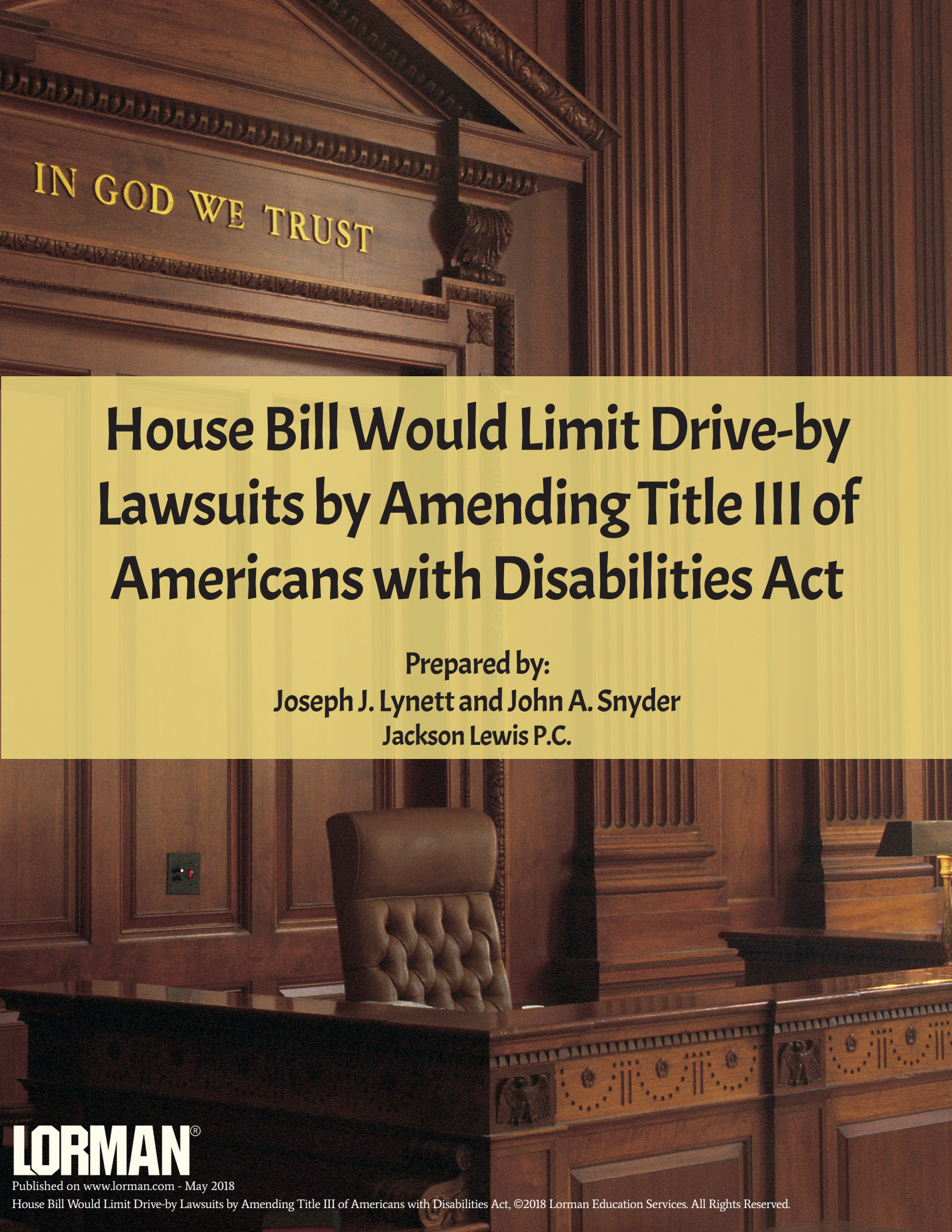


# House Bill Would Limit Drive-by Lawsuits by Amending Title III of Americans with Disabilities Act

**Prepared by:**
**Joseph J. Lynett and John A. Snyder**
**Jackson Lewis P.C.**

LORMAN®
Published on www.lorman.com - May 2018

INTRODUCING

Lorman's New Approach to Continuing Education

# ALL-ACCESS PASS

**The All-Access Pass grants you UNLIMITED access to Lorman's ever-growing library of training resources:**

- ☑ **Unlimited Live Webinars** - 120 live webinars added every month
- ☑ **Unlimited OnDemand and MP3 Downloads** - Over 1,500 courses available
- ☑ **Videos -** More than 1300 available
- ☑ **Slide Decks -** More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

**Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.**

## Get Your All-Access Pass Today!

# SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

# House Bill Would Limit Drive-by Lawsuits by Amending Title III of Americans with Disabilities Act

*Written by Joseph J. Lynett and John A. Snyder on February 28, 2018*

The House of Representatives has passed the "ADA Education and Reform Act" (HR 620) with an 85-percent vote in favor of passage (including 12 Democrats). Prior to filing a lawsuit under Title III of the Americans with Disabilities Act, the bill requires potential plaintiffs to provide businesses with both notice of architectural barriers as well as an opportunity to remove them during a cure period.

Given the recent surge in the number of ADA Title III lawsuits, HR 620 is largely seen as an attempt to slow the growing trend of repeat plaintiffs, who routinely commence multiple lawsuits (in some cases, hundreds of cases) against businesses to extract settlements based on minor physical access barriers in the buildings and facilities.

Under the bill, a potential plaintiff needs to send a business a pre-suit notice that sets forth the following:

1) "a written notice specific enough to allow such owner or operator to identify the barrier";

2) a description of "the circumstances under which the individual was actually denied access to a public accommodation, including the address of the property";

3) an indication of "whether a request for assistance in removing an architectural barrier to access was made"; and

4) "whether the barrier to access was a permanent or temporary barrier."

If the business fails to respond to the issuer of the pre-suit notice within 60 days of sending the notice with a description of the improvements it will make to remove the alleged barrier, the potential plaintiff can file a lawsuit. Likewise, if the business responds as described above, but it fails to remove the barrier or make "substantial progress" toward doing so within 120 days, a lawsuit can be filed.

The bill further requires the Disability Rights Section of the U.S. Department of Justice to devise a program to educate property owners and state and local governments about the ADA's requirements. HR 620 also mandates the Judicial Conference of the United States to develop a model program of alternative dispute resolution mechanisms to facilitate mediation and early dispute resolution, rather than costly litigation of ADA claims over alleged architectural barriers.

Supporters of the bill suggest that the pre-suit notice will advance the ultimate objectives of Title III of increasing accessibility. Detractors, on the other hand, have suggested it would cause businesses to take a wait-and-see approach, that is, wait for the notice before taking action. However, the relatively short timeframe for response and remediation should help alleviate those concerns.

To date, the Senate does not have a meaningful companion bill and little action has been taken by it. As a result, it is unclear whether HR 620 (in its current or a modified version) will become law.

The legislation, if enacted, applies only to claims under Title III. Many states and cities have enacted their own public accommodations laws that permit a court to award reasonable attorney's fees to a prevailing plaintiff. Unless these jurisdictions enact similar legislation requiring pre-suit notice, the federal legislation could have the unintended effect of moving more of these lawsuits to state court.

*If you have any questions regarding HR 620 or Title III compliance, please reach out to our Disability, Leave and Health Management Practice or the Jackson Lewis attorney with whom you regularly work.*