



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 333

130th General Assembly  
(As Introduced)

**Reps.** Stinziano, Hackett, Henne, Hood, Mallory, O'Brien

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## BILL SUMMARY

- Defines "accessibility law" as any federal or Ohio law that ensures accessibility to public places and modes of transportation for a person with a disability.
- Requires service of a notice of alleged accessibility law violations on the owner, agent, or other responsible party of the property where the alleged violations occurred before a lawsuit based on the alleged violations may be filed.
- Requires one of three types of responses to a notice of alleged accessibility law violations and specifies the consequences of making each type of response and of the failure to respond.
- Provides a 120-day period within which a responsible party who responds by promising to improve the property may make the improvements.
- Exempts actions praying for special damages arising out of injuries in fact and actions brought by the Ohio Civil Rights Commission from the bill's requirements.
- Requires a court or jury, in determining the amount of damages awarded to a successful plaintiff, to consider previous or pending actual damage awards received or sought for by that plaintiff for the same or similar injury.
- Authorizes a responsible party of a property to sue for costs and attorney's fees for the filing of an action (1) without giving the required notice or (2) after a responsible party has shown that improvements have been made to bring the property into compliance with the law and the property is in compliance.

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## CONTENT AND OPERATION

### Accessibility law

The bill requires that an alleged aggrieved party claiming a violation of an accessibility law notify the owner, agent, or other responsible party of the property (hereafter referred to as "respondent") where the alleged violation occurred before filing a civil action. An "accessibility law" is any federal or Ohio law that ensures accessibility to places of public accommodation, public conveyance and modes of transportation, streets, highways, sidewalks, walkways, buildings, medical facilities, and other public places for a person with a disability.<sup>1</sup>

### Service and contents of notice

The alleged aggrieved party must serve the required notice by personal service, in accordance with applicable state or federal laws, or by certified mail. The notice must state all alleged accessibility law violations for which an action may be filed by the alleged aggrieved party. The notice must be in substantially the following form:<sup>2</sup>

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 PURSUANT TO (citation of statute of which the property is believed to be in violation) 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 date on which the alleged violation occurred 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.)

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<sup>1</sup> R.C. 4112.16(H).

<sup>2</sup> R.C. 4112.16(A) and (B).



YOU HAVE 30 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 120 DAYS TO COMPLETE THESE IMPROVEMENTS. THE 120-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 120-DAY PERIOD, THE ALLEGED AGGRIEVED PARTY MAY BRING A LAWSUIT AGAINST YOU.

(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 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.



## Response to notice

A person who receives a notice must respond by personal service or certified mail within 30 days after the notice is served or sent. The response must do one of the following:<sup>3</sup>

(1) Expressly state that improvements will be made to bring the property into compliance with applicable accessibility laws. 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 property owner, agent, or other responsible party.

(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 respondent must attach evidence to the response that verifies those improvements.

## Filing of action

An alleged aggrieved party may not file a civil action until the notice is served and one of the following occurs:<sup>4</sup>

(1) If the response states that improvements will be made to bring the property into compliance with applicable accessibility laws, the respondent fails to make the improvements or bring the property into compliance with accessibility laws and fails to provide a satisfactory explanation for the failure within 120 days;

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

(3) The response states that the alleged violations have been corrected but the alleged aggrieved party reasonably believes that the alleged violations continue to exist;

(4) The property owner, agent, or other responsible party fails to respond to the notice within 30 days.

## Opportunity to correct violations

Under the bill, a respondent who states that improvements will be made to bring the property into compliance with applicable accessibility laws has 120 days to remedy the alleged violation. The 120-day period begins on the date the alleged aggrieved party

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<sup>3</sup> R.C. 4112.16(C).

<sup>4</sup> R.C. 4112.16(A).



receives the response. If the respondent fails to make the necessary improvements within that period and fails to provide a satisfactory explanation as to why the improvements were not completed, the alleged aggrieved party may file a civil action for accessibility law violations against the respondent.<sup>5</sup>

If the respondent makes the required improvements within the 120-day period, no current or future alleged aggrieved party may receive any damages or attorney's fees, other than special damages, for any action arising out of the same or similar facts that served as a basis for the alleged violation.<sup>6</sup>

## **Applicability**

The bill's notice and response requirements apply to all actions alleging a violation of an accessibility law for damages or fees, except for the following:<sup>7</sup>

(1) Actions praying for special damages arising out of injuries in fact. The bill is not to be construed to 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.

(2) Actions initiated by the Ohio Civil Rights Commission.

## **Damages**

The bill requires a court or jury, in determining the amount of damages awarded to a successful plaintiff, to consider previous or pending actual damage awards received or sought for by that plaintiff for the same or a similar injury.<sup>8</sup>

## **Civil action by property owner**

The bill authorizes an owner, agent, or other responsible party of a property to file a civil action to recover costs and attorney's fees from any person, and from the person's attorney, who files a civil action without first providing the notice required by the bill or who files a civil action alleging violation of an accessibility law after the owner, agent, or other responsible party has provided evidence that improvements

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<sup>5</sup> R.C. 4112.16(D)(1) and (2)(a).

<sup>6</sup> R.C. 4112.16(D)(2)(b).

<sup>7</sup> R.C. 4112.16(E).

<sup>8</sup> R.C. 4112.16(F).



have been made to bring the property into compliance with the law and the property is in compliance with the law.<sup>9</sup>

## Declaration of emergency

The bill includes a declaration of emergency so that it will take immediate effect. The stated ground for the declaration is the need "to eliminate vexatious litigation of accessibility laws, which unduly burden the courts and taxpayers without improving access for those with accessibility needs."<sup>10</sup>

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## COMMENT

Insofar as the bill applies to federal accessibility laws, it may be unconstitutional. The federal Americans with Disabilities Act (ADA)<sup>11</sup> does not require notice to anyone as a prerequisite to litigation. The imposition of a notice requirement by state law when the claim is based on a federal law that lacks a notice requirement has been held unconstitutional in another context.<sup>12</sup> The principle appears to apply to the ADA as well.

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## HISTORY

ACTION	DATE
Introduced	11-06-13

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<sup>9</sup> R.C. 4112.16(G).

<sup>10</sup> Section 2.

<sup>11</sup> 42 U.S.C. § 1201 *et seq.*

<sup>12</sup> *Felder v. Casey*, 487 U.S. 131, 150-53 (1988).

