



## Much Ado About the ADA

Some business owners complain that they're being sued before they have a chance to comply with the law.

By Evelyn Beck  
for Office.com

**June 16, 2000** – Hollywood tough guy Clint Eastwood is taking on the Americans with Disabilities Act (ADA). Over the past three years, a woman who uses a wheelchair has spent \$500,000 suing Eastwood and his hotel, the Mission Ranch in Carmel, Calif., for allegedly violating the ADA. If she wins, the remodeled resort must pay for further modifications – and her legal bill.

In May, Eastwood testified before Congress in support of a bill that would amend the ADA to require that plaintiffs notify businesses that they are in violation of the ADA and give them 90 days to comply before they can be sued. Supporters like Eastwood say the bill – the ADA Notification Act (HR 3590) – is necessary to keep thousands of small businesses that don't well understand the ADA from being swamped with attorneys' costs. Opponents say that this new proposal would weaken the most important civil rights legislation in decades.

HR 3590 is still in subcommittee, with no vote scheduled and little likelihood of passage, according to Elizabeth Nicolson, legislative director for Rep. Mark Foley, R-Fla., who is sponsoring the amendment. "What we had pushed for most was to have that hearing," Nicolson says, adding that there is probably not enough time left in this legislative session to move the bill forward.

In Foley's 16th Congressional District, which extends from Jupiter north to St. Lucie, Fla., two lawyers – Robert Bogdan of Broward County and Lance Wogalter of Palm Beach – filed what Foley calls "a blizzard of lawsuits" against dozens of businesses on behalf of a disabled child unable to enter such establishments as a liquor store and a pawn shop. "I call it legal extortion," Foley told the House in his testimony.

### Limited Access

But Bogdan, who is part of a group known as Citizens Concerned about Disability Access Inc., said that he initiated the suits against 60 or 70 businesses on behalf of his neighbor and her handicapped child because "they were frustrated that so many places were not complying with the ADA." The fact that the child would never enter some of those businesses is "probably accurate," he says, adding, "Foley thinks this is designed as a moneymaker. But the goal is to get these businesses to comply."

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Bogdan says that before the attention generated by these lawsuits, letters sent by the disabled "were routinely ignored by businesses (not in compliance). These lawsuits have raised consciousness," although Bogdan insists that he often does give businesses advance notice before suing.

**Next page: "It cost us less than \$100 to correct the infraction and \$2,000 for attorneys' fees."**

Most of the violations in dispute were minor, according to legislative director Nicolson. If alerted to the problems, she says, "Most small stores, I'm sure they'd immediately fix them." She cited such noncompliance as failure to put in or repaint a sign or to install a different door latch – updates that usually cost under \$200. But attorneys' fees were much higher – thousands of dollars per complaint.

It is those legal bills that have small business owners concerned. In Congressional hearings for the bill on May 18, a number of people testified about its impact on their lives and businesses.

Donna M. Batelaan and David Batelaan, owners of a mobility equipment business in Florida, couldn't believe that they had been sued. "We employ two people who use wheelchairs, we ourselves are in wheelchairs and all of our customers have mobility limitations," they testified. "We had not painted the lines and posted a sign on the one 'handicapped' spot that is required by the ADA. An attorney from New Jersey, without notice, filed a

suit against us. It cost us less than \$100 to correct the infraction and \$2,000 for attorneys' fees."

Terri Lynn Davis, a California businesswoman, was sued by a customer who had visited a year earlier. "I was told that she was damaged because we did not have an adequate number of parking spaces for the disabled as compared to regular spaces," Davis told Congress. "We were supposed to have seven and we only had six. She would not state that she could not park, but only that we did not have enough handicapped spaces."

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Added Davis: "We had absolutely no idea that we were not in compliance with the ADA, and had no problem making the corrections. We would have been happy to do that long before we were the target of a lawsuit." The case cost Davis – a volunteer for United Cerebral Palsy in San Diego – \$1,200 in physical alterations to her commercial office and retail center and \$7,000 in legal expenses.

#### Drive-by Suits

Christopher G. Bell, the managing partner of a Minneapolis law firm, calls the Florida lawsuits "drive-by suits" and cites one case in which he defended a client sued for ADA noncompliance only because "the toilet paper dispenser in the men's room was an inch off the accessibility standards." He said that in South Florida, four advocacy groups for the disabled have filed 112 lawsuits since the beginning of the year.

**Next page: "These cases are money losers."**

While no figures are available nationally on the number of such suits filed or the total costs footed by small-business owners, legislative director Nicolson says that in Florida alone there have been thousands of lawsuits involving ADA noncompliance, some of them clearly "absurd."

But Andrew Levy, a trial lawyer in Baltimore who uses a wheelchair, says he has yet to come across a frivolous claim. "The reality in my experience," he says in a telephone interview from his office at Brown, Goldstein & Levy, "is gross violations of the law everywhere you look: storefront after storefront with one or two steps nobody's bothered ramping. People just are not bothering to lift a finger."

And from a lawyer's point of view, he says, "These cases are money losers. You only get paid if you win. And judges are not handing out money." Levy says his fee of \$265 per hour is sometimes reduced by the presiding judges, who typically review attorneys' fees if these cases reach trial.

Levy thinks the ADA Notification Act is a terrible idea. "Title III is already a fairly weak part of the ADA because it doesn't have provisions for damages," he says. "All they (businesses) can be made to do is fix it (the violation). If you also create a notice provision, it means that absolutely no one needs to comply. There's no incentive to comply."

"I do not question the motives of the people who are supporting this amendment," Levy said in his testimony to Congress. "But I am positive that its passage will turn back the clock more than a decade, and continue the historic exclusion of people with disabilities from the mainstream of society."

Those pushing for HR 3590 argue that small businesses do not receive enough guidance about their ADA responsibilities. "The building code is enforced on the federal level but not on the local level," says legislative director Nicolson. "The average person, to open a store, you go to the local town hall. You're told about the fire and building codes. They say, 'Fine, you're set to go.' No one's telling you there's another law you have to comply with."

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## Complying with the ADA

The Americans with Disabilities Act is complex. But with the right information, you can stay out of court.

*By Evelyn Beck  
for Office.com*

**June 16, 2000** – The ADA requirements are complex. But there are sources to help explain it.

"Many critics (of this amendment) are intimately involved in issues in the disability community," says Elizabeth Nicolson, legislative director for Rep. Mark Foley, R-Fla., who is sponsoring the ADA Notification Act. "But if you're not involved, you don't know the specific requirements – the width a door has to be, the slope of a ramp."

The requirements are precise – but are also clearly explained in available literature. For example, doorways must be at least 36 inches wide and must feature hardware that is easily maneuvered; a round doorknob, for example, is inaccessible for someone with arthritis, but a lever handle would meet ADA requirements. Entrances must be accessible; if this is accomplished with a ramp, its slope must be no greater than 1:20. The area next to shelves must be at least 36 inches wide, with a 60 x 60 inch space for turning. Counters with a cash register must be at least 36 inches long and no more than 36 inches high.

Help is available. For new construction, the ADA offers a checklist that gives specific requirements about the parking and loading zones, exterior routes, building entrances and lobby, interior routes, public/common use restrooms, interior signs, food service areas, guest rooms and suites, and operating issues such as the availability of a TTY for the deaf.

There is also an ADA guide for small businesses that deals with the removal of architectural barriers and requirements about parking, signs, entrances (including door handles), shelves and maneuvering space, turnstiles, sales and service counters, seating and tables, and communication with customers. The site also explains available tax credits and tax deductions for business owners making modifications for compliance. A compliance manual is available, and questions can be directed to the toll-free ADA Information Line at (800) 514-0301.

It should also be noted that the ADA does not require small businesses to make any modifications to existing buildings that are not "readily achievable" or that would cause an "undue burden."

Everyone agrees that more assistance and more education are needed for business owners. One suggestion is that the existing national network of Centers for Independent Living, established by the Rehabilitation Act of 1973, might be charged with helping small businesses to understand what they must do to become ADA compliant.

Others call for increased community education, and even additional tax deductions and tax credits for small-business owners to encourage compliance.

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