

ADA Notice and Compliance

Current Law:

The Americans with Disabilities Act (ADA) is a civil rights law enacted in 1990, and Title III requires that businesses comply with basic nondiscrimination requirements that prohibit barriers to people with disabilities. Through Title III, private lawsuits can be filed without previous notice of violation or an opportunity to remedy the barrier.

BOMA Position:

BOMA supports legislation that protects the commercial real estate industry from “drive by” lawsuits by imposing notice and a compliance opportunity before commencement of a private civil action under the ADA.

Current Status:

Rep. Dan Lungren (R-CA) has introduced legislation in the House (H.R. 3356, The ADA Compliance for Customer Entry to Stores and Services (ACCESS) Act of 2011) to amend the ADA and impose notice and a compliance opportunity to be provided before commencement of a private civil action. The Act would require complainants to supply building owners with a written notice of the barrier to entry that is specific enough to allow the owner to identify the issue and correct it. It would provide a 60-day period for the owner to communicate the planned remedy and an additional 120-day period to become compliant.

A similar bill, H.R. 881, has also been introduced in the House. H.R. 881 seeks the same end with slightly different means; the legislation does not require the written notice to be as specific about the violation and changes the waiting period to a 90-day window from notification to correction.

Supporting Arguments:

- We support the intent of the Americans with Disabilities Act. However, there are many examples of ADA lawsuit abuses – where the plaintiff is more interested in a quick financial settlement, not correcting the problem, removing the barrier, and gaining access to the property.
- These lawsuits do not serve the interests of the disabled community and are disruptive and costly to small business.
- We support legislation to require that a complainant provide written and specific notice of the ADA non-compliance to the building owner and allow

time for the owner to correct the problem prior to filing a civil suit. This benefits all parties and maintains the intent and integrity of the law.

- BOMA believes that this legislation will lead to improved compliance with Title III of the ADA, help the disabled community have full access as required under the law, and protect business owners from mal-intended lawsuits.
- Please consider cosponsoring H.R.3356.

(H.R. 3356 is sponsored by Rep. Lungren, and Reps. Hunter, Calvert and Jenkins are the only cosponsors to date.)