

JEWISH DISABILITY ADVOCACY DAY

ON CAPITOL HILL, WASHINGTON DC SPONSORED BY THE JEWISH DISABILITY NETWORK



The Jewish Federations®
OF NORTH AMERICA

THE STRENGTH OF A PEOPLE.
THE POWER OF COMMUNITY.



PRESERVING THE AMERICANS WITH DISABILITIES ACT

Please reach out to your senators and representatives and urge them to oppose H.R. 620, the Americans with Disabilities Act (ADA) Education and Reform Act. H.R. 620 would undermine a key part of the ADA and lead to a less accessible society.

Background

The Americans with Disabilities Act (ADA) was enacted in 1990 with wide bipartisan congressional support and the approval of President George H.W. Bush. For more than 26 years, this seminal legislation has protected the civil rights of people who have physical, intellectual and mental disabilities and ensures that all Americans have full access to, and can fully participate in, all aspects of society.

The ADA requires the removal of barriers that deny individuals with disabilities equal opportunity and access to jobs, public accommodations, government services, public transportation, and telecommunications. This law has been good for businesses and the economy. It allows millions of people with disabilities to frequent businesses to which they previously could not access due to architectural barriers, and offers these businesses a vast new clientele of 57 million Americans with disabilities.

Under the ADA, if people with disabilities feel that their rights are being violated because they cannot physically access a business, they now have the right to file a complaint with the U.S. Department of Justice (DOJ). Many of these complaints are resolved by mediators without litigation ever being filed.

In a compromise with the business community agreed to as part of the ADA, when a complaint is filed alleging an ADA violation, the complainant can seek injunctive relief (requiring the business to fix the ADA violation) and the person with the disability is entitled to recoup attorney's fees, but plaintiffs are not entitled to civil damages under Title III of the law. In a few states, legislatures have decided to expand the reach of the ADA and allow civil damages, as is permitted by the Tenth Amendment.

Proposed Legislation

On January 25, 2017 Representative Ted Poe (R-TX) introduced H.R. 620, the ADA Education and Reform Act of 2017. Senator Jeff Flake (R-AZ), lead sponsor of identical legislation introduced in the 114th Congress (S. 3446), is expected to soon introduce a companion bill in the Senate.

H.R. 620 would impose several additional burdens on plaintiffs before they can file a civil action for an accessibility violation in a public accommodation case. **Most egregiously, H.R. 620 improperly shifts the burden of ensuring compliance with the ADA to individuals with disabilities who are being denied access to public accommodations due to business owners' failures to comply with the ADA.**

- H.R. 620 would make it the responsibility of the individual who is being denied access to a store, restaurant, hotel or other commercial establishment to tell business owners that their facilities do not comply with federal disability laws. This legislation would then provide the business with two months to explain to the person with the disability how it will fix a problem that never should have occurred in the first place and another four months to fix the problem. During those six months, the business legally would remain out of compliance with existing law and inaccessible to people with disabilities. Only after 180 days could a person with a disability exercise their legal rights under the ADA by filing a complaint with DOJ.
- The 180-day waiting period is particularly problematic if an individual with a disability has to wait months to be able to access a business essential to activities of daily living such as a laundromat, doctor's office or supermarket. No other member of a constitutionally protected class has to wait to exercise their legal rights alleging discrimination, and people with disabilities should not be forced to wait for months to enforce their civil rights under the ADA.
- H.R. 620 also would instruct the Judicial Conference of the U.S. to develop a mediation program to help resolve ADA disputes without going to court, but there is no need for this provision. As noted on DOJ's website, "In enacting the ADA, Congress specifically encouraged the use of alternative means of dispute resolution, including mediation, to resolve ADA disputes," and DOJ already has a program in place to refer potential litigants in ADA cases to mediation.
- H.R. 620 calls for education by the DOJ to inform state and local officials about the ADA, but there are already extensive efforts, including some provided by DOJ and technical assistance centers originally created by the ADA, to educate businesses about their obligations under the law.

We believe in strong and vigorous enforcement of the ADA, and oppose legislation that would limit the power of the ADA and reduce compliance with the law. H.R. 620 is an attempt to fix a law that is not broken. In doing so, this proposed legislation would roll back what is widely recognized as one of the most important civil rights achievements of the past 30 years -- making America more inclusive and accessible to people with disabilities.

For further information, please contact Aaron Kaufman, Senior Legislative Associate, at The Jewish Federations of North America, 202-736-5865 or Aaron.Kaufman@JewishFederations.org.

The Jewish Federations of North America represents 148 Jewish Federations and over 300 Network communities, which raise and distribute more than \$3 billion annually for social welfare, social services and educational needs. The Federation movement, collectively among the top 10 charities on the continent, protects and enhances the well-being of Jews worldwide through the values of Tikkun Olam (repairing the world), Tzedakah (charity and social justice) and Torah (Jewish learning).