



Monday, November 26, 2018

The Honorable Kevin Bacon, Chairman
Senate Judiciary Committee
Ohio Statehouse
Columbus, OH 43215

Chairman Bacon,

On behalf of the Ohio Developmental Disabilities Council, we wanted to offer our input into the Senate Judiciary Committee's deliberations on Amended House Bill 271. The Ohio DD Council testified in opposition to the as-introduced version of House Bill 271 during deliberations in the House Civil Justice Committee. However, before passing the bill, the committee wisely adopted changes that we believe improved the impact of the bill, and subsequently, the Council voted to remove our opposition and remain an interested party.

As you know, the Ohio Developmental Disabilities Council is created by the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000. Contained in the act is the goal of the nation, and subsequently all state councils on developmental disabilities, to provide individuals with disabilities with the skills, opportunities and supports to live free of abuse and neglect, and "violations of their legal and human rights."

The version of the bill passed by the House creates a permissive notification system within the state court system that aims to reduce, as proponents allege, the number of lawsuits filed that seek a settlement rather than a resolution of a violation of the Americans with Disabilities Act. The bill requires a business to exercise due diligence when responding to allegations of a violation by providing a reasonable and prudent period of time to respond and potentially correct any and all deficiencies in their facilities or programs that are considered to be a violation of the federal law guaranteeing access to facilities and programs for individuals with disabilities.

The change that specifically altered the position of the Council was language that makes the notification permissive rather than a requirement. The Council considered any change in the law that created a mandatory barrier to seeking redress a violation of every individual with a disability's legal rights. We believe the change from shall to may retains the original access that individuals with disabilities have to the court and provides an additional route for seeking direct improvements to the accessibility of facilities and programs.

We could not think of any other area in statute where an individual accused of breaking the law would be given a "get-out-of-jail" card by allowing them to eliminate the offending behavior without the intervention of the court. Passage of the bill as introduced would have altered the long standing and accepted legal principle that ignorance of law excuses no one, unless that law is the Americans with Disabilities Act.

The recovery of attorney fees is possible under a scenario where an individual does not provide notification and more likely under the newly created scenario where notification is provided but an out-of-court resolution is not met. The Council hopes the incentive created under the new scenario leads to improved accessibility by businesses and entities who have not met the standards and requirements of a federal law that has been in place for 28 years.

We thank you for your consideration of our input on House Bill 271.

Sincerely,



Jo Spargo
Chair



Carolyn Knight
Executive Director