



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Nicholas A. Keller

Sub. H.B. 271*

132nd General Assembly
(As Reported by S. Judiciary)

Reps. McColley and Rezabek, 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, R. Smith, Stein

BILL SUMMARY

- Adds a prerequisite for an award of attorney's fees in a civil action alleging a violation of a disability accessibility law that the party responsible for property where the alleged violation occurred be notified of the alleged violation before a civil action based on the alleged violation is filed.
- Requires one of three types of responses to a notice of an alleged accessibility law violation and specifies the consequences of making each type of response and of failing to respond.
- Provides a 60-day period within which a responsible party who responds by promising to improve the property may make the improvements and allows for a 60-day extension upon reasonable explanation.
- Permits an award of attorney's fees to an aggrieved party who prevails in the civil action if the aggrieved party gave prelitigation notice of an alleged violation and if the responsible party promised to make improvements but failed to complete them.
- Exempts from the bill's requirements lawsuits for recovery of special damages filed by a person who suffers an injury in fact because the person was denied full and equal access to an accommodation as required by federal or state law.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Overview

The bill permits an alleged aggrieved party claiming a violation of an accessibility law to notify the owner, agent, or other responsible party of the property (responsible party) of the alleged violation before filing a civil action. A decision by an alleged aggrieved party to file a civil action without serving notice affects the party's ability to recover attorney's fees (see "**Damages and attorney's fees**," below).

An "accessibility law" is either of the following:

- The provision in the Ohio Civil Rights Law that declares it to be an unlawful discriminatory practice for a person in control of a place of public accommodation, except for limited reasons, to deny a person with a disability the full enjoyment of the place of public accommodation;
- Any federal law that ensures accessibility for a person with a disability to services, programs, places of public accommodation, public conveyance and modes of transportation, streets, highways, sidewalks, walkways, buildings, medical facilities, and other public places.

Ohio laws relating to housing discrimination are not "accessibility laws" under the bill.¹

A "disability" is a physical or mental impairment that substantially limits one or more major life activities, including the caring for one's self, walking, and seeing. The term includes having a record of a physical or mental impairment and being regarded as having a physical or mental impairment.²

Service and contents of notice

An alleged aggrieved party who elects to serve notice to the responsible party must do so by personal service, in accordance with applicable state or federal laws, or by certified mail. The notice must identify the alleged accessibility law violation occurring on the property.³ The bill provides a model for the notice (see "**Notice form**," below).

¹ R.C. 4112.16(F)(1); R.C. 4112.02(G) and (H), not in the bill.

² R.C. 4112.01(A)(13), not in the bill.

³ R.C. 4112.16(A).



Response to notice

A person who receives the notice must respond to the alleged aggrieved party by personal service or certified mail within 15 business days after the notice is served or sent. The response must do one of the following:

(1) Expressly state that improvements will be made to bring the property into compliance with applicable accessibility laws. If the responsible party makes the improvements within the 60-day period or provides a reasonable explanation as to why the improvements are not completed, such a response may not be considered an admission of guilt and is inadmissible as evidence in any future actions based on the same facts filed against the respondent.

(2) Challenge the validity of the alleged violation;

(3) State that the alleged violations identified by the alleged aggrieved party have been corrected to comply with applicable accessibility laws. The responsible party must attach evidence to the response that verifies those improvements.⁴

Filing of action

An alleged aggrieved party who serves notice may not file a civil action until one of the following occurs (see **COMMENT**):

(1) If the response states that improvements will be made to bring the property into compliance with applicable accessibility laws, the responsible party fails to make the improvements or bring the property into compliance with accessibility laws within 60 days and, in the opinion of the alleged aggrieved party, fails to provide a reasonable explanation for the failure;

(2) The response challenges the validity of the alleged violation;

(3) The response states that the alleged violation has been corrected but the alleged aggrieved party reasonably believes that the alleged violation continues to exist;

(4) The responsible party fails to respond to the notice within 15 business days.⁵

Opportunity to correct violation

Under the bill, a responsible party who states that improvements will be made to bring the property into compliance with applicable accessibility laws has 60 days to

⁴ R.C. 4112.16(C), (D)(1)(b), and (F)(2).

⁵ R.C. 4112.16(A) and (D)(2)(a).



remedy the alleged violation. The 60-day period begins on the date the alleged aggrieved party receives the response. The responsible party may extend the time for compliance, up to an additional 60 days, upon providing a reasonable explanation as to why the improvement requires more than 60 days to complete. Reasonable explanations include demonstrated need for delay, such as construction and permitting related issues. If the responsible party fails to make the necessary improvements within the 60-day period and, in the opinion of the alleged aggrieved party, fails to provide a reasonable explanation as to why the improvements were not completed, the alleged aggrieved party may file a civil action for the accessibility law violation against the responsible party.⁶

Damages and attorney's fees

If an alleged aggrieved party files a civil action alleging violation of an accessibility law without serving the required prelitigation notice,⁷ the alleged aggrieved party (now the plaintiff) generally is not entitled to attorney's fees upon winning the case. The plaintiff may receive attorney's fees, however, if the trial court determines that attorney's fees are appropriate due to the nature of the violation, including its willfulness, duration, or severity.

If the plaintiff wins in a civil action filed after giving notice, the plaintiff is normally entitled to reasonable attorney's fees in addition to any other available remedies if the responsible party fails to make the improvements within the 60-day period or to provide a reasonable explanation for the delay. However, the plaintiff is not entitled to attorney's fees if: (1) the plaintiff filed the action before the expiration of an extension period invoked by the responsible party, (2) the court determines that the responsible party's explanation as to the necessity of the extension was reasonable, and (3) the defendant makes the improvements to bring the property into compliance with applicable accessibility laws during the period of extension.⁸

The plaintiff may not receive any damages or attorney's fees for any action arising out of the same or similar facts that served as a basis for the alleged violation if the responsible party who receives prelitigation notice of a violation does either of the following:

⁶ R.C. 4112.16(D)(1)(a) and (2)(a).

⁷ In the Ohio Civil Rights Law, a complainant who is not an aggrieved person can commence a civil action on behalf of the aggrieved person (R.C. 4112.05(B)(1), 4112.051(A)(2), 4112.052, and 4112.06, not in the bill).

⁸ R.C. 4112.16(A) and (D)(2)(b).



- Makes improvements to bring the property into compliance with the applicable accessibility laws within the statutory 60-day period and provides evidence to the plaintiff that the improvements were made;
- Demonstrates to the court's satisfaction that the explanation given for the necessity of an extension was reasonable.

The plaintiff may receive damages and attorney's fees for actions arising out of a recurrence of the same or similar alleged accessibility law violation if it is determined that the responsible party failed to maintain accessibility following the initial improvements.⁹

Applicability

The bill does not limit actions for recovery of special damages filed by any person who suffers an injury in fact because the person was denied full and equal access to an accommodation as required by federal or state law. The bill does not apply to charges filed with the Ohio Civil Rights Commission or deferred to the Commission under federal law. It also does not preclude the Commission from investigating charges of discrimination against a place of public accommodation.¹⁰

Notice form

The notice described in the bill must be in substantially the following form or furnish similar information:

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

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

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

⁹ R.C. 4112.16(D)(2)(c).

¹⁰ R.C. 4112.16(E).



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

(1) YOU MAY EXPRESSLY STATE THAT IMPROVEMENTS WILL BE MADE TO BRING THE PROPERTY INTO COMPLIANCE WITH APPLICABLE ACCESSIBILITY LAWS. IF YOU RESPOND IN THIS MANNER, YOU HAVE A MAXIMUM OF 60 DAYS TO COMPLETE THESE IMPROVEMENTS. THE 60-DAY PERIOD SHALL BEGIN ON THE DATE YOUR RESPONSE TO THIS NOTICE IS RECEIVED AT THE ADDRESS GIVEN ABOVE. IF THE IMPROVEMENTS NECESSARY TO BRING THE PROPERTY INTO COMPLIANCE WITH THE APPLICABLE ACCESSIBILITY LAWS ARE NOT COMPLETED WITHIN THE 60-DAY PERIOD, THE ALLEGED AGGRIEVED PARTY MAY BRING A LAWSUIT AGAINST YOU. YOU MAY EXTEND THE 60-DAY PERIOD ONLY IF YOU PROVIDE A REASONABLE EXPLANATION AS TO WHY IMPROVEMENTS CANNOT BE MADE WITHIN 60 DAYS. REASONABLE EXPLANATIONS INCLUDE DEMONSTRATED NEED FOR DELAY, SUCH AS CONSTRUCTION AND PERMITTING RELATED ISSUES.

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

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

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE OR YOUR RIGHTS UNDER FEDERAL OR OHIO LAW, PLEASE CONTACT YOUR LEGAL COUNSEL.¹¹

¹¹ R.C. 4112.16(B).



COMMENT

It is unclear what happens if an aggrieved party serves the notice but files the civil action prior to the occurrence of one of the events described in the bill.

HISTORY

ACTION	DATE
Introduced	06-12-17
Reported, H. Civil Justice	02-01-18
Passed House (96-0)	02-28-18
Reported, S. Judiciary	---

