



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Sarah A. Maki

### Sub. H.B. 271

132nd General Assembly  
(As Passed by the General Assembly)

- 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, T. Johnson, Landis, LaTourette, Lepore-Hagan, Manning, McClain, Merrin, Patton, Pelanda, Perales, Reineke, Retherford, Rogers, Romanchuk, R. Smith, Stein
- Sens.** Brown, Burke, Coley, Eklund, Hackett, Huffman, Lehner, Obhof, O'Brien, Peterson, Schiavoni, Tavares, Terhar, Thomas, Williams, Wilson

**Effective date:** March 20, 2019

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## ACT SUMMARY

- Allows an alleged aggrieved party claiming a violation of an accessibility law to notify the responsible party of the alleged violation before filing a civil action.
- Requires one of three types of responses to a notice of an alleged accessibility law violation, as follows:
  - A statement that the responsible party will make improvements that will bring the property into compliance with accessibility laws within 60 days, with a 60-day extension upon reasonable explanation.
  - A challenge to the validity of the alleged violation.
  - A statement that the responsible party has made improvements to bring the property into compliance with accessibility laws, supported by evidence verifying the statement.
- Specifies when an alleged aggrieved party who notifies the responsible party of the alleged violation of an accessibility law may file a civil action.
- Specifies when an alleged aggrieved party may be awarded attorney's fees.

- Exempts from the act'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 and charges filed with the Ohio Civil Rights Commission.

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## CONTENT AND OPERATION

### Overview

The act 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. If notice is given, the alleged aggrieved party is temporarily precluded from filing a civil action until the responsible party responds or fails to respond to the notification. A decision by an alleged aggrieved party to file a civil action without providing notice affects the party's ability to recover attorney's fees.

An "accessibility law" is either:

- The provision of 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 act.<sup>1</sup>

A "disability" is a physical or mental impairment that substantially limits one or more major life activities. The term includes having a record of a physical or mental impairment or being regarded as having a physical or mental impairment.<sup>2</sup>

### Notice

The act allows an alleged aggrieved party claiming a violation of an accessibility law to notify the responsible party of the alleged violation before filing a civil action. An

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<sup>1</sup> R.C. 4112.16(F)(1); R.C. 4112.02(G) and (H), not in the act.

<sup>2</sup> R.C. 4112.01(A)(13) and 42 U.S.C. 12102, not in the act.



alleged aggrieved party who elects to notify the responsible party must do so by personal service, in accordance with state or federal laws, or by certified mail. The notice must identify specific facts that constitute the alleged violation and the location of the alleged violation.<sup>3</sup> The act provides a model for the notice (see "**Notice form**," below).

## **Response to notice**

The act requires a person who receives the notice to 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:<sup>4</sup>

(1) Expressly state that improvements will be made to bring the property into compliance with 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 accessibility laws. The responsible party must attach evidence that verifies those improvements.

## **Filing of action**

The act precludes an alleged aggrieved party who notifies a responsible party of an alleged violation from filing a civil action until one of the following occurs (see **COMMENT**):<sup>5</sup>

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

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

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<sup>3</sup> R.C. 4112.16(A) and (B).

<sup>4</sup> R.C. 4112.16(C), (D)(1)(b), and (F)(2).

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



(3) The response states that the alleged violation has been corrected to comply with accessibility laws, but the alleged aggrieved party reasonably believes that the alleged violation persists;

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

### **Opportunity to correct alleged violation**

A responsible party who states that improvements will be made to bring the property into compliance with 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 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.<sup>6</sup>

### **Damages and attorney's fees**

#### **Notice not provided**

If an alleged aggrieved party (now plaintiff) files a civil action alleging violation of an accessibility law and does not serve the optional prelitigation notice to the responsible party (now defendant),<sup>7</sup> the plaintiff generally is not entitled to attorney's fees unless the trial court determines that attorney's fees are appropriate due to the nature of the violation, including its willfulness, duration, or severity.<sup>8</sup>

#### **Notice provided**

If a plaintiff prevails in a civil action alleging violation of an accessibility law and provides the optional prelitigation notice to the defendant, and the defendant fails to make improvements within the 60-day period or provide a reasonable explanation for the delay, the plaintiff is generally entitled to reasonable attorney's fees in addition to any other available remedies, unless all of the following are true:<sup>9</sup>

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<sup>6</sup> R.C. 4112.16(D)(1)(a).

<sup>7</sup> 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 act).

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

<sup>9</sup> R.C. 4112.16(D)(2)(b).



(1) The plaintiff filed the action before an extension period invoked by the defendant expired;

(2) The court determines that the defendant's explanation as to the necessity of the extension was reasonable;

(3) The defendant makes the improvements to bring the property into compliance with accessibility laws during the period of extension.

If the defendant makes the improvements within the 60-day period and provides evidence of the improvements to the plaintiff or demonstrates to the court's satisfaction that the explanation for the delay was reasonable, 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.

However, 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 defendant failed to maintain accessibility following the initial improvements.<sup>10</sup>

## **Applicability**

The act 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 act 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.<sup>11</sup>

## **Notice form**

The notice described in the act must be in substantially the following form or furnish similar information:<sup>12</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

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<sup>10</sup> R.C. 4112.16(D)(2)(c).

<sup>11</sup> R.C. 4112.16(E).

<sup>12</sup> R.C. 4112.16(B).



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.)

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.

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## COMMENT

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

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## HISTORY

ACTION	DATE
Introduced	06-12-17
Reported, H. Civil Justice	02-01-18
Passed House (96-0)	02-28-18
Reported, S. Judiciary	12-06-18
Passed Senate (31-0)	12-12-18

