

Written Statement of the
International Council of Shopping Centers, the
American Hotel & Lodging Association, the
National Association of Real Estate Investment Trusts,
The National Restaurant Association,
The Real Estate Roundtable, and the
Retail Industry Leaders Association
Submitted for the Hearing on

**H.R. 3356, the “ACCESS (ADA Compliance for Customer Entry to
Stores and Services) Act”**

House Committee on the Judiciary
Subcommittee on the Constitution

June 27, 2012

The International Council of Shopping Centers (“ICSC”), the American Hotel & Lodging Association (AH&LA), the National Association of Real Estate Investment Trusts (“NAREIT”), the National Restaurant Association, the Real Estate Roundtable, and the Retail Industry Leaders Association (“RILA”), (collectively, “the trade associations”) hereby submit the following statement for the record in reference to the above-entitled hearing.

The trade associations support H.R. 3356, the “ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act. This proposal would take a meaningful first step in correcting an area of the law that has become a focus of abuse for opportunistic trial lawyers, by ensuring that the owners and operators of public accommodations can address identified access violations before they face litigation.

The trade associations support the intent and spirit of the Americans with Disabilities Act of 1990 which requires that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, or leases to, or operates a place of public accommodation. Entities covered by the term “public accommodation” include shopping centers, hotels, restaurants, theaters, and auditoriums. We believe it is appropriate to establish a framework or process by which public accommodations that are not currently accessible can be made accessible prior to the initiation of costly lawsuits.

However, beginning as far back as the late 1990s, members of the trade associations became victims of unscrupulous attorneys who file, or threaten to file, lawsuits against property owners for minor access violations with little or no advanced warning. These attorneys have now developed a mature, cottage industry of “inspecting” various shopping centers, stores and restaurants in order to locate minor, easily-correctable ADA infractions, such as those relating to parking lot striping and signs, bathroom dispensers, ramps and signage.

While most provisions of the ADA require a plaintiff to notify and provide the owner an opportunity to correct an alleged violation before a lawsuit can go forward, the section of the ADA relating to public access to private property does not contain such notice provision. Taking advantage of this loophole, some attorneys (without giving property owners an opportunity to fix the alleged violations) are filing, or threatening to file, lawsuits that usually lead to cash settlements – because property owners want to avoid the time, expense and hassle of litigation and the potential negative publicity associated with it. To make matters worse, many property owners pay a nuisance settlement even though they reasonably believed their properties were ADA-compliant based on assurances by state or local inspectors and/or outside consultants.

H.R. 3356, by requiring notice before the filing of a lawsuit, will permit property owners to comply with the ADA in a timely and reasonable manner. The current practice of “sue first, ask questions later” only serves to enrich trial attorneys without true benefits to disabled Americans. For instance, in the court case of *Molski v. Mandarin Touch Restaurant* the court found that the plaintiff was a vexatious litigant who filed 300-400 law suits designed to harass and intimidate business owners into agreeing to cash settlements. In that case, both the litigant and the attorney faced sanctions for frivolous ADA litigation. H.R. 3356 would do much to reduce the incentive for the type of litigation at issue in the *Molski* case.

In conclusion, the trade associations and others in the business community have long been committed to finding a solution, legislative or otherwise, that will preserve the rights of the disabled community and ensure access to public accommodations for disabled individuals, while curtailing counterproductive ADA litigation. The trade associations believe an ADA compromise must be reached that balances the spirit of ADA with a common sense and fair approach to correcting alleged violations, such as the notice regime proposed by H.R. 3356.

The trade associations would also call to the Subcommittee’s attention recent reforms in California which mandate pre-trial hearings to filter out frivolous suits and which permit property owners to be certified as ADA-compliant by neutral third parties. In addition to the notice requirements contained in the bill under consideration today, the trade associations would suggest that similar measures be considered at the federal level. Ultimately, there is a compelling need for Congress to act in this area. Under current law, unscrupulous attorneys and others are benefitting rather than those ADA was meant to protect.

Thank you for this opportunity to submit testimony on this important matter.

Founded in 1957, ICSC is the premier global trade association of the shopping center industry. Its more than 55,000 members in over 90 countries include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, as well as academics and public officials.

Serving the hospitality industry for more than a century, AH&LA is the sole national association representing all sectors and stakeholders in the lodging industry, including individual hotel

property members, hotel companies, student and faculty members, and industry suppliers. AH&LA was founded in 1910.

NAREIT®, the National Association of Real Estate Investment Trusts®, is the worldwide representative voice for REITs and publicly traded real estate companies with an interest in U.S. real estate and capital markets. NAREIT's members are REITs and other businesses throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses.

The National Restaurant Association is the leading business association for the restaurant and foodservice industry. The Association's mission is to help our members build customer loyalty, rewarding careers and financial success. Nationally, the industry is comprised of 970,000 restaurant and foodservice outlets employing 12.9 million people. We serve more than 130,000 million guests per day. Despite being an industry of predominately small businesses, the restaurant industry is the nation's second-largest private-sector employer.

The Real Estate Roundtable represents the leadership of the nation's top privately owned and publicly held real estate ownership, development, lending and management firms, as well as the elected leaders of the major national real estate industry trade associations. Collectively, Roundtable members hold portfolios containing over 5 billion square feet of developed property valued at over \$1 trillion; over 1.5 million apartment units; and in excess of 1.3 million hotel rooms. Participating Roundtable trade associations represent more than 1.5 million people involved in virtually every aspect of the real estate business.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.