BEFORE THE HOUSE CIVIL JUSTICE COMMITTEE
PROPONENT TESTIMONY ON HB 271
Wednesday, September 20th, 2017

Chair Butler, Vice Chair Hughes, Ranking Member Boggs, and members of the House Civil Justice Committee, thank you for the opportunity to provide proponent testimony on House Bill 271. My name is Don Boyd and I am the Director of Labor and Legal Affairs for the Ohio Chamber of Commerce.

The Ohio Chamber is the state's leading business advocate, and we represent nearly 8,000 companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans. The Ohio Chamber of Commerce is a champion for Ohio business so our state enjoys economic growth and prosperity.

The Americans with Disabilities Act (ADA) was enacted to prohibit discrimination against individuals with disabilities and to provide them with remedies for violations of the law. However, the law is often complex and contradictory and there is no comprehensive administrative oversight. The compliance manual alone is over 270 pages. Businesses and property owners don't often know what their obligations are or how to comply. Therefore, the ADA is enforced primarily through litigation.

Currently, when a lawsuit is filed under the federal ADA successful plaintiffs are entitled only to injunctive relief, meaning the problem or violation is remedied, and their attorney's fees. This gives attorneys, often seeking settlement, an incentive to file lawsuits independent of how quickly the violations are fixed. This has resulted in a cottage industry of ADA lawsuits that not only saddle employers with unfair litigation and settlement costs, but actually prevent the access problems at issue from being corrected in a timely manner.

We believe that HB 271 offers a meaningful solution to this very serious problem. The bill proposes a notification process prior to the filing of a civil action and provides a model notice language. Once the notice is received, the business has 15 days to respond in one of three ways. First, the business can respond stating the improvements that will alleviate the access violation will be made within 90 days, or within an additional 180 days if a

reasonable explanation for the delay is given. Second, the business may dispute the violation. Third, the business may state that the alleged violation has already been remedied and attach evidence verifying the statement. If the improvements are not made within the specified timeframe, the business disputes the violation, the business stated the violation was fixed but the aggrieved individual reasonably believes the alleged violation continues to exist, or the business fails to respond at all within the 15-day period, then the individual may file a civil action.

Today, a business may not even know of a violation until they receive a lawsuit. The process laid out in this legislation would disincentivize lawsuits in favor of both sides coming together to reach timely and workable solutions and would facilitate better compliance. Similar to ADA accommodations under employment law, this would allow for an interactive process to take place to remedy a violation prior to litigation. The bill's requirement that an individual provide notice of an alleged violation prior to filing a lawsuit is reasonable and provides businesses with an opportunity to fix or remedy the violation in a timely manner. Most businesses do not intentionally violate the ADA, but are simply unclear about their obligations. This bill gives them the ability to address the alleged violations prior to going to court and would help lower legal costs for businesses that simply want to improve access. However, it would not close the door to litigation if the violation is disputed.

We believe this legislation reasonably balances the interests of ensuring access for individuals with disabilities and preventing lawsuit abuse plaguing businesses. Thank you for the opportunity to testify today and I would be happy to answer any questions at this time.