

114TH CONGRESS
2D SESSION

S. 3446

To amend the Americans with Disabilities Act of 1990 regarding remedies and procedures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2016

Mr. FLAKE (for himself and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Americans with Disabilities Act of 1990 regarding remedies and procedures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ADA Education and
5 Reform Act of 2016”.

6 **SEC. 2. COMPLIANCE THROUGH EDUCATION.**

7 From amounts made available to the Disability
8 Rights Section of the Department of Justice as of the ef-
9 fective date of this Act, the Disability Rights Section of
10 the Department of Justice shall, in consultation with prop-

erty 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 guidance about remediation for potential violations of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

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

1 that such person is about to be subjected to dis-
 2 crimination in violation of section 303. Nothing
 3 in this section shall require a person with a dis-
 4 ability to engage in a futile gesture if such per-
 5 son has actual notice that a person or organiza-
 6 tion covered by this title does not intend to
 7 comply with its provisions.

8 “(B) BARRIERS TO ACCESS TO EXISTING
 9 PUBLIC ACCOMMODATIONS.—A civil action
 10 under section 302 or 303 based on the failure
 11 to remove an architectural barrier to access into
 12 an existing public accommodation may not be
 13 commenced by a person aggrieved by such fail-
 14 ure unless—

15 “(i) that person has provided to the
 16 owner or operator of the accommodation a
 17 written notice specific enough to allow such
 18 owner or operator to identify the barrier;
 19 and

20 “(ii)(I) during the period beginning on
 21 the date the notice is received and ending
 22 60 days after that date, the owner or oper-
 23 ator fails to provide to that person a writ-
 24 ten description outlining improvements
 25 that will be made to remove the barrier; or

1 “(II) if the owner or operator provides
2 the written description under subclause (I),
3 the owner or operator fails to remove the
4 barrier or to make substantial progress in
5 removing the barrier during the period be-
6 ginning on the date the description is pro-
7 vided and ending 120 days after that date.

8 “(C) SPECIFICATION OF DETAILS OF AL-
9 LEGED VIOLATION.—The written notice re-
10 quired under subparagraph (B) must also speci-
11 fy in detail the circumstances under which an
12 individual was actually denied access to a public
13 accommodation, including the address of the
14 property, the specific sections of this Act al-
15 leged to have been violated, whether a request
16 for assistance in removing an architectural bar-
17 rier to access was made, and whether the bar-
18 rier to access was a permanent or temporary
19 barrier.”.

20 **SEC. 4. EFFECTIVE DATE.**

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

1 **SEC. 5. MEDIATION FOR ADA ACTIONS RELATED TO ARCHI-**
2 **TECTURAL BARRIERS.**

3 The Judicial Conference of the United States shall,
4 under rule 16 of the Federal Rules of Civil Procedure or
5 any other applicable law, in consultation with property
6 owners and representatives of the disability rights commu-
7 nity, develop a model program to promote the use of alter-
8 native dispute resolution mechanisms, including a stay of
9 discovery during mediation, to resolve claims of architec-
10 tural barriers to access for public accommodations. To the
11 extent practical, the Federal Judicial Center should pro-
12 vide a public comment period on any such proposal. The
13 goal of the model program shall be to promote such access
14 quickly and efficiently without the need for costly litiga-
15 tion. The model program should include an expedited
16 method for determining the relevant facts related to such
17 barriers to access and steps taken before the commence-
18 ment of litigation to resolve any issues related to access.

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