

# AN ACT

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

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 4112.16 of the Revised Code be enacted to read as follows:

Sec. 4112.16. (A) Prior to filing a civil action alleging violation of an accessibility law, the alleged aggrieved party may notify the owner, agent, or other responsible party of the property where the alleged violation occurred by personal service, in accordance with applicable state or federal laws, or by certified mail, of alleged accessibility law violations for which an action may be filed by the alleged aggrieved party. If an alleged aggrieved party does not serve notice, the alleged aggrieved party is not entitled to attorney's fees upon the judgment of a civil action alleging violation of an accessibility law unless the trial court determines that attorney's fees are appropriate due to the nature of the violations, including their willfulness, duration, or severity. If an alleged aggrieved party serves notice in accordance with division (B) of this section, the alleged aggrieved party is precluded from filing such a civil action until one of the following occurs:

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

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

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

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

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

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

SPECIFICALLY, THE POSSIBLE VIOLATION(S) HAS/HAVE BEEN IDENTIFIED AS

FOLLOWS:

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

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

(1) YOU MAY EXPRESSLY STATE THAT IMPROVEMENTS WILL BE MADE TO BRING THE PROPERTY INTO COMPLIANCE WITH APPLICABLE ACCESSIBILITY LAWS. IF YOU RESPOND IN THIS MANNER, YOU HAVE A MAXIMUM OF 60 DAYS TO COMPLETE THESE IMPROVEMENTS. THE 60-DAY PERIOD SHALL BEGIN ON THE DATE YOUR RESPONSE TO THIS NOTICE IS RECEIVED AT THE ADDRESS GIVEN ABOVE. IF THE IMPROVEMENTS NECESSARY TO BRING THE PROPERTY INTO COMPLIANCE WITH THE APPLICABLE ACCESSIBILITY LAWS ARE NOT COMPLETED WITHIN THE 60-DAY PERIOD, THE ALLEGED AGGRIEVED PARTY MAY BRING A LAWSUIT AGAINST YOU. YOU MAY EXTEND THE 60-DAY PERIOD ONLY IF YOU PROVIDE A REASONABLE EXPLANATION AS TO WHY IMPROVEMENTS CANNOT BE MADE WITHIN 60 DAYS. REASONABLE EXPLANATIONS INCLUDE DEMONSTRATED NEED FOR DELAY, SUCH AS CONSTRUCTION AND PERMITTING RELATED ISSUES.

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

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

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

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

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

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

(3) State that the alleged violations identified by the alleged aggrieved party have been corrected to comply with applicable accessibility laws. The property owner, agent, or other

responsible party shall attach evidence to the response that verifies those improvements.

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

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

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

(b) In a civil action filed pursuant to division (D)(2)(a) of this section in which a plaintiff prevails, the plaintiff shall recover reasonable attorney's fees, in addition to any other remedies available to the plaintiff. However, the plaintiff shall not be entitled to attorney's fees under this division if all of the following are true:

(i) The plaintiff filed the civil action prior to the expiration of an extension invoked by the defendant.

(ii) The court determines that the defendant's explanation as to the necessity of the extension was reasonable.

(iii) The defendant makes the improvements to bring the property into compliance with applicable accessibility laws during the period of extension.

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

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

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

(2) This section does not apply to charges filed with the Ohio civil rights commission under Chapter 4112. of the Revised Code or deferred to the commission under federal law. This section does not preclude the commission from investigating charges of discrimination against a place of public accommodation.

(F) As used in this section:

(1) "Accessibility law" means division (G) of section 4112.02 of the Revised Code as that division applies to a person with a disability or any federal law that ensures accessibility to services, programs, places of public accommodation, public conveyance and modes of transportation, streets, highways, sidewalks, walkways, buildings, medical facilities, and other public places for a person with a disability. "Accessibility law" does not mean division (H) of section 4112.02 of the Revised Code or any other provision of the Revised Code relating to housing discrimination issues or actions.

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

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_