



Senate Committee on Judiciary

Testimony in Support of Senate Bill 258

Presented by Eric Stafford, Vice President of Government Affairs, Kansas Chamber

Josh Ney, Partner, Kriegshauser Ney Law Group

Monday, March 6, 2023

Madam Chair and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. Appearing with me is Josh Ney, law partner of Ryan Kriegshauser who serves as private counsel to the Kansas Chamber and can speak to the technical aspects of this legislation. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state. We appreciate the opportunity to testify in support of Senate Bill 258, a bill that unfortunately has been introduced as Kansas businesses are being targeted for allegedly having websites not in compliance with the Americans with disabilities act.

According to the Society for Human Resource Management, since 2013 "California's 5,930 filings accounted for over half of the total nationwide and more than the other 49 states combined. New York was second with 2,774 lawsuits, and Florida was third with just over 1,050 cases." Attached as Exhibit A, is an article from the Institute for Legal Reform describing these lawsuits and 320% increase in these lawsuits since 2013.

We believe these cases are not genuine in their desire to find a solution to a problem of website compliance. These are repeated claims where small businesses appear to be randomly and geographically targeted in hopes of reaching multiple settlements.

SB 258 is the second bill the legislature has considered on this subject. Back in 2017, financial institutions were early targets of ADA website compliance litigation, and the legislature passed Senate Bill 50 creating the definition of the unauthorized practice of law. Unfortunately, that law is not enough to deter behavior of unfairly targeting businesses, or creating a cause of action against law firms filing multiple lawsuits outside of Kansas against businesses in our state.

We believe Senate Bill 258 will offer protections against Kansas businesses who are unfairly targeted for ADA compliance issues and creates a mechanism by which the abusive practices can come to an end while still offering protections for plaintiffs with legitimate claims.

Thank you for the opportunity to testify in support of Senate Bill 258, and I am happy to answer any questions at the appropriate time.



How Small Businesses are Targeted with Abusive ADA Lawsuits

The American with Disabilities Act (ADA) was enacted in 1990 to protect people with disabilities from discrimination in all areas of public life, like work, school, state and local governments, and...

Published

October 12, 2022

Share



Newsletter

Subscribe

The American with Disabilities Act (ADA) was enacted in 1990 to protect people with disabilities from discrimination in all areas of public life, like work, school, state and local governments, and other places of public use, such as stores, banks, theaters, daycare centers, and restaurants.

We can all agree that the ADA is an important law to help those with disabilities fully participate in society. Unfortunately, plaintiffs' lawyers and serial filers have discovered loopholes in the law to capitalize on at the expense of many small businesses-hurting our economy and damaging the integrity of the ADA.

According to **data** collected by the law firm Seyfarth Shaw, ADA lawsuits have increased by 320% since 2013. Many of these lawsuits are brought against small businesses who are specifically targeted because they have limited means to defend themselves.

Why Are Small Businesses Targeted by Plaintiffs' Lawyers?

Small businesses are often unaware they're in violation of the ADA and making fixes or monitoring laws around old or historic buildings, streets, or digital assets, like a website, may be nearly impossible due to zoning regulations or not having staff, who are subject matter experts due to budgetary constraints, as a few examples. According to **Courthouse News**, Hon's Wun-Tun House in San Francisco was sued in March 2021, because their dining tables were not wheelchair-accessible, even though they were closed for sit-down service and only offered takeout. A latte shop was hit with a similar boilerplate ADA lawsuit by the same plaintiffs' law firm.

In Alameda, California an entire block of businesses became the target of ADA violation claims, including Lola's Chicken Shack. The plaintiffs sued Lola's for a lack of accessible outdoor tables and a high front door threshold. The owner of Lola's discovered that 31 other businesses near and within the same block of his restaurant were being sued using the same boilerplate claims. Listen to Mark, owner and operator of Lola's, describe his experience in the video below.

Abusive ADA Lawsuits Flooding Cali. Small Bu...



Mark hired three separate inspectors to assess Lola's Chicken Shack violations. None could agree on what, if anything, Lola's had done wrong. The confusion over specific violations made it impossible for the restaurant to provide any remedies to the ADA lawsuit claims.

This **common strategy** tends to involve plaintiffs' lawyers or plaintiffs driving around to various locations and taking measurements to see if their businesses are ADA-compliant. Often, by the time a small business owner is notified of their violation, it is too late, and they aren't given an opportunity to understand and address the claim-mainly because the statute provides for attorneys' fees, which creates a monetary incentive for plaintiffs' lawyers to quickly file claims instead of notifying business owners that they are not in compliance with the ADA.

Law firms know that many small businesses don't have the time or resources to take a lawsuit through litigation and will likely pay to settle the case. In this case, Lola's was sued by a serial plaintiff because their ramp was allegedly not up to code, and they did not have an ADA-compliant table outside. The plaintiff, an attorney who happens to be quadriplegic, has filed hundreds of other similar lawsuits against businesses in the area.

Business owners should not have to operate in fear of being surprised with an abusive ADA lawsuit. While there are steps that business owners can take to follow ADA compliance, it is important that we hold serial plaintiffs accountable for turning a lawsuit into a lucrative industry.

ADA Website Compliance is the Latest Tactic Used by Plaintiff's Lawyers

Digital accessibility laws leave much uncertainty and confusion for business owners, and plaintiff's lawyers are taking advantage of this situation. In 2020, more than 2,500 lawsuits were filed alleging that websites or mobile apps weren't accessible to blind users, **according to Seyfarth Shaw**. The study showed that many plaintiff's firms file hundreds of cookie-cutter

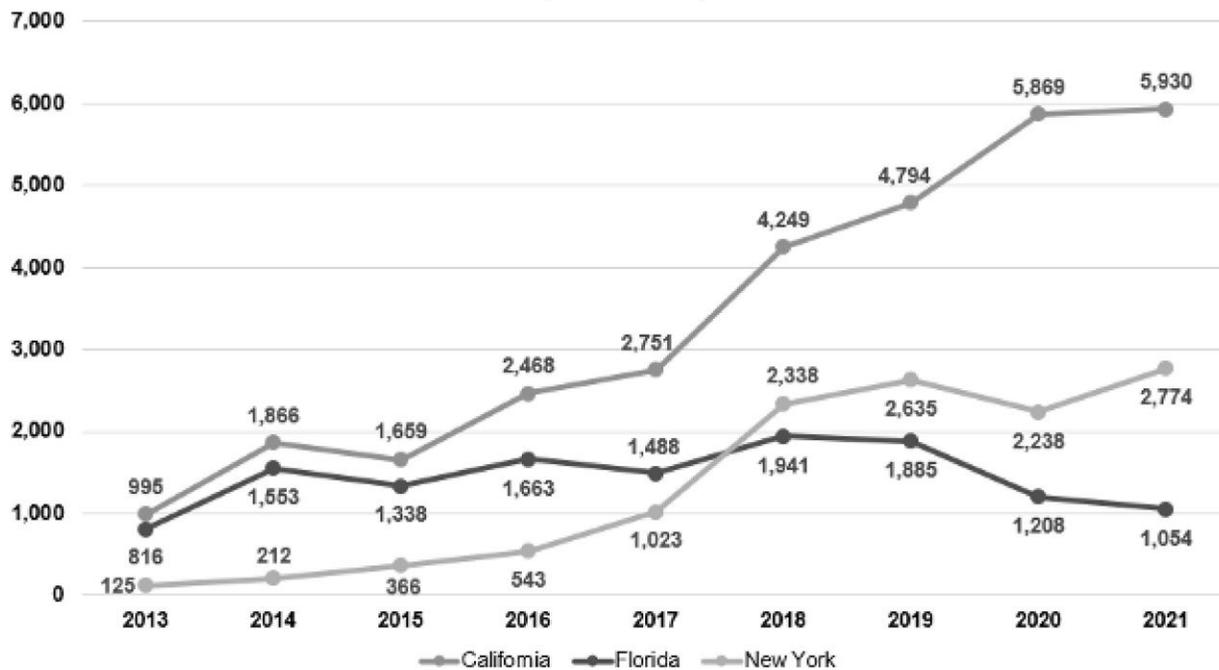
website compliance lawsuits. In addition, according to the American Bar Association, website and mobile app accessibility lawsuits have made up roughly a fifth of all ADA filings in federal courts since 2018.

The U.S. Department of Justice recently released guidance on how state and local governments and businesses that are open to the public can make sure their websites are accessible to people with disabilities.

Which States Have the Most ADA Lawsuits?

Between 2013-2021, California, New York, and Florida had the most ADA lawsuits filed. In 2021, nearly 6,000 lawsuits were filed in California, and the serial plaintiffs who sued Lola's Chicken Shack were responsible for filing more than 1,000 lawsuits since 2020. In 2020, over 85% of all website accessibility lawsuits occurred in these three states.

California, New York, and Florida ADA Title III Federal Lawsuits (2013-2021)



Source: Seyfarth Shaw Analysis, February 2022.

It is evident that in many ADA cases, plaintiffs' lawyers are prioritizing monetary benefits over ADA compliance. The good news is some states are taking notice. A federal judge in California has imposed additional evidentiary requirements on a plaintiffs' firm in at least 35 ADA lawsuits, according to Law.com. The firm must provide evidence that the client plans to return to the business and that the client visited the business to begin with. In New York, an attorney involved in at least 300 ADA lawsuits plead guilty for fraudulent lawsuits that brought in \$900,000 in attorney's fees. States and the federal government should take action to protect small businesses by cracking down on plaintiffs' firms that use cookie-cutter ADA lawsuits.