



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable Thomas R. Carper
United States Senate
513 Hart Building
Washington, DC 20510

RE: ADA "Pool" Legislation

Dear Senator Carper:

I write on behalf of the State Council for Persons with Disabilities (SCPD) to oppose multiple pieces of federal legislation which address the accessibility of pools. First, H.R. 4256 and S. 2390 [Pool Safety and Accessibility for Everyone (Pool SAFE) Act] prohibits any suit brought for violations of the revised regulations of the Americans with Disabilities Act of 1990 concerning the requirements to provide an accessible means of entry to pools for places of public accommodation and commercial facilities that occurred on or after March 15, 2012, and before the date that is one year after enactment of this Act. In addition, it bars the Attorney General (AG) from investigating or initiating a compliance review of an alleged violation occurring during such period. It requires dismissal of any suit brought against a place of public accommodation or commercial facility for such a violation brought on or after March 15, 2012, and before the date of enactment of this Act. Finally, the proposed legislation directs the AG to revise accessibility regulations to provide that a place of public accommodation or a commercial facility is in compliance with the requirement to have an accessible means of entry to a pool when such a place or facility uses a portable pool lift on request, even if: (1) installation of a permanent lift is readily achievable, and (2) a single portable pool lift is used for multiple pools.

There is additional related legislation currently pending. H.R. 4200, S. 2186 and S. 2191 prevent the USDOJ from administering or enforcing accessibility regulations related to pools, without qualification as to time or content.

As background, in 2010 the USDOJ published comprehensive revisions to the ADAAG. One of the more controversial revisions relates to the requirements for newly constructed and existing pools. There are rules for larger and smaller pools, including spas and hot tubs, as well as wave pools and "lazy rivers." These requirements, which include installation of permanent lifts, were to go into effect March 15, 2012. The permanent lift requirement was not issued until January 2012. The proposed legislation essentially limits the enforcement of United States Department of Justice regulations regarding the accessibility of swimming pools in places of public accommodation. The bills extend the compliance date for the regulations for one year and

modify the lift requirement to allow for temporary lifts that can be shared between pools at the same facility.

In summary, SCPD strongly opposes the legislation, not only because of the content, but also because of the way in which it could undercut the DOJ's ability to enforce the ADA and the ADA itself. This legislation would certainly be a disturbing precedent and would encourage any special interest group representing entities covered by the ADA to seek out legislation that excludes them from enforcement. It would badly undercut the scope and effectiveness of the ADA. The U.S. Department of Justice (DOJ) has already extended the timeline for compliance in this context. On May 18, 2012, the DOJ issued a final rule, which extends the compliance date to January 31, 2013 for the application of the 2010 ADA Standards for Accessible Design to existing swimming pools, wading pools, and spas (pools built before March 15, 2012). The legislation is simply another way to put pressure on the DOJ to reinterpret (again) the standards for pools. The additional time for comment will allow the DOJ to publish standards that only address the concerns of pool owners and operators, and not people with disabilities.

Thank you for your consideration.

Sincerely,



Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

P&I/fed leg-regs/ada pool legislation 7-30-12