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# NY Lawmakers Plan to Address Surge in ADA Website Accessibility Suits

A little-known committee chaired by State Sen. Diane Savino, D-Staten Island, has plans to tackle the issue, which has caused the number of lawsuits brought against businesses allegedly out of compliance with the ADA to skyrocket in recent years.

By Dan M. Clark | Originally published on [New York Law Journal \(/newyorklawjournal\)](#) | April 24, 2019

Lawmakers in New York are planning legislative action to curb a surge in the number of lawsuits brought in federal court against businesses who operate websites that allegedly violate the terms of the Americans With Disabilities Act, or ADA.

A little-known committee chaired by State Sen. Diane Savino, D-Staten Island, has plans to tackle the issue, which has



*Photo: niroworld/Shutterstock.com*

caused the number of lawsuits brought against businesses allegedly out of compliance with the ADA to skyrocket in recent years.

There were a staggering 1,564 of those lawsuits brought in federal courts in New York last year alleging that companies had not made their websites compliant with the ADA, according to [a report \(https://www.adatitleiii.com/2019/01/number-of-federal-website-accessibility-lawsuits-nearly-triple-exceeding-2250-in-2018/\)](https://www.adatitleiii.com/2019/01/number-of-federal-website-accessibility-lawsuits-nearly-triple-exceeding-2250-in-2018/) from law firm Seyfarth Shaw, which has offices in New York.

That was more than two-thirds of the total website accessibility lawsuits in the country, according to the report, and the amount of litigation has continued to grow. UsableNet, a web accessibility company, [tracked \(https://blog.usablenet.com/ada-based-web-accessibility-claims-continue-record-breaking-rise\)](https://blog.usablenet.com/ada-based-web-accessibility-claims-continue-record-breaking-rise) nearly 400 of those lawsuits filed during the first three months of this year in New York.

“What’s happening is, they’re like ambulance-chaser attorneys, and they’ve decided that this is the new frontier,” Savino said. “They’re targeting, I guess, industries, or groups, they figure will settle quickly because they don’t want the adverse publicity or they just don’t know any better.”

Savino chairs the Senate internet and technology committee, a seven-member panel in the chamber that considers legislation affecting issues related to technological advancements, like artificial intelligence and digital currency.

What’s unclear, so far, is how state lawmakers in New York will act to address the surge in website accessibility litigation. The number of lawsuits nationwide nearly tripled between 2017 and last year, with the effects of that surge felt by businesses in New York.

Brooklyn law firm Cohen & Mizrahi has filed more of those suits than any other litigator in the state, according to UsableNet. Joseph Mizrahi, a name partner of the firm [who spoke to \(https://www.law.com/newyorklawjournal/2019/01/17/ada-website-](https://www.law.com/newyorklawjournal/2019/01/17/ada-website-)

[accessibility-suits-flood-new-yorks-federal-courts-report-says/](#)) the New York Law Journal on the issue previously, did not immediately respond to a request for comment on possible state action to limit the rising level of litigation.

Savino said firms like Cohen & Mizrahi, which is not alone in the flurry of website accessibility litigation, have taken advantage of a gap in state and federal law on the issue. There are currently no accessibility standards at either level for businesses to follow while creating and maintaining their website. That's what they want to work on, Savino said.

"What it's really exposing is that there's a real lack of regulation from the federal level down to the states about what reasonable accommodation means with respect to internet access," Savino said. "So, we're going to take a look at that and try to develop a set of standards recognizing, again, that there are not four walls of the internet."

The committee would work to establish regulations for businesses in New York to adhere to on website accessibility to qualify as compliant, Savino said. No such standards exist in state law, and the federal government hasn't acted to clarify the extent to which business are required to accommodate individuals living with a disability on the web.

"States are the incubators of ideas. The feds have dragged their feet," Savino said. "They created the [ADA]. They need to update it."

Lawmakers could also explore a so-called notice-and-cure approach to address the problem, said Adam Morey from the Lawsuit Reform Alliance, a group that advocates for changes in state law they argue would improve litigation.

The proposal would require that notice be given to a company ahead of a lawsuit when their website is allegedly inaccessible to individuals living with a disability. The company would then have time to cure the problem to avoid litigation. Without that option, many are currently inclined to settle claims rather than take their chances in court, Morey said.

“Most of these plaintiffs settle,” Morey said. “It’s in the best interest of a lot of defense firms and businesses to not let them go to trial because you don’t know what the decision’s going to be.”

Lawmakers were initially leaning toward a notice-and-cure bill, a legislative staffer involved in discussions on the issue said. But that method was put on hold in favor of working with disability advocates to codify compliance into state law, according to the staffer.

A timeline on when a fix could be proposed by lawmakers and enacted is unclear at this point, but Savino said she wants to use her committee to act on the issue sooner rather than later since the number of website accessibility lawsuits has continued to rise.

“We have to get a handle on this because it could literally bankrupt a small business by these litigators who are really just exploiting loopholes in the law,” Savino said.

Services also exist to help companies avoid and settle litigation by offering to make their website fully accessible either in response to, or to prevent, a lawsuit.

AudioEye, a company offering that service, has gained a number of clients because of impending litigation over website accessibility, according to Dr. Carr Bettis, its executive chairman. They also encourage businesses to seek out those services proactively if they’re looking to avoid such a lawsuit before state or federal lawmakers act on the issue.

“We have a very specific process of what we’ve done for clients,” Bettis said. “Lawyers then can, of course, use that in response to anyone suing.”

The company essentially uses tools to make a website accessible to people living with disabilities and other conditions, including vision-impaired individuals and those suffering from epilepsy. When a client reaches out to them, they can immediately install a basic set of tools on their website. They then get to work on making it fully accessible, which can help avoid litigation.

Former New York Gov. David Paterson, a consultant for AudioEye, said that companies who seek out the service would be equipped with a strong defense against litigation—whether it's already been brought or not—by showing how they've changed their website to address issues over accessibility.

"If they show they're now in the process of fixing the problem, it probably makes the lawsuit go away or becomes part of a settlement," Paterson said. "They could certainly do that. I wish more of them would do that."

Without such a fix, companies could be forced to pay up to \$500 for each website accessibility lawsuit brought against them per plaintiff, of which there could be many. But there is no such limit on the amount of attorney fees that can be collected through the litigation.

If state lawmakers move to address the growing number of lawsuits, they'll have less than two months to introduce a proposal and vote on its approval before they're scheduled to leave Albany for the year in June.

#### **READ MORE:**

**[ADA Website Accessibility Suits Flood New York's Federal Courts, Report Says](https://www.law.com/newyorklawjournal/2019/01/17/ada-website-accessibility-suits-flood-new-yorks-federal-courts-report-says/)**  
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