STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

September 19, 2017

The Honorable Lisa Rochester
Washington, DC Office
1123 Longworth House Office Building
Washington, DC 20515

Re: H.R. 620 (ADA Education & Reform Act of 2017)

Dear Representative Rochester,

We write to share perspective on the above legislation which was passed by the House Judiciary Committee on September 7, 2017. The Council is charged under Delaware law [29 Del.C. §8210(b)(5)] with commenting on federal legislation affecting persons with disabilities. A copy of the 3-page bill and background materials accompany this letter for facilitated reference.

The legislation is designed to undermine enforcement of the Americans with Disabilities Act through imposition of a set of "Kafkaesque" impediments on civil actions. Prior to seeking judicial enforcement, persons with disabilities would be required to provide a written notice with the following features:

1) detailed circumstances under which the person was denied access to a public accommodation;

2) address of property;

3) specific sections of the ADA violated;

4) whether request for assistance in removing the barrier was made; and

5) whether the barrier was permanent or temporary.

After receipt, the owner would have 60 days to decide whether to address the identified barrier

followed by 120 days in which the owner must make substantial progress in removing the barrier. Thus, even 6 months (180 days) after notice, the person with a disability may still face the barrier while awaiting further "progress".

The legislation also naively envisions establishment of an alternative dispute resolution system despite the current existence of such a system. See enclosed "The Civil Rights Division's Comments on the 'ADA Education and Reform Act of 2017' (H.R. 620)".

Consistent with the accompanying background materials, hundreds of disability-related organizations have expressed strong opposition to the legislation. The Council would appreciate your commitment to protection of the current ADA enforcement system unencumbered by the limitations proposed by H.R. 620.

Thank you for your consideration.

Sincerely,

Jamie Wolfe

Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

Barbara R Monaghan

Barbara Monaghan, Chairperson
Delaware Developmental Disabilities Council

Dafne A. Carnright

Dafne Carnright, Chairperson
Governor's Advisory Council for Exceptional Citizens

CONGRESS.GOV

H.R.620 - ADA Education and Reform Act of 2017

115th Congress (2017-2018)

Sponsor: Rep. Poe, Ted [R-TX-2] (Introduced 01/24/2017)

Committees: House - Judiciary

Latest Action: 09/07/2017 Ordered to be Reported by the Yeas and Nays: 15 - 9. (All Actions)

Tracker: Introduced Passed House Passed Senate To President Became Law

Summary (1) Text (1) Actions (5) Titles (2) Amendments (0) Cosponsors (51) Committees (1) Related Bills (0)

Shown Here:
Introduced in House (01/24/2017)

115TH CONGRESS
1ST SESSION

H. R. 620

To amend the Americans with Disabilities Act of 1990 to promote compliance through education, to clarify the requirements for demand letters, to provide for a notice and cure period before the commencement of a private civil action, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Mr. POE of Texas (for himself, Mr. PETERS, Mr. CALVERT, Mr. BERA, Ms. SPEIER, and Mr. CONAWAY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Americans with Disabilities Act of 1990 to promote compliance through education, to clarify the requirements for demand letters, to provide for a notice and cure period before the commencement of a private civil action, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "ADA Education and Reform Act of 2017".

SEC. 2. COMPLIANCE THROUGH EDUCATION.

Based on existing funding, the Disability Rights Section of the Department of Justice shall, in consultation with property owners and representatives of the disability rights community, develop a program to educate State and local governments and property owners on effective and efficient strategies for promoting access to public accommodations for persons with a disability (as defined in section 3 of the Americans with Disabilities Act (42 U.S.C. 12102)). Such program may include training for professionals such as Certified Access Specialists to provide a guidance of remediation for potential violations of the Americans with Disabilities Act.

SEC. 3. NOTICE AND CURE PERIOD.

Paragraph (1) of section 308(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12188(a)(1)) is amended to read as follows:

"(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—

"(A) IN GENERAL.—Subject to subparagraph (B), the remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a–3(a)) are the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

"(B) BARRIERS TO ACCESS TO EXISTING PUBLIC ACCOMMODATIONS.—A civil action under section 302 or 303 based on the failure to remove an architectural barrier to access into an existing public accommodation may not be commenced by a person aggrieved by such failure unless—

"(i) that person has provided to the owner or operator of the accommodation a written notice specific enough to allow such owner or operator to identify the barrier; and

"(ii) (I) during the period beginning on the date the notice is received and ending 60 days after that date, the owner or operator fails to provide to that person a written description outlining improvements that will be made to remove the barrier; or

"(II) if the owner or operator provides the written description under subclause (I), the owner or operator fails to remove the barrier or to make substantial progress in removing

the barrier during the period beginning on the date the description is provided and ending 120 days after that date.

"(C) SPECIFICATION OF DETAILS OF ALLEGED VIOLATION.—The written notice required under subparagraph (B) must also specify in detail the circumstances under which an individual was actually denied access to a public accommodation, including the address of property, the specific sections of the Americans with Disabilities Act alleged to have been violated, whether a request for assistance in removing an architectural barrier to access was made, and whether the barrier to access was a permanent or temporary barrier.".

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect 30 days after the date of the enactment of this Act.

SEC. 5. MEDIATION FOR ADA ACTIONS RELATED TO ARCHITECTURAL BARRIERS.

The Judicial Conference of the United States shall, under rule 16 of the Federal Rules of Civil Procedure or any other applicable law, in consultation with property owners and representatives of the disability rights community, develop a model program to promote the use of alternative dispute resolution mechanisms, including a stay of discovery during mediation, to resolve claims of architectural barriers to access for public accommodations. To the extent practical, the Federal Judicial Center should provide a public comment period on any such proposal. The goal of the model program shall be to promote access quickly and efficiently without the need for costly litigation. The model program should include an expedited method for determining the relevant facts related to such barriers to access and steps taken before the commencement of litigation to resolve any issues related to access.

National Disability Rights Network Condemns the House Judiciary Committee Passage of the Americans with Disabilities Act (ADA) Education and Reform Act of 2017

For Immediate Release
September 8, 2017

Contact: David Card
202.408.9514 x122
press@ndrn.org

WASHINGTON – Yesterday, the House Judiciary Committee passed the misnamed Americans with Disabilities Act (ADA) Education and Reform Act of 2017 (H.R. 620) without a single Democratic vote. More than 27 years after the passage of the ADA, the committee's vote was not an attempt to reform or educate on the ADA, but a blatant attempt by Congress to say that it is ok to discriminate against people with disabilities by not making public accommodations accessible.

"Businesses that have not complied with the ADA within the last 27 years do not need a couple more months to come into compliance," said NDRN Policy Director Eric Buehlmann. "They have already shown a disdain to even try to accommodate potential customers with disabilities."

The passage of the ADA in 1990 was a compromise between the disability and business communities by only allowing lawsuits that fix the problem. No damages are permitted, but this Congress wants to roll back that compromise. Rather than helping make places more accessible, this legislation will make enforcement of the ADA tougher and treat the civil rights of people with disabilities different than other protected groups.

Abraham Lincoln once said, "laws without enforcement are just good advice." And with passage of H.R. 620 by the House Judiciary Committee, the Congress is trying to turn the ADA into just good advice.

For more information on this work go to NDRN's Save the ADA website.

Please see letter of opposition signed by 236 Civil Rights Organizations.

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The National Disability Rights Network (NDRN) is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and the Client Assistance Programs (CAP) for individuals with disabilities. Collectively, the Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

Press Kit

NDRN-at-a-glance

About NDRN

Executive Profiles

P&A Programs

Disability Etiquette

Find resources and tips for writing about, interviewing and interacting with people with disabilities.

click here...

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Washington, DC 20002
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CONSORTIUM FOR CITIZENS
WITH DISABILITIES

April 10, 2017

The Honorable Steve King
Chair, House Judiciary
Subcommittee Constitution and Civil Justice
2210 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Cohen
Ranking Member, House Judiciary
Subcommittee Constitution and Civil Justice
2404 Rayburn House Office Building
Washington, DC 20515

Re: ***UPDATED with more groups*** - CCD Rights TF Letter of Opposition to the Americans with Disabilities Act (ADA) Education and Reform Act of 2017 (H.R. 620)

Dear Chair King and Ranking Member Cohen:

The undersigned **223** members of the Consortium for Citizens with Disabilities (CCD) and allies of CCD write in opposition to the ADA Education and Reform Act of 2017 (H.R. 620). The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

H.R. 620 would create significant obstacles for people with disabilities to enforce their rights under Title III of the Americans with Disabilities Act (ADA) to access public accommodations, and would impede their ability to engage in daily activities and participate in the mainstream of society. Rather, the burden of protecting the right to access a public place is shifted to the person with the disability, who first has to be denied access; then must determine that violations of the law have occurred; then must provide the business with specific notice of which provisions of the law were violated and when; and finally, the aggrieved person with the disability must afford the business a lengthy period to correct the problem.

The bill's proponents purport to protect business owners from the burden of understanding and complying with rules designed to ensure that people with disabilities could access public accommodations, on the ground that this burden is too heavy for businesses. Yet *people with disabilities* are expected to shoulder this burden and to provide businesses with information about the specific legal obligations that they are

violating—*after* those individuals have been denied the access rights that Congress gave them decades ago. We know of no other law that outlaws discrimination but permits entities to discriminate with impunity until victims experience that discrimination and educate the entities perpetrating it about their obligations not to discriminate. Such a regime is absurd, and would make people with disabilities second-class citizens.

Almost 27 years ago, the ADA was carefully crafted as a bipartisan compromise to take the needs of covered entities, including the types of businesses covered by Title III, into account. Among the compromises reflected in the ADA was the absence of any damage remedy in Title III; only injunctive relief and attorney's fees are available for violations of this part of the law. The fact that, almost 27 years after enactment, there are still organizations, businesses, and companies who violate the law and deny access to people with disabilities suggests that businesses should be better educated about their legal obligations under the ADA—just as they are expected to be about the other legal obligations that they undertake in running a business—not that we should limit the rights of people with disabilities to participate in their communities.

Section 2 of this bill states that the bill was written in *consultation with ... and representatives of the disability rights community.* But H.R. 620 was not written in consultation with representatives of the disability rights community and it would create barriers to the civil rights for persons with disabilities that do not exist in other civil rights laws.

As was mentioned earlier, the ADA has been law for almost 27 years. By this time, business owners have had ample notice of the ADA's requirements and opportunity to remove barriers. If, after 27 years, a business has continued to not comply with the requirements of this legislation, why should a person have to wait more time for enforcement of their civil rights? Should an individual who is not allowed to enter a restaurant because of their race, gender or religion, have to wait before seeking to enforce their civil rights? Title III of the ADA already reflects a compromise that takes into account the concerns of businesses; it does not allow individuals to seek damages for violations of their civil rights. Now legislation like H.R. 620 seeks to further erode the civil rights of people with disabilities

We look forward to an opportunity to speak with you and your staff about our concerns. As H.R. 620 would erode the civil rights of people with disabilities, we must oppose this legislation. Please contact Dara Baldwin, Senior Public Policy Analyst, National Disability Rights Network (NDRN) with any questions or concerns at dara.baldwin@ndrn.org or 202-408-9514 ext. 102.

Sincerely,

Advance CLASS Inc.
American Association of People with Disabilities (AAPD)
American Association on Health and Disability
American Civil Liberties Union (ACLU)
American Council of the Blind (ACB)

American Psychological Association (APA)
Association of University Centers on Disabilities (AUCD)
Autistic Self Advocacy Network (ASAN)
Bazelon Center for Mental Health Law
Brain Injury Association of America
Center for Public Representation
Christopher & Dana Reeve Foundation
Council of Parent Attorneys and Advocates, Inc. (COPAA)
Disability Rights and Education Fund (DREDF)
Easterseals
Epilepsy Foundation
Institute for Educational Leadership (IEL)
Jewish Federations of North America
Justice in Aging
Learning Disabilities Association of America
Lutheran Services in America Disability Network
National Association of Councils on Developmental Disabilities (NACDD)
National Center for Learning Disabilities (NCLD)
National Council on Independent Living (NCIL)
National Disability Institute (NDI)
National Disability Rights Network (NDRN)
National Down Syndrome Congress (NDSC)
National Multiple Sclerosis Society
Paralyzed Veterans Association (PVA)
Parent2Parent USA
TASH
The Advocacy Institute
The American Foundation for the Blind (AFB)
The Arc
U.S. International Council on Disabilities (USICD)
United Cerebral Palsy (UCP)
United Spinal Association

Allies of CCD

9to5, National Association of Working Women
Ability 360
Ability1st is the Center for Independent Living of North Florida, Inc.
ACCESS for the Disabled, Inc.
Access Living
ADAPT (National)
ADAPT Montana
ADAPT of Texas

Alaska State Independent Living Council
APRIL
Arizona Center for Disability Law
Arizona Disability Coalition
Arkansas State Independent Living Council (ARSILC)
Atlantis Community, Inc.
Autism Women's Network
Black Women's Roundtable
BNICEH 'be nicer" (Black Network In Children's Emotional Health)
Boston Center for Independent Living
Brain Injury Alliance of Arizona
Brazoria County Center for Independent Living
Bronx Independent Living Services
Brooklyn Center for Independence of the Disabled
California Disability Alliance (CDA)
California Foundation for Independent Living Centers (CFILC)
Californians for Disability Rights
Center for Disability Rights
Center For Independence of Individuals with Disabilities
Center for Independent Living of the Keys
Children's Advocacy Institute
Coalition for Truth Independence
Communities Actively Living Independent & Free (CALIF)
Community Legal Aid Society, Inc.
Community Resources for Independent Living
Connecticut Legal Rights Project, Inc.
Dayle McIntosh Center
DC Advocacy Partners
DIRECT Center for Independence
Disabilities Resource Center of Siouxland
DisAbility Advocacy and Access Network, Inc.
Disability Network Southwest Michigan
Disability Policy Consortium of Massachusetts
Disability Power & Pride
Disability Rights Arkansas (DRAR)
Disability Rights Center - CA
Disability Rights Center – NH
Disability Rights Iowa (DRIA)
Disability Rights Maine (DRME)
Disability Rights Maryland (DRMD)
Disability Rights Mississippi (DRMS)
Disability Rights New Jersey (DRNJ)
Disability Rights Pennsylvania (DRPA)
Disability Rights Tennessee (DRTN)

Disability Rights Vermont (DRVT)
Disability Rights Washington (DRWA)
Disability Rights Wisconsin (DRWI)
Ecumenical Ministries of Oregon
Enterprise Community Partners
Faith Voices Arkansas
Families and Friends of Louisiana's Incarcerated Children
Family Equality Council
Florida Alliance for Assistive Services and Technology, Inc.
FORGE, Inc.
Fort Bend Center for Independent Living
FREED Aging & Disability Resource Connection
Grassroots Global Justice Alliance
Grassroots Global Justice Alliance
Green Think Tank for the Disability Community
Grounded Solutions Network
Housing Choice Partners
Houston Center for Independent Living
Idaho Federation of Families for Children's Mental Health
Idaho State Independent Living Council
IHSS Consumers Union
Illinois-Iowa Center for Independent Living
IMPRUVE (Independent Movement of Paratransit Riders for Unity, Vehicles, Equality)
Independence Associates, Inc.
Independence First
Independent Connection, Inc.
Independent Living Center of Hudson Valley
Independent Living Center of Southern California
Iowa Statewide Independent Living Council
Jewish Council for Public Affairs
Justice for Families
Juvenile Law Center
Kentucky Protection & Advocacy
Lakeshore Foundation
Leadership Conference on Civil and Human Rights
Legal Action Center
Little People of America
Living Independence Network Corp. (LINC)
Living Independently for Today and Tomorrow
Louisiana Center for Children's Rights
Maryland Alliance of Disability Commissions & Committees
Mayor's Office for People with Disabilities, City of Chicago
Mile High Connects
MommieActivist and son

National Action Network (NAN)
National Association for the Advancement of Colored People (NAACP)
National Association of Human Rights Workers
National Association of Social Workers/Texas Chapter
National Association of the Deaf (NAD)
National Bar Association (NBA)
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition for the Homeless
National Coalition of Mental Health Recovery (NCMHR)
National Coalition on Black Civic Participation
National Council of Churches
National Council of Jewish Women.
National Fair Housing Alliance
National Federation of the Blind
National Housing Law Project
National Juvenile Justice Network (NJJN)
National LGBTQ Task Force Action Fund
National Low Income Housing Coalition (NLIHC)
National Organization of Nurses with Disabilities (NOND)
National Youth Advocate Program, Inc.
Native American Disability Law Center, Inc.
NETWORK Lobby for Catholic Social Justice
New Jersey Parents Caucus, Inc.
New York Association of Psychiatric Rehabilitation Services (NYAPRS)
New York Association on Independent Living
New York State ADAPT
New York State Independent Living Council
North Dakota Protection & Advocacy Project
Northern West Virginia Center for Independent Living
Not Dead Yet
OHIO SILC
One Billion Rising
Oregon Walks
Paraquad
Pennsylvania Council for Independent Living
Pennsylvania Council of Churches
Pennsylvania Council of the Blind
Personal Attendant Coalition of Texas
Portlight Strategies
REACH Resource Centers on Independent Living-Fort Worth, Dallas, Denton & Plano, TX
Regional Center for Independent Living (Rochester, NY) All About You Homecare
Resource Center for Accessible Living

Rochester ADAPT
Services Maximizing Independent Living and Empowerment (SMILE)
Sign Faith Voices AR
SKIL Resource Center in Parsons, KS
South Carolina Christian Action Council
Southwestern Center for Independent Living (SWCIL)
Statewide Independent Living Council of Illinois
Summit Independent Living
Texas Disability Project/ REV UP Texas
The ADA Legacy Project
The Advocacy Center of Louisiana
The Advocrat Group
The Center for Independence of the Disabled
The Coalition for Juvenile Justice (CJJ)
The Daniel Initiative
The District of Columbia Center for Independent Living, Inc.
The Freedom Center, Inc.
The IMAGE Center of Maryland
The Independence Center
The League
The League for People with Disabilities
The Maryland Coalition of Families
The National Association of Counsel for Children
The National Association of Social Workers (NASW)
The National Crittenton Foundation
The Nebraska Statewide Independent Living Council
The North Country Center for Independence in Plattsburgh
The Partnership for Inclusive Disaster Strategies
The Reformed Church in America
The Starkloff Disability Institute
Transformative Justice Coalition
Union for Reform Judaism
United Way of the Ouachitas, Hot Springs, Arkansas
V-Day
Vermont Coalition for Disability Rights (VCDR)
Vermont SILC
Vermonters for Criminal Justice Reform
Virginia Council of Churches
W. Haywood Burns Institute
Washington State Independent Living Council (WA SILC)
West Virginia State Independent Living Center, Inc.
White Apple Institute
Wisconsin Coalition of Independent Living Centers, Inc.
Women Who Never Give Up

The Leadership Conference
on Civil and Human Rights

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202.466.3435 fax
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April 27, 2017

The Honorable Steve King
Chair, Subcommittee on the Constitution and Civil Justice
House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Steve Cohen
Ranking Member, Subcommittee on the Constitution and Civil Justice
House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

OPPOSE THE "ADA EDUCATION AND REFORM ACT OF 2017" (H.R. 620)

Dear Chairman King and Ranking Member Cohen:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 organizations to promote and protect the rights of all persons in the United States, we write to express our strong opposition to the ADA (Americans with Disabilities Act) Education and Reform Act of 2017 (H.R. 620).

The Leadership Conference believes in strong and vigorous enforcement of the ADA. Multiple bills have been introduced in Congress that seek to limit the power of the ADA and reduce compliance with the law. We oppose any such efforts, including H.R. 620, to limit the ability of people with disabilities to vindicate their rights in court.

H.R. 620 would impose a burdensome process before people with disabilities could file a civil action for an accessibility violation in a public accommodation case. Such restrictions on the ability of individuals to vindicate their rights do not exist for other protected classes who seek to access public accommodations. Moreover, these restrictions would undermine the compromise between the needs of business owners and people with disabilities that was crafted when the ADA was passed nearly three decades ago. H.R. 620 would upset this careful balance and dramatically shift the burden to access public accommodations from businesses to discrimination victims. The bill would remove incentives for businesses to comply with the law unless and until people with disabilities are denied access and submit the requisite notice. H.R. 620 would lead to the continued exclusion of people with disabilities from the mainstream of society and would turn back the clock on disability rights in America.

The Leadership Conference

For these reasons, we urge you to oppose the ADA Education and Reform Act of 2017. If you have any questions, please contact Mike Zubrensky, Chief Counsel and Legal Director, at zubrensky@civilrights.org or (202) 869-0380.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

The Civil Rights Division's Comments on the "ADA Education and Reform Act of 2017" (H.R. 620)

The Civil Rights Division, which administers and enforces the Americans with Disabilities Act, has various concerns regarding H.R. 620.

As further outlined below, the bill would direct the Department to take actions that are already a part of its mandate under the Americans with Disabilities Act (ADA). In addition, the proposed notice and cure provisions substantially change the balance Congress struck for private enforcement actions pursuant to title III of the ADA, and the Department already funds an innovative mediation program administered by the Division that is designed to promote access without resort to litigation. Moreover, the 30-day enactment period is not workable given the need for additional regulatory activity by the Department to effectuate some of the provisions of the bill.

I. **The Civil Rights Division currently engages in robust technical assistance** (Sec. 2). As described below, the Division's Disability Rights Section (DRS) currently operates a robust technical assistance program for entities covered by titles II and III of the ADA. As a result, the requirements of this Section of the proposed bill are largely duplicative of the work already being done.

- The Division's ADA Technical Assistance Unit already carries out the ADA's statutory charge (42 U.S.C. 12206) that the Department provide technical assistance to the more than seven million public accommodations and public entities that have responsibilities under titles II and III of the ADA.
    - Specific activities include the creation and dissemination of a vast array of technical assistance materials; operation of the nationwide toll-free ADA Information Line; operation of the Department's ADA Website (www.ada.gov); educational efforts that include presentations and training sessions to covered entities and individuals with disabilities; and outreach initiatives targeted to specific audiences, including businesses, state and local governments, people with disabilities, and under- and unrepresented minority groups and geographic locations.

- In FY 2016 and YTD FY 2017, the Department answered 97,000 calls to the ADA Information Line by ADA Specialists who assisted callers in applying the ADA to their own unique situations. A significant number of these calls came from places of public accommodation seeking guidance on barrier removal issues.

- The Department's ADA information website, www.ADA.gov, provides a central location for all of the Department's technical assistance materials on ADA compliance issues, including a large number of publications on barrier removal issues such as: a guide to Managing Accessible Features in Retail Establishments, an ADA Guide for Small Businesses, and a guide on Common ADA Errors and Omissions in New Construction

and Alterations. ADA.gov, which is operated by the Disability Rights Section and its staff, is a highly trafficked website. For example, in FY 2016 and YTD FY 2017, it had more than 30 million hits.

- The Department routinely conducts training and outreach activities throughout the country on important issues under the ADA like the ADA's barrier removal requirements, and also provides extensive training to state and local government entities.
    - The Department's training efforts include routinely partnering with the ADA National Network to support its training and outreach efforts. Funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) of the Department of Health and Human Services, the network consists of ten regional "ADA Centers" located throughout the United States and an "ADA Knowledge Translation Center." Each regional ADA Center provides information, guidance, and training on how to implement the ADA that focuses on its region's unique needs. This regional focus is critical to ensuring that ADA National Network services meet the needs of diverse populations and stakeholders throughout the country.
    - Both the Department's outreach and training efforts, and the ADA National Network, serve all sectors of society, including businesses, employers, state and local governments, architects, disability organizations and individuals with disabilities.
- The Division also funds and provides support for a comprehensive and innovative ADA Mediation Program, as discussed further below in Part III. The Mediation Program is a way for public accommodations and individuals with disabilities to resolve their ADA-based disputes without resort to investigation or litigation by the Department.

II. The notice and cure provisions of this proposed bill change the landscape of enforcement under the ADA for matters involving the barrier removal requirements.

- Public accommodations have been subject to the ADA's barrier removal requirements for more than 27 years ago. The ADA's barrier removal provisions, contained at 42 U.S.C. 12182(b)(2)(A)(iv), (v) and 28 C.F.R. 36.304-36.305, reflect the measured determination by Congress that for existing places of public accommodation, only those architectural barriers that are "readily achievable," i.e, easily accomplishable without significant difficulty or expense, must be removed to avoid discrimination on the basis of disability. The "readily achievable" defense is available to all public accommodations that are subject to barrier removal actions.
    - The notification provisions do not allow public accommodations to avail themselves of the ADA's defenses. Instead, the notification provisions require a "form over substance" process that at the very least delays access to the ADA's defenses, or overrides the existence of these defenses altogether, requiring persons

with disabilities and public accommodations to proceed down a path of procedure and for those public accommodations to potentially make changes to their facilities that would not be required under the ADA.

- The proposed notice and cure process would also unnecessarily limit individuals' abilities to obtain much-needed barrier removal in a timely manner by imposing additional requirements that may not result in the collaborative process that the proposed bill intends, but may instead result in additional areas of litigation.

    - Both the notice requirements for the person with a disability and the response requirements from the public accommodation involve a series of steps that may not be clear. Either regulatory action by the Department or judicial intervention may be required to define these terms and concepts.

    - Moreover, the addition of the notice and cure procedures may prevent individuals with disabilities from availing themselves of the ADA's statutory right not to engage in a "futile gesture" before asserting their rights under the law. Specifically, the notice requirements to set out "circumstances under which an individual was actually denied access;" and the requirement that a "request for assistance in removing an architectural barrier" be made seem to be the specific sorts of "futile gestures" that the ADA does not require.

    - The proposed notice and cure procedures also include requests for information by a person with a disability that may not be known and ultimately, do not matter. For example, the ADA regulations already provide that temporary interruptions to access due to maintenance and repairs are not considered to be architectural barriers to access. *See* 28 CFR 36.211.

    - The notice and cure provisions may prevent an individual with a disability from obtaining rapid relief. Section 3 gives public accommodations up to 180 days (60 days to respond to an initial notice and another 120 days to actually make any progress toward removing the barrier). For individuals with disabilities who live in small towns or remote areas of the country and have limited access to alternative places of public accommodation that may be more accessible, like hospitals, doctors offices, funeral homes, and grocery stores, this additional time could be a significant problem.

- Because the notice and cure section is to be placed in the general enforcement provisions of the ADA, and because it applies to civil actions under sections 302 and 303 based on the failure to remove architectural barriers, it appears to apply to the Department of Justice. Notice and cure obligations for the Department of Justice are unnecessary because the Department already has the obligation to use alternative means of resolution when possible to resolve disputes under the ADA. 42 U.S.C. 12212. In addition, the Department is required to comply with Executive Order 12988 that requires the Department to attempt to settle disputes and provide notice before filing suit under civil rights laws.

III. **The Department of Justice already funds a comprehensive and innovative ADA Mediation Program** (Sec. 5). While the proposed bill requires that the Judicial Conference of the United States develop a model mediation program for barrier removal, in fact, the Department has funded and supported such a program under the ADA for many years.

- Since 1994, the ADA Mediation Program has helped the Department to more quickly resolve ADA complaints effectively, efficiently, equitably, and voluntarily using an alternative dispute resolution approach, as encouraged by Title V of the ADA.

- The ADA Mediation Program is a partnership between the Federal government and the private sector. About half of all referred complaints allege discrimination in the area of barrier removal, and others address program access, effective communication, and modifications of policies, practices, and procedures.

- The ADA Mediation Program has achieved remarkable results, providing a convenient alternative to litigation that resolves issues between public accommodations and local community members with disabilities that meets everyone's needs and preserves, rather than severs, the relationship between the parties.

    - Mediation is voluntary for both the person with a disability and the public accommodation, and places responsibility on the shoulders of both parties, who themselves control both the process and the outcome of the mediation.

    - More than 6,000 complaints filed with the Department alleging ADA violations have been referred to the program for mediation. Ninety percent of these have involved public accommodations under title III, and about half have involved barrier removal issues

    - Seventy-seven percent of complaints mediated have been successfully resolved.