outline how they plan to remedy the situation, followed by 120 days to make the necessary changes. If the business owner does not complete either one of those steps, the plaintiff may then go to court to commence litigation. This section strikes a thoughtful balance between giving businesses a reasonable time to remedy an alleged violation while also ensuring that a lawsuit may still be filed if a business either refuses or does not reply to a request for a remedy.

Section 5 of the bill directs the Judicial Conference of the United States to consult with property owners and representatives of the disability rights community to develop a model program to utilize alternative dispute resolution mechanisms to resolve these kinds of claims. These mechanisms would be completely voluntary.

This legislation enjoys wide bipartisan support and has been endorsed by the American Hotel and Lodging Association, International Council of Shopping Centers, National Apartment Association, National Federation of Independent Businesses, National Restaurant Association, and the Retail Industry Leaders Association among others.

I appreciate the opportunity to testify today and I look forward to any questions.

