

August 31, 2019

US Representatives & Senators:

The Pennsylvania Association of Bed & Breakfast Inns (PABBI) strongly supports the American with Disabilities Act (ADA) and is committed to ensuring that individuals with disabilities are provided unfettered access to our properties and online service.

The intent of the ADA is to prohibit discrimination and ensure all Americans have equal access to public accommodations. Unfortunately, the law has been used as a weapon by scheming lawyers seeking to extort easy settlements from small business owners through demands for exorbitant attorney’s fees after alleging ambiguous violations of the law. PABBI supports the work of the American Hotel & Lodging Association who is working with federal lawmakers to help find a remedy to the growing “cottage industry” of bad actors exploiting the ADA and small business owners.

The U.S. House of Representatives passed H.R. 620, the ADA Education and Reform Act of 2017; however, the bill never passed in the Senate. The most significant changes with respect to lawsuits under the ADA were:

* Prior to filing a lawsuit, the aggrieved party must serve the owner or operator of a place of public accommodation with a detailed notice of the alleged violation or violations of the ADA;
* The owner or operator is then provided with 60 days to respond to the notice, describing how the violation or violations will be addressed; and
* The owner or operator is then given another 120 days to correct the violation or violations – referred to as removing the barriers – or to at least make substantial progress in doing so.

Currently, there is no requirement that a party suing for alleged violations under the ADA provide any kind of notice to the owner or operator of a place of public accommodation prior to filing a lawsuit. Changes are necessary to curtail the abundance of frivolous lawsuits designed to do nothing more than generate attorney’s fees, which divert funds from the actual work of increasing accessibility. Our PA Bed and breakfasts are small business owners who are potentially in danger of losing their business due to a frivolous lawsuit.

PABBI is asking for you to introduce a similar bill to address this issue. A number of B&B’s in PA were served with ADA lawsuit letters in December 2018. B&B owners across the country are being served with letters threatening an ADA lawsuit if a settlement is not reached. Some of these B&Bs being served are exempt from the law, but they are still threatened with a lawsuit if a settlement is not paid to make it go away or incur defense costs that can be thousands of dollars. This is criminal what these law firms are doing to hard working small business owners.

August 31, 2019

Page 2

A large proportion of these ADA lawsuit letters allege that the websites are not accessible to the legally blind or visually impaired or do not adequately describe the accessibility features. The owners/operators of websites are then sued. At first blush, it would not appear that this amendment to the ADA would apply to such claims in that the bill specifically uses the term “architectural barriers” which would seem to confine its scope to physical issues with a place of public accommodation. Of course, since websites did not exist when the ADA was passed in 1990, this issue is being shaped

by the courts. While courts are not consistent in their rulings, websites have been labeled as “public accommodations.” Attached is an article about the lawsuit filed against Dominoes that is being addressed by the courts.

With the permission of the B&B owner, I have attached a letter they had received so you can understand the seriousness of this issue. This particular B&B is exempt from complying with the ADA law since they have 5 or less rooms and are owner occupied. The letter specifically addressed the lack of accessible features offered through its reservation service. Also attached is the letter our Attorney issued on behalf of our members that received similar letters.

The National Restaurant Association Restaurant Law Center filed an amicus brief with the U.S. Supreme Court urging it to provide clarity regarding ADA protections related to websites. Because websites are able to operate across state lines, it is important that a federal standard is put in place to ensure clarity and compliance.

The Professional Association of Innkeepers International (PAII) and the Association of Independent Hospitality Professionals (AIHP) are diligent in educating our industry on both physical and website ADA compliance, and facilitates consultations with attorneys experienced in assisting in defending these egregious lawsuits. However, the lack of clear ADA compliance standards, specifically from the Department of Justice (DOJ), has caused “legislation thru litigation” resulting in conflicting rulings enabling the continued feeding frenzy of lawsuits. PAII has assembled a database of 300 ADA lawsuits against lodging properties filed in the district courts between January and July 2019. It is evident that serial plaintiffs and their law firms have capitalized on this lack of standards to prey upon small businesses.

Legislation is needed to restore the integrity of the ADA law by addressing the unseemly practice of “drive-by” and “surf-by” lawsuits. The bill needs to reform Title III of the ADA, which covers private businesses open to the public, by specifying clear, unambiguous rules for identifying and correcting ADA access violations before allowing litigation or a drawn-out settlement process. If a business fails to correct an identified violation following a notice and a defined period of time, then the right for seeking legal recourse still applies under the ADA.

Thank you for your consideration. Please let us know what other information we can provide you. I’m also available to discuss both the emotional and financial hardship these threat letters and lawsuits have had on our industry.

Sincerely,

Carl Kosko, PABBI Board Chair

Owner, Harvest Moon Bed & Breakfast, New Holland, PA