

As Passed by the House

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Sub. H. B. No. 271

Representatives McColley, Rezabek

Cosponsors: Representatives Henne, Antani, Wiggam, Arndt, Hood, Koehler, Sweeney, Kick, Thompson, Riedel, Seitz, Lipps, Goodman, Dean, Scherer, Green, Blessing, Schaffer, Hughes, Anielski, Antonio, Boyd, Brown, Butler, Celebrezze, Cupp, Duffey, Gavarone, Hagan, Hambley, Hoops, Johnson, Landis, LaTourette, Lepore-Hagan, Manning, McClain, Merrin, Patton, Pelanda, Perales, Reineke, Retherford, Rogers, Romanchuk, Smith, R., Stein

A BILL

To enact section 4112.16 of the Revised Code to	1
authorize an alleged aggrieved party to provide	2
a notice of an alleged accessibility law	3
violation in advance of filing a civil action	4
and to establish the circumstances under which	5
an alleged aggrieved party is entitled to	6
attorney's fees in a civil action based on the	7
violation.	8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4112.16 of the Revised Code be	9
enacted to read as follows:	10

<u>Sec. 4112.16. (A) Prior to filing a civil action alleging</u>	11
<u>violation of an accessibility law, the alleged aggrieved party</u>	12
<u>may notify the owner, agent, or other responsible party of the</u>	13
<u>property where the alleged violation occurred by personal</u>	14
<u>service, in accordance with applicable state or federal laws, or</u>	15

by certified mail, of alleged accessibility law violations for 16
which an action may be filed by the alleged aggrieved party. If 17
an alleged aggrieved party does not serve notice, the alleged 18
aggrieved party is not entitled to attorney's fees upon the 19
judgment of a civil action alleging violation of an 20
accessibility law unless the trial court determines that 21
attorney's fees are appropriate due to the nature of the 22
violations, including their willfulness, duration, or severity. 23
If an alleged aggrieved party serves notice in accordance with 24
division (B) of this section, the alleged aggrieved party is 25
precluded from filing such a civil action until one of the 26
following occurs: 27

(1) The alleged aggrieved party receives a response as 28
described in division (C) (1) of this section and the property 29
owner, agent, or other responsible party of the property fails 30
to make the improvements or bring the property into compliance 31
with accessibility laws and fails to provide a reasonable 32
explanation for the failure within sixty days as required by 33
division (D) of this section. 34

(2) The alleged aggrieved party receives a response as 35
described in division (C) (2) of this section. 36

(3) The alleged aggrieved party receives a response as 37
described in division (C) (3) of this section, but the alleged 38
aggrieved party reasonably believes that the alleged violations 39
continue to exist. 40

(4) The property owner, agent, or other responsible party 41
of the property fails to respond to the notice within fifteen 42
business days as required by division (C) of this section. 43

(B) A notice provided pursuant to division (A) of this 44

section shall furnish similar information or be in substantially 45
similar form to the following: 46

THIS LETTER IS TO INFORM YOU THAT THE PROPERTY LOCATED AT 47
(address of property), FOR WHICH YOU ARE THE PROPERTY OWNER, 48
AGENT, OR OTHER RESPONSIBLE PARTY, MAY BE IN VIOLATION OF 49
FEDERAL AND/OR STATE ACCESSIBILITY LAWS AND CAUSED HARM TO (name 50
of alleged aggrieved party). 51

SPECIFICALLY, THE POSSIBLE VIOLATION(S) HAS/HAVE BEEN 52
IDENTIFIED AS FOLLOWS: 53

(Notice must identify the specific facts that constitute 54
the alleged violation, including the approximate date on which 55
the alleged violation occurred or was observed and 56
identification of the location of the alleged violation with 57
sufficient detail, so that the location can be identified by the 58
property owner, agent, or other responsible party.) 59

YOU HAVE 15 BUSINESS DAYS TO RESPOND TO THIS NOTICE BY 60
PERSONAL SERVICE OR CERTIFIED MAIL. YOUR RESPONSE MUST BE 61
ADDRESSED TO (address where personal service may be received or 62
certified mail may be sent). OHIO LAW ALLOWS YOU TO RESPOND IN 63
ONE OF THREE WAYS: 64

(1) YOU MAY EXPRESSLY STATE THAT IMPROVEMENTS WILL BE MADE 65
TO BRING THE PROPERTY INTO COMPLIANCE WITH APPLICABLE 66
ACCESSIBILITY LAWS. IF YOU RESPOND IN THIS MANNER, YOU HAVE A 67
MAXIMUM OF 60 DAYS TO COMPLETE THESE IMPROVEMENTS. THE 60-DAY 68
PERIOD SHALL BEGIN ON THE DATE YOUR RESPONSE TO THIS NOTICE IS 69
RECEIVED AT THE ADDRESS GIVEN ABOVE. IF THE IMPROVEMENTS 70
NECESSARY TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 71
APPLICABLE ACCESSIBILITY LAWS ARE NOT COMPLETED WITHIN THE 60- 72
DAY PERIOD, THE ALLEGED AGGRIEVED PARTY MAY BRING A LAWSUIT 73

AGAINST YOU. YOU MAY EXTEND THE 60-DAY PERIOD ONLY IF YOU 74
PROVIDE A REASONABLE EXPLANATION AS TO WHY IMPROVEMENTS CANNOT 75
BE MADE WITHIN 60 DAYS. REASONABLE EXPLANATIONS INCLUDE 76
DEMONSTRATED NEED FOR DELAY, SUCH AS CONSTRUCTION AND PERMITTING 77
RELATED ISSUES. 78

(2) YOU MAY CHALLENGE THE VALIDITY OF THE ALLEGED 79
VIOLATIONS. IF YOU RESPOND IN THIS MANNER, THE ALLEGED AGGRIEVED 80
PARTY MAY BRING A LAWSUIT AGAINST YOU IMMEDIATELY. 81

(3) IF THE VIOLATIONS LISTED ABOVE ARE THE SAME AS OR 82
SIMILAR TO PREVIOUS VIOLATIONS THAT YOU BELIEVE HAVE BEEN 83
CORRECTED, YOU MAY RESPOND BY STATING THAT THE NECESSARY 84
IMPROVEMENTS HAVE BEEN MADE TO BRING THE PROPERTY INTO 85
COMPLIANCE WITH THE APPLICABLE ACCESSIBILITY LAWS. YOU MUST ALSO 86
ATTACH EVIDENCE THAT VERIFIES THOSE IMPROVEMENTS. 87

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE OR YOUR RIGHTS 88
UNDER FEDERAL OR OHIO LAW, PLEASE CONTACT YOUR LEGAL COUNSEL. 89

(C) Within fifteen business days after an alleged 90
aggrieved party serves or sends a notice pursuant to division 91
(A) of this section, the property owner, agent, or other 92
responsible party of the property where the alleged violation 93
occurred shall respond to the notice by personal service or 94
certified mail to the alleged aggrieved party. That response 95
shall do one of the following: 96

(1) Expressly state that improvements will be made to 97
bring the property into compliance with applicable accessibility 98
laws. 99

(2) Challenge the validity of the alleged violation. If 100
the property owner, agent, or other responsible party responds 101
in this manner, the alleged aggrieved party may file an action, 102

subject to any applicable statutes of limitations, any time 103
after receipt of that response. 104

(3) State that the alleged violations identified by the 105
alleged aggrieved party have been corrected to comply with 106
applicable accessibility laws. The property owner, agent, or 107
other responsible party shall attach evidence to the response 108
that verifies those improvements. 109

(D) (1) (a) If a property owner, agent, or responsible party 110
of the property where the alleged accessibility law violation 111
occurred responds in the manner described in division (C) (1) of 112
this section, the property owner, agent, or responsible party 113
shall have sixty days to remedy the alleged violation. The 114
sixty-day period shall begin on the date the alleged aggrieved 115
party receives the response described in division (C) of this 116
section. The owner, agent, or other responsible party may extend 117
the sixty-day period by not more than sixty days upon providing 118
a reasonable explanation as to why the improvement requires more 119
than sixty days to complete. Reasonable explanations include 120
demonstrated need for extension, such as construction and 121
permitting related issues. 122

(b) If the property owner, agent, or other responsible 123
party of the property where the alleged accessibility law 124
violation occurred responds in the manner described in division 125
(C) (1) of this section and makes the improvements to bring the 126
property into compliance with applicable accessibility laws 127
within the sixty-day period described in division (D) (1) (a) of 128
this section or provides a reasonable explanation as to why 129
those improvements are not completed, the response as described 130
in division (C) (1) of this section shall not be considered an 131
admission of guilt and shall be inadmissible as evidence in any 132

future actions based on the same facts filed against the 133
property owner, agent, or other responsible party. 134

(2) (a) If the property owner, agent, or other responsible 135
party of the property where the alleged accessibility law 136
violation occurred fails to make the improvements to bring the 137
property into compliance with applicable accessibility laws 138
within the sixty-day period described in division (D) (1) (a) of 139
this section and, in the opinion of the aggrieved party, fails 140
to provide a reasonable explanation as to why those improvements 141
are not completed, the alleged aggrieved party may file a civil 142
action for accessibility law violation against that property 143
owner, agent, or other responsible party. 144

(b) In a civil action filed pursuant to division (D) (2) (a) 145
of this section in which a plaintiff prevails, the plaintiff 146
shall recover reasonable attorney's fees, in addition to any 147
other remedies available to the plaintiff. However, the 148
plaintiff shall not be entitled to attorney's fees under this 149
division if all of the following are true: 150

(i) The plaintiff filed the civil action prior to the 151
expiration of an extension invoked by the defendant. 152

(ii) The court determines that the defendant's explanation 153
as to the necessity of the extension was reasonable. 154

(iii) The defendant makes the improvements to bring the 155
property into compliance with applicable accessibility laws 156
during the period of extension. 157

(c) If the property owner, agent, or other responsible 158
party where the alleged accessibility law violation occurred 159
makes the improvements to bring the property into compliance 160
with the applicable accessibility laws within the sixty-day 161

period described in division (D)(1) of this section and provides 162
evidence to the alleged aggrieved party that the improvements 163
have been made, or if the property owner, agent, or other 164
responsible party demonstrates to the court's satisfaction that 165
the explanation given for the necessity of an extension was 166
reasonable, the alleged aggrieved party shall not receive any 167
damages or attorney's fees for any action arising out of the 168
same or similar facts that served as a basis for the alleged 169
violation. The alleged aggrieved party may receive damages and 170
attorney's fees for actions arising out of a recurrence of the 171
same or similar alleged accessibility law violation if it is 172
determined that the property owner, agent, or other responsible 173
party failed to maintain accessibility following the initial 174
improvements. 175

(E)(1) This section shall not be construed to limit 176
actions for recovery of special damages filed by any person who 177
suffers an injury in fact because the person was denied full and 178
equal access to an accommodation as required by federal or state 179
law. 180

(2) This section does not apply to charges filed with the 181
Ohio civil rights commission under Chapter 4112. of the Revised 182
Code or deferred to the commission under federal law. This 183
section does not preclude the commission from investigating 184
charges of discrimination against a place of public 185
accommodation. 186

(F) As used in this section: 187

(1) "Accessibility law" means division (G) of section 188
4112.02 of the Revised Code as that division applies to a person 189
with a disability or any federal law that ensures accessibility 190
to services, programs, places of public accommodation, public 191

conveyance and modes of transportation, streets, highways, 192
sidewalks, walkways, buildings, medical facilities, and other 193
public places for a person with a disability. "Accessibility 194
law" does not mean division (H) of section 4112.02 of the 195
Revised Code or any other provision of the Revised Code relating 196
to housing discrimination issues or actions. 197

(2) "Business day" means a day of the week excluding 198
Sunday and a legal holiday as defined in section 1.14 of the 199
Revised Code. 200