

Testimony of Kelly Casto  
House Bill 271  
Senate Judiciary Committee

September 25, 2018

Chairman Bacon and members of the Senate Judiciary Committee, thank you for allowing me to provide proponent testimony on House Bill 271. My name is Kelly Casto and I serve in Asset Management for CASTO. Our company is now operating in the fourth generation and one of the cornerstones to our success has been our reputation. We are known both in the real estate community and the greater community for our integrity and credibility. Unfortunately, that credibility is under attack by individuals shamefully using the Americans with Disability Act as a cover. The bill before you will hopefully send a message that this practice must be stopped. House Bill 271 allows for property owners to be notified and correct possible minor violations of the ADA prior to a lawsuit being filed.

We take enormous pride in our shopping centers and if there is an issue we certainly want to address it immediately. Despite the care we take, over the last several years we have been involved numerous lawsuits claiming minor ADA violations at our properties. However, these lawsuits provide little to no detail on any specific violation and we are left facing the very real prospect of a drawn out legal battle.

To give you an example of what we are dealing with at CASTO specifically, I would like to describe to the Committee how we are typically hit with these lawsuits. Usually we are provided a notice that a lawsuit has been filed which will state in vague terms the violation, such as “restrooms are in violation” or “access to the property is in violation.” As you can imagine within a shopping center, this type of description is virtually useless in allowing us to assess exactly what has presented the difficulty. We are left questioning, Is the mirror height incorrect?

Is the bathroom completely non-compliant? Is the ramp sloping off by a fraction of a degree? Maybe there is no ramp at all and we need one? If the information of the alleged violation was relayed to us with specific detail, we could actually determine if there was a problem and make all efforts to correct the error immediately. Unfortunately, the goal of these lawsuits appears not to be to fix violations but for financial gain by third parties other than the plaintiff.

After we are served with the lawsuit, the plaintiff's attorney sends an inspector to draft a report detailing the violations. Inspection reports are typically 40-75 pages long and have violations of a mostly minor nature. These reports usually state such items as the slope of a ramp being a few degrees off, parking striping that is faded or a sign that does not meet height requirements. The vast majority of the alleged violations are easily fixable in a reasonable time and at a reasonable cost. This should not require litigation if we are willing and able to remedy the violations.

After these inspection reports are completed, the plaintiff's counsel will then make a settlement demand. These demands have generally been in the \$30,000 to \$35,000 range and the majority of the cost relates to attorneys' fees and costs for the inspection report. Several have also included a \$10,000 demand for Plaintiff damages.

Facing this type of litigation, it is not surprising that we make the business decision to seek a settlement. The settlements have been between \$9,500 and \$16,000, with a cost for our outside counsel between \$4,000 - \$7,000 per violation. This of course does not include our internal cost with legal and property management.

As I said at the beginning of my testimony, the CASTO reputation is one of our driving forces for our success. We have been a part of this community for over eight decades and look

forward to being part of it for many more years to come. Unfortunately, we are facing a situation that continues to get worse and worse. Ensuring full access for everyone is something we want to ensure and protect. This can be accomplished without turning the ADA into a money-making operation. Those using the ADA for financial gain need to be stopped and House Bill 271 will help in that goal. Allowing for notification and remedial action if needed before a lawsuit being filed will help protect Ohio businesses like mine and achieve the true intent of the ADA. I ask that you please support House Bill 271.

Thank you and I would be more than happy to try and answer any questions.