

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 271**

**Representatives McColley, Rezabek**

**Cosponsors: Representatives Henne, Antani, Wiggam, Arndt, Hood, Koehler,  
Sweeney, Kick, Thompson, Riedel, Seitz, Lipps, Goodman, Dean, Scherer, Green,  
Blessing, Schaffer**

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**A BILL**

To enact section 4112.16 of the Revised Code to 1  
authorize an alleged aggrieved party to provide 2  
a notice of an alleged accessibility law 3  
violation in advance of filing a civil action 4  
and to establish the circumstances under which 5  
an alleged aggrieved party is entitled to 6  
attorney's fees in a civil action based on the 7  
violation. 8

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 4112.16 of the Revised Code be 9  
enacted to read as follows: 10

**Sec. 4112.16.** (A) Prior to filing a civil action alleging 11  
violation of an accessibility law, the alleged aggrieved party 12  
shall notify the owner, agent, or other responsible party of the 13  
property where the alleged violation occurred by personal 14  
service, in accordance with applicable state or federal laws, or 15  
by certified mail, of alleged accessibility law violations for 16  
which an action may be filed by the alleged aggrieved party. If 17

an alleged aggrieved party does not serve notice, the alleged 18  
aggrieved party is not entitled to attorney's fees upon the 19  
judgment of a civil action alleging violation of an 20  
accessibility law unless the trial court determines that 21  
attorney's fees are appropriate due to the nature of the 22  
violations, including their willfulness, duration, or severity. 23  
If an alleged aggrieved party serves notice in accordance with 24  
division (B) of this section, the alleged aggrieved party is 25  
precluded from filing such a civil action until one of the 26  
following occurs: 27

(1) The alleged aggrieved party receives a response as 28  
described in division (C) (1) of this section and the property 29  
owner, agent, or other responsible party of the property fails 30  
to make the improvements or bring the property into compliance 31  
with accessibility laws and fails to provide a reasonable 32  
explanation for the failure within ninety days as required by 33  
division (D) of this section. 34

(2) The alleged aggrieved party receives a response as 35  
described in division (C) (2) of this section. 36

(3) The alleged aggrieved party receives a response as 37  
described in division (C) (3) of this section, but the alleged 38  
aggrieved party reasonably believes that the alleged violations 39  
continue to exist. 40

(4) The property owner, agent, or other responsible party 41  
of the property fails to respond to the notice within fifteen 42  
business days as required by division (C) of this section. 43

(B) A notice provided pursuant to division (A) of this 44  
section shall furnish similar information or be in substantially 45  
similar form to the following: 46

THIS LETTER IS TO INFORM YOU THAT THE PROPERTY LOCATED AT 47  
(address of property), FOR WHICH YOU ARE THE PROPERTY OWNER, 48  
AGENT, OR OTHER RESPONSIBLE PARTY, MAY BE IN VIOLATION OF 49  
FEDERAL AND/OR STATE ACCESSIBILITY LAWS AND CAUSED HARM TO (name 50  
of alleged aggrieved party). 51

SPECIFICALLY, THE POSSIBLE VIOLATION(S) HAS/HAVE BEEN 52  
IDENTIFIED AS FOLLOWS: 53

(Notice must identify the specific facts that constitute 54  
the alleged violation, including the approximate date on which 55  
the alleged violation occurred or was observed and 56  
identification of the location of the alleged violation with 57  
sufficient detail, so that the location can be identified by the 58  
property owner, agent, or other responsible party.) 59

YOU HAVE 15 BUSINESS DAYS TO RESPOND TO THIS NOTICE BY 60  
PERSONAL SERVICE OR CERTIFIED MAIL. YOUR RESPONSE MUST BE 61  
ADDRESSED TO (address where personal service may be received or 62  
certified mail may be sent). OHIO LAW ALLOWS YOU TO RESPOND IN 63  
ONE OF THREE WAYS: 64

(1) YOU MAY EXPRESSLY STATE THAT IMPROVEMENTS WILL BE MADE 65  
TO BRING THE PROPERTY INTO COMPLIANCE WITH APPLICABLE 66  
ACCESSIBILITY LAWS. IF YOU RESPOND IN THIS MANNER, YOU HAVE A 67  
MAXIMUM OF 90 DAYS TO COMPLETE THESE IMPROVEMENTS. THE 90-DAY 68  
PERIOD SHALL BEGIN ON THE DATE YOUR RESPONSE TO THIS NOTICE IS 69  
RECEIVED AT THE ADDRESS GIVEN ABOVE. IF THE IMPROVEMENTS 70  
NECESSARY TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 71  
APPLICABLE ACCESSIBILITY LAWS ARE NOT COMPLETED WITHIN THE 90- 72  
DAY PERIOD, THE ALLEGED AGGRIEVED PARTY MAY BRING A LAWSUIT 73  
AGAINST YOU. YOU MAY EXTEND THE 90-DAY PERIOD ONLY IF YOU 74  
PROVIDE A REASONABLE EXPLANATION AS TO WHY IMPROVEMENTS CANNOT 75  
BE MADE WITHIN 90 DAYS. REASONABLE EXPLANATIONS INCLUDE 76

DEMONSTRATED NEED FOR DELAY, SUCH AS CONSTRUCTION AND PERMITTING 77  
RELATED ISSUES. 78

(2) YOU MAY CHALLENGE THE VALIDITY OF THE ALLEGED 79  
VIOLATIONS. IF YOU RESPOND IN THIS MANNER, THE ALLEGED AGGRIEVED 80  
PARTY MAY BRING A LAWSUIT AGAINST YOU IMMEDIATELY. 81

(3) IF THE VIOLATIONS LISTED ABOVE ARE THE SAME AS OR 82  
SIMILAR TO PREVIOUS VIOLATIONS THAT YOU BELIEVE HAVE BEEN 83  
CORRECTED, YOU MAY RESPOND BY STATING THAT THE NECESSARY 84  
IMPROVEMENTS HAVE BEEN MADE TO BRING THE PROPERTY INTO 85  
COMPLIANCE WITH THE APPLICABLE ACCESSIBILITY LAWS. YOU MUST ALSO 86  
ATTACH EVIDENCE THAT VERIFIES THOSE IMPROVEMENTS. 87

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE OR YOUR RIGHTS 88  
UNDER FEDERAL OR OHIO LAW, PLEASE CONTACT YOUR LEGAL COUNSEL. 89

(C) Within fifteen business days after an alleged 90  
aggrieved party serves or sends a notice pursuant to division 91  
(A) of this section, the property owner, agent, or other 92  
responsible party of the property where the alleged violation 93  
occurred shall respond to the notice by personal service or 94  
certified mail to the alleged aggrieved party. That response 95  
shall do one of the following: 96

(1) Expressly state that improvements will be made to 97  
bring the property into compliance with applicable accessibility 98  
laws. 99

(2) Challenge the validity of the alleged violation. If 100  
the property owner, agent, or other responsible party responds 101  
in this manner, the alleged aggrieved party may file an action, 102  
subject to any applicable statutes of limitations, any time 103  
after receipt of that response. 104

(3) State that the alleged violations identified by the 105

alleged aggrieved party have been corrected to comply with 106  
applicable accessibility laws. The property owner, agent, or 107  
other responsible party shall attach evidence to the response 108  
that verifies those improvements. 109

(D) (1) (a) If a property owner, agent, or responsible party 110  
of the property where the alleged accessibility law violation 111  
occurred responds in the manner described in division (C) (1) of 112  
this section, the property owner, agent, or responsible party 113  
shall have ninety days to remedy the alleged violation. The 114  
ninety-day period shall begin on the date the alleged aggrieved 115  
party receives the response described in division (C) of this 116  
section. The owner, agent, or other responsible party may extend 117  
the ninety-day period by not more than ninety days upon 118  
providing a reasonable explanation as to why the improvement 119  
requires more than ninety days to complete. Reasonable 120  
explanations include demonstrated need for extension, such as 121  
construction and permitting related issues. 122

(b) If the property owner, agent, or other responsible 123  
party of the property where the alleged accessibility law 124  
violation occurred responds in the manner described in division 125  
(C) (1) of this section and makes the improvements to bring the 126  
property into compliance with applicable accessibility laws 127  
within the ninety-day period described in division (D) (1) (a) of 128  
this section or provides a reasonable explanation as to why 129  
those improvements are not completed, the response as described 130  
in division (C) (1) of this section shall not be considered an 131  
admission of guilt and shall be inadmissible as evidence in any 132  
future actions based on the same facts filed against the 133  
property owner, agent, or other responsible party. 134

(2) (a) If the property owner, agent, or other responsible 135

party of the property where the alleged accessibility law 136  
violation occurred fails to make the improvements to bring the 137  
property into compliance with applicable accessibility laws 138  
within the ninety-day period described in division (D) (1) (a) of 139  
this section and, in the opinion of the aggrieved party, fails 140  
to provide a reasonable explanation as to why those improvements 141  
are not completed, the alleged aggrieved party may file a civil 142  
action for accessibility law violation against that property 143  
owner, agent, or other responsible party. 144

(b) In a civil action filed pursuant to division (D) (2) (a) 145  
of this section in which a plaintiff prevails, the plaintiff 146  
shall recover reasonable attorney's fees, in addition to any 147  
other remedies available to the plaintiff. However, the 148  
plaintiff shall not be entitled to attorney's fees under this 149  
division if the plaintiff filed the civil action prior to the 150  
expiration of an extension invoked by the defendant and the 151  
court determines that the defendant's explanation as to the 152  
necessity of the extension was reasonable. 153

(c) If the property owner, agent, or other responsible 154  
party where the alleged accessibility law violation occurred 155  
makes the improvements to bring the property into compliance 156  
with the applicable accessibility laws within the ninety-day 157  
period described in division (D) (1) of this section and provides 158  
evidence to the alleged aggrieved party that the improvements 159  
have been made, or if the property owner, agent, or other 160  
responsible party demonstrates to the court's satisfaction that 161  
the explanation given for the necessity of an extension was 162  
reasonable, the alleged aggrieved party shall not receive any 163  
damages or attorney's fees for any action arising out of the 164  
same or similar facts that served as a basis for the alleged 165  
violation. The alleged aggrieved party may receive damages and 166

attorney's fees for actions arising out of a recurrence of the 167  
same or similar alleged accessibility law violation if it is 168  
determined that the property owner, agent, or other responsible 169  
party failed to maintain accessibility following the initial 170  
improvements. 171

(E) (1) This section shall not be construed to limit 172  
actions for recovery of special damages filed by any person who 173  
suffers an injury in fact because the person was denied full and 174  
equal access to an accommodation as required by federal or state 175  
law. 176

(2) This section does not apply to actions initiated by 177  
the Ohio civil rights commission under Chapter 4112. of the 178  
Revised Code. 179

(F) As used in this section: 180

(1) "Accessibility law" means any federal law or section 181  
of the Revised Code that ensures accessibility to services, 182  
programs, places of public accommodation, public conveyance and 183  
modes of transportation, streets, highways, sidewalks, walkways, 184  
buildings, medical facilities, and other public places for a 185  
person with a disability. 186

(2) "Business day" means a day of the week excluding 187  
Sunday and a legal holiday as defined in section 1.14 of the 188  
Revised Code. 189