The United States House of Representatives recently passed a bill aimed at stemming the floodtide of Americans with Disabilities Act (ADA) lawsuits brought by a small number of serial plaintiffs. The bill, the ADA Education and Reform Act of 2017 (H.R. 620), imposes a notice requirement and would allow businesses a grace period to cure alleged accessibility barriers before a lawsuit could be filed. Although not specifically aimed at particular type of ADA lawsuit, the reforms in the bill may provide relief from the large number of website accessibility lawsuits filed over the past few years.

Title III of the Americans with Disabilities Act (ADA), 42 USC § 12182(a), enacted in 1990, prohibits discrimination against the disabled, which include the blind and vision impaired, in places of public accommodation. Section 12188(a) of the ADA provides disabled individuals with a private right of action to enforce the ADA by seeking injunctive relief against offending business, and allows for the recovery of costs and attorney’s fees incurred in bringing a suit.

Originally designed to encourage compliance with the ADA, the private right of action has morphed, in recent years, into a cottage business for certain plaintiffs’ firms taking advantage of the availability of attorney’s fees under the act. As discussed in previous legal alerts, nearly one thousand lawsuits alleging violations of the ADA based on the alleged failure to maintain ADA compliant websites that are accessible to the blind and visually impaired have been filed over the last year. Many of these suits are based on technicalities that have limited, if any, connection to the websites’ underlying accessibility.

The ADA Education and Reform Act seeks to curb this type of lawsuits, and the burden they place on business, by imposing certain preconditions before a lawsuit can be filed. Under the bill:

- A potential plaintiff would have to provide written notice to a business owner of an alleged accessibility barrier and give them the opportunity to respond in writing about how the barrier may be addressed.

- The businesses would then have four months to demonstrate a willingness to correct a violation of the ADA.

- Only if the business owner does not remove the barrier, or does not demonstrate substantial progress in removing the barrier, would the individual be able to sue.

The bill will now move on to the Senate where it faces uncertain support. Regardless of whether the measures set forth in the bill ultimately become law, they reflect a recognition that private suits under the ADA have reached a critical mass that demands attention. Until reforms are enacted to limit attorney driven
suits, it is important for all businesses to understand the need for ADA compliance and the pitfalls posed by non-compliance in an effort to limit the risk of potential litigation.

*If you have any questions about this legal alert, please feel free to contact any of the attorneys listed under 'Related People/Contributors' or the Eversheds Sutherland attorney with whom you regularly work.*