

By: Seliger

S.B. No. 827

A BILL TO BE ENTITLED

AN ACT

relating to procedures for asserting claims under the Americans with Disabilities Act; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 27A to read as follows:

CHAPTER 27A. ACTIONS INVOLVING THE AMERICANS WITH DISABILITIES ACT

Sec. 27A.001. DEFINITIONS. In this chapter:

(1) "Americans with Disabilities Act" means the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(2) "Claimant" means a person seeking relief under the Americans with Disabilities Act.

(3) "Respondent" means the person against whom a claimant is seeking relief under the Americans with Disabilities Act.

Sec. 27A.002. APPLICABILITY. This chapter applies to a claim under the Americans with Disabilities Act based on a respondent's failure to comply with applicable design, construction, technical, or other standards required by the Americans with Disabilities Act, including complying with website accessibility guidelines.

Sec. 27A.003. NOTICE OF INTENT TO FILE CLAIM. (a) Notwithstanding any other law, before a claimant files an action

1 asserting a claim under the Americans with Disabilities Act, the  
2 claimant must give notice to the respondent of intent to file the  
3 claim. Notice required under this section must be made not later  
4 than the 150th day before the date the action asserting the claim is  
5 filed.

6 (b) The notice must state:

7 (1) the name of the individual asserting the claim  
8 under the Americans with Disabilities Act and the specific  
9 provision of the Americans with Disabilities Act that gives the  
10 individual standing to file an action asserting the claim;

11 (2) each alleged violation of the Americans with  
12 Disabilities Act, including each applicable statutory or  
13 regulatory provision alleged to have been violated;

14 (3) each design, construction, technical, or other  
15 standard alleged to have been violated; and

16 (4) the time, place, and manner in which the claimant  
17 discovered the alleged violation.

18 (c) The notice may be given in a manner prescribed for  
19 service of process in a civil action.

20 Sec. 27A.004. RIGHT TO CORRECT. A respondent who has  
21 received a notice of intent to file a claim under Section 27A.003  
22 may correct an alleged violation of the Americans with Disabilities  
23 Act before the earliest date on which the claimant may file an  
24 action under Section 27A.003.

25 Sec. 27A.005. NOTICE OF CORRECTION OR OTHER EXPLANATION.

26 (a) A respondent who has corrected an alleged violation of the  
27 Americans with Disabilities Act shall provide notice of the

1 correction to the claimant.

2 (b) The notice must describe each correction and the manner  
3 in which the correction addresses the alleged violation.

4 (c) If the respondent concludes that the alleged violation  
5 has not occurred and that a correction is not necessary, the  
6 respondent shall provide the claimant an explanation of the  
7 respondent's conclusion.

8 (d) The notice of correction or explanation may be given in  
9 a manner prescribed for service of process in a civil action.

10 Sec. 27A.006. FILING AND ABATEMENT OF ACTION. (a) If a  
11 claimant files an action asserting a claim under the Americans with  
12 Disabilities Act, the claimant must establish by a preponderance of  
13 the evidence that the respondent has not corrected one or more of  
14 the alleged violations stated in the notice of intent to file a  
15 claim provided under Section 27A.003.

16 (b) If an action is filed, the respondent may file a plea in  
17 abatement and request an evidentiary hearing on the plea. The court  
18 shall abate the action for a period not to exceed 60 days from the  
19 date of the hearing if the court finds, by a preponderance of the  
20 evidence, that:

21 (1) the respondent initiated action to correct the  
22 alleged violation during the time allowed under Section 27A.004;

23 (2) the respondent could not complete the corrections  
24 within that time; and

25 (3) the corrections will be completed by the end of the  
26 period of abatement.

27 Sec. 27A.007. DISMISSAL OR CONTINUATION OF ACTION. If a

1 respondent has provided a notice of correction or has completed  
2 corrections during a period of abatement under Section 27A.006:

3 (1) the claimant may file a motion to dismiss the  
4 action without prejudice; or

5 (2) the respondent may file a motion for summary  
6 judgment in accordance with the Texas Rules of Civil Procedure.

7 Sec. 27A.008. BAD FAITH CLAIMS. (a) A claimant may not in  
8 bad faith provide a notice of intent to file a claim under the  
9 Americans with Disabilities Act.

10 (b) A notice of intent to file a claim is in bad faith if the  
11 notice includes a claim that the respondent has violated the  
12 Americans with Disabilities Act and is liable for that violation  
13 and the notice:

14 (1) does not meet the requirements prescribed by  
15 Section 27A.003; or

16 (2) describes a claim that is objectively baseless  
17 because:

18 (A) the claimant does not have standing to file  
19 an action asserting the claim under the Americans with Disabilities  
20 Act; or

21 (B) the premises is not subject to the  
22 requirements of the Americans with Disabilities Act.

23 Sec. 27A.009. ATTORNEY GENERAL ENFORCEMENT. (a) If the  
24 attorney general believes that a person has violated or is  
25 violating Section 27A.008, the attorney general may bring an action  
26 on behalf of the state to enjoin the person from violating that  
27 section.

1        (b) In addition to seeking an injunction under Subsection  
2 (a), the attorney general may request and the court may order any  
3 other relief that may be in the public interest, including:

4            (1) the imposition of a civil penalty in an amount not  
5 to exceed \$50,000 for each violation of Section 27A.008;

6            (2) an order requiring reimbursement to this state for  
7 the reasonable value of investigating and prosecuting a violation  
8 of Section 27A.008; and

9            (3) an order requiring restitution to a recipient of a  
10 bad faith notice of intent to file a claim for legal and  
11 professional expenses related to the violation.

12        Sec. 27A.010. CONSTRUCTION OF CHAPTER. This chapter may  
13 not be construed to:

14            (1) limit rights and remedies available to the state  
15 or another person under any other law; or

16            (2) alter or restrict the attorney general's authority  
17 under other law with regard to conduct involving claims under the  
18 Americans with Disabilities Act.

19        Sec. 27A.011. NO PRIVATE CAUSE OF ACTION. This chapter does  
20 not create a private cause of action for violation of Section  
21 27A.008.

22        SECTION 2. Chapter 27A, Civil Practice and Remedies Code,  
23 as added by this Act, applies only to an action filed or a notice of  
24 intent to file a claim provided on or after the effective date of  
25 this Act.

26        SECTION 3. This Act takes effect September 1, 2017.