



October 23<sup>rd</sup>, 2017

House Civil Justice Committee

House Bill 271

Opponent Testimony- The Ability Center of Greater Toledo

Chairman Butler, Vice-Chair Hughes, Ranking Member Boggs, and members of the House Civil Justice Committee, thank you for taking time to speak with me about House Bill 271. My name is Valerie Novack. I am a Disability Rights Advocate with The Ability Center of Greater Toledo in Sylvania, OH. We are a Center for Independent Living serving seven (7) counties in Northwest Ohio. Our focus is to support individuals with disabilities to live in a fully inclusive community. If passed, House Bill 271, The Accessibility Law Violation Notice, would create barriers to inclusive living for persons with disabilities in Ohio.

For most of U.S. History, persons with disabilities were prohibited from going to public places such as banks, hospitals, sports events, libraries, restaurants, grocery stores, and hotels because of physical barriers. They were literally unable to get in the door, which made it difficult to live independently day to day. The passage of the ADA helped establish physical access for those with disabilities, but there is still a long way to go. As a Center for Independent Living, we regularly hear from persons with disabilities who, for example, cannot go to restaurants that have no accessible parking; cannot get into stores that have no accessible entrance; and cannot use the bathroom at their workplace or doctor's office. When persons with disabilities reach out to these businesses to request that they bring their buildings into compliance, some businesses make the requested changes, but many do not.

The Americans with Disabilities Act, ADA, was established in 1990, 27 years ago. Since then, many of the guidelines from the ADA Architectural Guidelines have been adopted into Ohio's Commercial Building Code. Thus, proponents are claiming that they have little or no knowledge of legal requirements that have been in effect for 27 years, and are, mostly, also required under Ohio law for any new construction. Despite this, House Bill 271 would shift the burden of compliance from businesses to people with disabilities. If House Bill 271 passes, businesses would have no incentive to comply with the ADA unless persons with disabilities provide additional notice of non-compliance as well as up to a 180-day period in which that person is unable to use the facilities. Where most persons with disabilities, now, simply reach out to the manager or owner of a business to request access, they would almost be required to hire an attorney to give the notice that would trigger this law.

Proponent testimony claims HB 271 is necessary due to an increase of 'drive-by' and 'frivolous' law suits in Ohio. However, in northwest Ohio, there are very few attorneys that will take these cases because the law does not allow plaintiffs to collect damages. Often, attorneys' fees are not enough of an incentive for an attorney to take a case. In addition, many of the examples provided in testimony may appear minor or technical but are not. Some examples were tables being too high, lack of railings on ramps, ramps sloped incorrectly, and carpet being too thick. All of these requirements can make the difference between a space being safe and usable or being dangerous and inaccessible. An inch can be the difference between getting in a building, or making it safely to a restroom.

In addition to the resources available for businesses to comply, and the already lean enforcement of ADA compliance, truly meritless lawsuits and unethical lawyers already have a process they are beholden to. Ohio Revised Code has statutes for both vexatious litigators (2323.52) and frivolous legal claims (2323.51). There is no need to make any changes to ADA enforcement in order to address lawyers or individuals attempting to abuse the law.

Those in favor of the Accessibility Law Violation Notice claim it is a way to strengthen ADA protections, but in reality, it would make the ADA very difficult to enforce. Proponent testimony fails to take into account the very real need, and minor enforcement, of the ADA and misunderstands the purpose and technical nature of the law. House Bill 271 is not the way to address unethical lawyers, instead it will complicate citizens' rights to accessible communities and full access. Meritless lawsuits and unethical lawyers should be combated without making changes to civil rights enforcements that are necessary to ensure full inclusion for all people.

Thank you,

Valerie Novack  
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The Ability Center of Greater Toledo