



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 333*

130th General Assembly
(As Reported by H. Judiciary)

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

BILL SUMMARY

- Defines "accessibility law" as any federal or Ohio law that ensures accessibility to services, programs, public places, and modes of transportation for a person with a disability.
- Authorizes 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 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.
- Provides for an award of attorney's fees to an alleged aggrieved party who prevails in a civil action filed after giving prelitigation notice of alleged violations and failure of the responsible party who promises to make improvements to complete the improvements.
- Exempts actions brought by the Ohio Civil Rights Commission from the bill's requirements.

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

CONTENT AND OPERATION

Accessibility law

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 (hereafter referred to as "respondent") of an alleged violation before filing a civil action. An "accessibility law" is any federal or Ohio law that ensures accessibility to services, programs, 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.¹ The failure of an alleged aggrieved party to serve notice affects the party's ability to recover attorney's fees (see "**Damages and attorney's fees**," below).

Service and contents of notice

An alleged aggrieved party who elects to serve notice must do so by personal service, in accordance with applicable state or federal laws, or by certified mail. The notice must state alleged accessibility law violations for which an action may be filed by the alleged aggrieved party. The notice must furnish similar information or be in substantially the following form:²

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.)

¹ R.C. 4112.16(F)(1).

² R.C. 4112.16(A) and (B).



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.

Response to notice

A person who receives a notice must respond 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:³

(1) Expressly state that improvements will be made to bring the property into compliance with applicable accessibility laws. If the respondent 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.⁴

(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 who serves notice may not file a civil action until one of the following occurs:⁵

(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 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 R.C. 4112.16(C).

⁴ R.C. 4112.16(D)(1)(b).

⁵ R.C. 4112.16(A) and (D)(2)(a).



(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 15 business 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 60 days to remedy the alleged violation. The 60-day period begins on the date the alleged aggrieved party receives the response. The respondent may extend the 60-day period by not more than 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 respondent fails to make the necessary improvements within the 60-day period and fails to provide a reasonable 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.⁶

Damages and attorney's fees

If a plaintiff who is an alleged aggrieved party does not serve the optional prelitigation notice, the plaintiff is not entitled to attorney's fees upon the judgment of a civil action alleging violation of an accessibility law unless the trial court determines that attorney's fees are appropriate due to the nature of the violations, including their willfulness, duration, or severity. If the plaintiff files a civil action after giving notice and after the respondent's failure to make the improvements within the 60-day period or to provide a reasonable explanation for any delay, then, if the plaintiff prevails, the plaintiff is normally entitled to reasonable attorney's fees in addition to any other available remedies. However, the plaintiff is not entitled to attorney's fees if the plaintiff filed the action before the expiration of an extension period invoked by the respondent and the court determines that the respondent's explanation as to the necessity of the extension was reasonable.⁷

If a respondent who receives prelitigation notice of violations makes the improvements to bring the property into compliance with the applicable accessibility laws within the statutory 60-day period and provides evidence to the alleged aggrieved party that the improvements were made, or if the respondent demonstrates to the

⁶ R.C. 4112.16(D)(1)(a) and (2)(a).

⁷ R.C. 4112.16(A) and (D)(2)(b).



court's satisfaction that the explanation given for the necessity of an extension was reasonable, the alleged aggrieved party 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. The alleged aggrieved party 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 respondent failed to maintain accessibility following the initial improvements.⁸

Applicability

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. The bill does not apply to actions initiated by the Ohio Civil Rights Commission.⁹

Definition of "business day"

For purposes of the bill, "business day" means a day of the week excluding Sunday and a legal holiday.¹⁰

HISTORY

ACTION	DATE
Introduced	11-06-13
Reported. H. Judiciary	---

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⁸ R.C. 4112.16(D)(2)(c).

⁹ R.C. 4112.16(E).

¹⁰ R.C. 4112.16(F)(2).

