May 3, 2017

All Members (personalized)
Texas House of Representatives
POB 2910
Austin, TX 78768

Please Support HB 1463 by Smithee
Stop Harassment of Small Businesses by Fake ADA Lawsuits

Dear Representative:

HB 1463 deals with a new form of lawsuit abuse: so-called “drive-by” lawsuits against restaurants, convenience stores, neighborhood banks, and other businesses for alleged violations of the Americans With Disabilities Act (ADA). Under this legal business model, attorneys send demand letters to Texas businesses threatening to sue them under the ADA if they don’t pay a specified “settlement” amount. Often these letters don’t specify particular violations or give the business any notice of violations that may require correction. As a recent “60 Minutes” story on ADA drive-by lawsuits also revealed, some lawyers generate demand letters after little more than a Google Earth search for businesses in certain areas. This egregious conduct offends not only basic ethical principles, but it dishonors the very people whom the ADA is designed to assist.

While some businesses may indeed have technical or inadvertent violations of the ADA, the law should never be used to extort money by threatening litigation with false and misleading demand letters. Instead, businesses should have the opportunity to correct legitimate violations of accessibility standards before having to hire a lawyer. HB 1463 accomplishes this common-sense result by requiring a person to give 60 days’ notice to a business of specific violations prior to filing a lawsuit. If the business fails to correct the violations in that time, the lawsuit may go forward.

HB 1463 does not in any way affect the ability of a person to bring suit under federal law for violations of the ADA. The federal ADA pre-empts state law, and nothing in HB 1463 attempts to change this result. Instead, HB 1463 amends the state law version of the ADA (Chapter 121, Human Resources Code) to provide for pre-suit notice and a 60-day right to cure.

HB 1463 thus assures that Texas businesses have a reasonable opportunity to correct violations that could subject them to damages under state law, while deterring the outrageous practice of frivolous and extortionate “drive-by” lawsuits.

Regards,

Carol Sims
Executive Director

Lisa O. Kaufman
General Counsel

George S. Christian
Senior Counsel

Ex officio
Red McCombs
McCombs Enterprises
Ralph Wayne
Ruben Martin
Martin Resource Management Corp.
Please SUPPORT HB 1463 by Smithee – SB 827 by Seliger
Stop Harassment of Small Businesses by Fake ADA Lawsuits

In recent years, business owners have seen a sharp increase in frivolous lawsuits. These so-called "drive-by" lawsuits against restaurants, convenience stores, hotels, neighborhood banks, and other businesses for alleged violations of the Americans With Disabilities Act (ADA). Under this legal business model, attorneys send demand letters to Texas businesses threatening to sue them under the ADA if they don’t pay a specified “settlement” amount. Often these letters don’t specify particular violations or give the business any notice of violations that may require correction. As a recent “60 Minutes” story on ADA drive-by lawsuits also revealed, some lawyers generate demand letters after little more than a Google Earth search for businesses in certain areas. This egregious conduct offends not only basic ethical principles, but it dishonors the very people whom the ADA is designed to assist. Further, these threatening lawsuits don’t actually address compliance with the ADA.

- This bill requires a complainant to send a business a notification of its intent to sue under the state Americans with Disabilities Act, stating the specific alleged violation.
- The bill then gives the business owner 60 days to cure the alleged violation before the complainant may commence the lawsuit.
- The bill prohibits attorneys from demanding settlement amounts in the initial alleged violation letter.
- Contrary to some claims about the bill, HB 1463 does not in any way affect the ability of a person to bring suit under federal law for violations of the ADA. HB 1463 amends the state law version of the ADA.

This bill is good public policy because it will encourage compliance with the ADA, while discouraging lawyers from simply shaking down small businesses for money.

Please vote FOR HB 1463

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