

TO: Chairman Kevin Bacon and Members of the Senate Judiciary Committee
RE: HB 271 – Memo in support of HB 271 – as Passed by the House
DATE: November 27, 2018
FROM: Ohio Association for Justice, Protecting Ohio’s Employees and the Ohio Employment Lawyers Association

We are pleased to inform you that the above-named organizations support HB 271 as passed by the House. After lengthy and productive discussions with the sponsors and proponents of the legislation, the House Civil Justice Committee adopted several amendments that significantly improved the legislation from our perspective, which enabled us to change our policy position from opposition to support for the bill.

Sub. HB 271 provides concrete incentives for individuals with disabilities to serve written notice prior to filing an accessibility lawsuit, but does not bar actions filed without a notice. It also provides procedures, time limits, and certain protections for property owners who correct accessibility issues voluntarily after receiving notice of violations.

The specific provisions are as follows:

- The bill provides for written notice to business owners of accessibility violations prior to filing a public accommodations lawsuit. However, if suit is filed without the notice, the plaintiff cannot generally recover attorney’s fees. (Lines 11-23)
- In the absence of prior notice, the bill still allows attorney’s fees to be awarded if “the trial court determines that attorney’s fees are appropriate due to the nature of the violations, including their willfulness, duration, or severity.” (Lines 17-23)
- The notice does not need to use any “magic words,” but it must convey the basic details of the violation, provide the violator 15 business days to respond, and inform the violator they have up to 60 days to fix the violation. The bill provides model language that can be incorporated in a form notice to be provided to violators. (Lines 44-89)
- Once a notice is served, the sender generally cannot sue until the recipient has either failed to respond, has denied the violation, or has missed the 60-day deadline. (Lines 24-43)
- The violator can ask for a single, 60-day extension of the deadline. But if the aggrieved party does not believe an extension is needed and sues before it expires, the violator will need to demonstrate to the court that the extension was needed. (Lines 117-122; 164-167)

- If the violator fails to respond, denies the violation, or fails to fix it within the original or extended 60-day deadline, the aggrieved party can file a lawsuit. Attorney's fees will be awarded automatically if the aggrieved party prevails. (Line 145-148)
- If the court determines the violations have been corrected within the original 60-day period or within a reasonably requested 60-day extension, an aggrieved party who files a lawsuit will not receive damages or fees, except actual damages as provided below. (Line 148-157)
- None of these provisions will apply to limit a lawsuit for actual damages due to an injury in fact suffered due to an accessibility violation or any action by the Ohio Civil Rights Commission. (Lines 176-186). And, as noted above, anyone who is willing to forgo automatic attorney's fees can disregard the notice provision entirely.

If you have any questions, please contact Connie Nolder, legislative representative for Protecting Ohio's Employees and the Ohio Employment Lawyers Association. Connie@crnconsulting.org/ 614-329-6100 or John Van Doorn, Government Affairs Director for the Ohio Association for Justice. JVandoorn@OAJustice.org/614-341-6800.