



## ADA Title III Lawsuits on the Rise in Texas

Texas is one of many states in the U.S. seeing a sharp rise in ADA III lawsuits. These so-called “Drive-by” lawsuits occur when disabled individuals visit businesses in older buildings to make a purchase from that business with the ulterior motive of finding an ADA violation to report to their attorney. These locations are often pre-scouted by an able-bodied person to locate a violation in advance. When the disabled individual subsequently encounters difficulties due to the alleged violation, a colorable cause of action against the business exists. This can mean costly damages, attorney’s fees, and the cost of the remediation of the alleged violation. The intent of the ADA may be noble, but it’s created a cottage industry for serial litigants and their attorneys.

The attorney’s fee provision in the ADA has been treated by the courts like other civil rights cases where a prevailing plaintiff always recovers fees. Even when defendants prevail in a case, they are almost never able to recover their fees. Because of the wording and the interpretation of the ADA, plaintiffs have an upper hand in early negotiation of a settlement when there is a potentially legitimate violation.

Businesses can mitigate their risk from these lawsuits by following the ADA. Compliance with every aspect of the ADA can be difficult. The ADA has a 279-page manual that details the architectural requirements that businesses must have to be ADA compliant. Even if a business has made every effort to become compliant, no business is immune from this cottage industry.

In the event that your business receives notice that you have been sued for an ADA violation, stay calm. These cases are typically small and can be resolved relatively quickly with the assistance of an experienced attorney who can help you determine the basis of the lawsuit and what defenses can apply. Ultimately, hiring an experienced attorney can lead to a faster resolution at a lower net cost. After the suit is resolved and remediation to the property is done, you will be free to continue as you always have with day-to-day operations of your business.

The Fifth Circuit has suggested that a plaintiff must actually show that they have an intent to return to the business being sued and that they are affected by the alleged ADA violation in some “concrete way.” In this recent case, the court found that a plaintiff who brought almost 400 similar ADA lawsuits against businesses in the Austin area within a year did not have standing because he could not remember a single business that he had sued and revisited. While the outcome here is favorable for defending these types of claims, it is unclear how well this will dissuade plaintiffs—and more specifically their attorneys. Only time will tell.

**For more information, please contact [Wesley Walker](#).**