

CHAPTER 197
SB 359 – FINAL VERSION

03/21/12 1274s
03/28/12 1460s
16May2012... 2183h

2012 SESSION

12-2933
05/03

SENATE BILL **359**

AN ACT relative to civil actions involving accessibility standards for public buildings.

SPONSORS: Sen. Gallus, Dist 1; Sen. Lambert, Dist 13; Rep. Merrick, Coos 2; Rep. Gionet,
 Graf 3

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill provides that, in an action to enforce accessibility standards for public buildings, the court may award attorneys fees to the prevailing party. The bill also defines prevailing party in such cases.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to civil actions involving accessibility standards for public buildings.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 197:1 Accessibility Standards for Public Buildings; Enforcement Actions. Amend RSA 155-A:5-
2 a, V to read as follows:

3 V. In addition to other enforcement authority granted in this chapter, the protection and
4 advocacy system for New Hampshire, as designated by the governor pursuant to 42 U.S.C. section
5 15043, shall have standing to enforce the accessibility standards required by this section. If the
6 protection and advocacy system determines that probable cause exists that a public building violates
7 the accessibility certification or inspection requirements of this section, it shall issue a letter to the
8 owner of the building specifically identifying the deficiencies and requesting that the building be
9 brought into compliance. The owner shall have 30 days to respond to the letter and 270 days to
10 bring the building into compliance. If the owner does not respond, does not agree that there are
11 some or all of the deficiencies asserted, **or** does not agree to bring the building into compliance
12 within the specified time periods, or any other dispute remains as to compliance, either the owner or
13 the protection and advocacy system may file an action in the superior court to determine compliance
14 with this section. The protection and advocacy system may bring the action in its name or in the
15 name of any individual with a physical impairment who is adversely affected by the alleged failure to
16 adhere to the accessibility standards of the state building code, or both. If it is determined by the
17 superior court that the building is not in compliance with the accessibility standards in the state
18 building code, the court shall order that the ~~owner~~ **responsible party** bring the building into
19 compliance. ~~[If the protection and advocacy system prevails in such action, it shall be awarded court~~
20 ~~costs and reasonable attorney's fees from the owner. For purposes of this section, "prevailing" is~~
21 ~~defined to include a judgment by the court, a consent decree, or instances where the owner agrees to~~
22 ~~make or makes some or all of the requested changes after the filing date of the action.] **The court**~~
23 **may award reasonable attorney's fees and costs to the prevailing party. For purposes of**
24 **this section, a party prevails only if it receives either an enforceable judgment on the**
25 **merits or a consent decree.**

26 197:2 Effective Date. This act shall take effect 60 days after its passage.

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- 1 Approved: Enacted in accordance with Article 44, Part II, of N.H. Constitution, without signature of
- 2 the governor, June 13, 2012.
- 3 Effective Date: August 12, 2012