

ADA Notification Bills: And Then There Were Three

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An Update from the NCIL ADA Civil Rights Subcommittee

There are now three ADA Notification bills introduced in the 114th Congress. The latest was introduced on Monday, March 7, 2016 by Rep. Jerry McNerney (D-CA). What is different this session is we are seeing bills that have members of both parties signing on.

As we approach the 26th anniversary of the Americans with Disabilities Act, few of the members of Congress that were there at that time of its signing remain. This creates a huge challenge as many who were there at the time understood the ADA and the intent of the law. That makes it all that much more important for us to form a strong opposition to these attacks and make this a priority as we head to the Hill this summer during the NCIL conference and when we meet with legislators when they are home in their district offices.

NCIL, with the National Disability Rights Network (NDRN), the American Association of People with Disabilities (AAPD), the Association of Programs for Rural Independent Living (APRIL), Paralyzed Veterans of America (PVA) and other partners, will be meeting to discuss strategy early this month in Washington. In the meantime, the ADA Civil Rights Subcommittee is working on producing a position paper of our own, which we hope to be sharing soon to bring our membership up to speed as we advocate against unnecessary change.

These bills are not expected to move during this session, which gives us time to create a plan, but we all know how things work in DC and we need to develop our plans sooner than later. The three ADA Notification bills introduced in the 114th Congress as of mid-April are outlined below.

H.R. 4719: Correcting Obstructions to Mediate, Prevent, and Limit Inaccessibility Act or the COMPLI Act

- Status: Introduced in House (March 7, 2016)
- Sponsored by: Representative Jerry McNerney (D-CA)
- Co-sponsors: none

This bill amends the Americans with Disabilities Act of 1990 to prohibit persons aggrieved by certain public accommodation violations from commencing a civil action for discrimination unless they: (1) provide the owner or operator of the accommodation with a written notice that is specific enough to identify the violation; (2) specify in the notice that the owner or operator has 90 days to remove or correct the violation before an action will be brought; and (3) refrain from sending demand letters, requests for settlement, or other communications to the owner or operator during such 90-day period.

An owner or operator of a public accommodation who is provided such a notice must notify the public of the alleged violation and the steps being taken to remedy it. Owners or operators are entitled to an additional 30 days to comply if they make a good faith effort but are unable to correct the violation within the original 90-day period. A civil action for discrimination based on such a violation may not be commenced while a civil action relating to the same violation is pending.

H.R. 241: ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act of 2015

- Status: Introduced in House (January 9, 2015)
- Sponsored by Representative Ken Calvert (R-CA) with 19 Co-sponsors including: Duncan (CA), McClintock (CA), Denham (CA), Rohrabacher (CA), Royce (CA), LaMalfa (CA), Laas (CA), Valadao (CA), Cook (CA), Walters (CA), Nunes (CA), Jenkins (KS), Simpson (ID), Westmoreland (GA), Burgess (TX), Coffman (CO), Harris (MD), Ashford (NE), Conway (TX)

This bill amends the Americans with Disabilities Act of 1990 to prohibit an aggrieved person from commencing a civil action for discrimination based on the failure to remove a structural barrier to entry into an existing public accommodation unless the owner or operator of such accommodation: (1) is provided a written notice specific enough to identify such barrier; and (2) has, within specified time periods, either failed to provide the aggrieved person with a written description outlining improvements that will be made to remove such barrier or provided such description and failed to remove such barrier.

H.R. 3765: ADA Education and Reform Act of 2015

- Status: Introduced in House (October 20, 2016)
- Sponsored by Representative Ted Poe (R-TX) with 27 Co-sponsors including: Collins (GA), Jolly (FL), Marchant (TX), Smith (TX), Mulvaney (SC), Nunes (CA), Denham (CA), Babin (TX), Bradley (AL), Valadao (CA), Burgess (TX), Ros-Lehtinen

(FL), Schweikert (AZ), Peters (CA), Emmer (MN), Cole (OK), Rangel (NY), Olson (TX), Amodei (NV), Rogers (AL), Conway (TX), Hensarling (TX), Graves (MO), Ashford (NE), Carter (GA), Russell (OK), Johnson (TX)

This bill requires the Disability Rights Section of the Department of Justice to develop a program to educate state and local governments and property owners on strategies for promoting access to public accommodations for persons with a disability. The program may include training for professionals to provide a guidance of remediation for potential violations of the Americans with Disabilities Act of 1990 (ADA).

The bill prohibits persons from, and subjects violators to a criminal fine for, sending demand letters or other pre-suit notifications alleging a violation of ADA public accommodation requirements if the notification does not specify the circumstances under which an individual was actually denied access. The notification must specify: (1) the address of property, (2) the specific ADA sections alleged to have been violated, (3) whether a request for assistance in removing an architectural barrier was made, and (4) whether the barrier was permanent or temporary.

The bill also prohibits commencement of civil action based on the failure to remove an architectural barrier to access into an existing public accommodation unless: (1) the aggrieved person has provided to the owners or operators a written notice specific enough to identify the barrier, and (2) the owners or operators fail to provide the person with a written description outlining improvements that will be made to improve the barrier or they fail to remove the barrier or make substantial progress after providing such a description.

The Judicial Conference of the United States must develop a model program to promote alternative dispute resolution mechanisms to resolve such claims. The model program should include an expedited method for determining relevant facts related to such barriers and steps to resolve accessibility issues before litigation.