

SECOND REGULAR SESSION

HOUSE BILL NO. 1694

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRISTENSEN.

3951H.02I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to abusive website access litigation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be
2 known as section 537.1250, to read as follows:

**537.1250. 1. (1) This section shall be known and may be cited as the "Act
2 Against Abusive Website Access Litigation".**

3 **(2) As used in this section, the following terms mean:**

4 **(a) "Access violation", any allegation that a public accommodation fails to**
5 **comply with the accessibility requirements of the federal Americans with Disabilities**
6 **Act or under state law;**

7 **(b) "Public accommodation", the same as defined in 42 U.S.C. Section 2000 et**
8 **seq. For the purposes of this section, "public accommodation" includes a website**
9 **operated by a resident of this state;**

10 **(c) "Resident of this state", any individual residing in Missouri or any entity that**
11 **has registered with the Missouri secretary of state's office under chapter 351.**

12 **2. (1) The attorney general under section 507.070 on behalf of a class of**
13 **residents of this state who are subject to litigation that alleges any website access**
14 **violation, or any resident of this state who is subject to litigation that alleges any website**
15 **access violation, may file a civil action in any court of competent jurisdiction within this**
16 **state against the party, attorney, or law firm that initiated such litigation for a**

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 determination as to whether such litigation alleging a website access violation is abusive
18 litigation.

19 (2) A civil action alleging a website access claim is considered abusive only if,
20 based on the totality of the circumstances, the court finds that the primary purpose of
21 the action was to obtain a monetary settlement unrelated to improving accessibility or
22 enforcing accessibility rights. In making this determination, the court may consider:

23 (a) Whether the same plaintiff, attorney, or law firm has filed a high number of
24 substantially similar lawsuits without meaningful efforts to resolve or improve
25 accessibility;

26 (b) Whether the plaintiff provided the defendant with reasonable notice and an
27 opportunity to correct the alleged barrier prior to filing suit;

28 (c) Any history of sanctions or findings of bad faith against the plaintiff or
29 counsel;

30 (d) Whether the filing party or lawyer filing the litigation is a resident of this
31 state or is licensed to practice law in this state;

32 (e) The nature of settlement discussions and the reasonableness of settlement
33 offers and refusals to settle. The application of such settlement information shall be
34 used only as provided by this section and shall not otherwise alter the rules of evidence
35 applicable to such court; and

36 (f) Whether any factors under Missouri supreme court rule 55.03(c) exist in the
37 litigation and whether sanctions are appropriate under Missouri supreme court rule
38 55.03(d).

39 (3) A defendant who receives written notice of an alleged website accessibility
40 violation and in good faith initiates substantial steps to correct it within ninety days shall
41 have a rebuttable presumption that any subsequent claim for a website accessibility
42 violation is abusive. The presumption may be overcome by showing that the defendant
43 failed to complete reasonable corrective measures within ninety days or acted in bad
44 faith. The trier of fact shall not determine whether such litigation is abusive litigation
45 until after such ninety-day period expires or the alleged violation is corrected, as
46 determined by the court, whichever occurs first.

47 3. The attorney general may intervene or bring an action on behalf of Missouri
48 residents or entities that are the targets of abusive website access litigation as defined in
49 this section. The attorney general may also issue guidance or determinations clarifying
50 when litigation practices are deemed abusive, but such determinations shall not
51 preclude legitimate accessibility enforcement actions.

52 4. If the trier of fact determines that an initiator of an action under subsection 2
53 of this section is a defendant in abusive litigation, the court may award reasonable

54 attorney's fees and costs in bringing the action under subsection 2 of this section as well
55 as defending against the abusive litigation to be paid by the party bringing the abusive
56 litigation. In addition, the court may award punitive damages or sanctions not to exceed
57 three times the amount of attorney's fees awarded by the court.

58 5. At the conclusion of the litigation alleging a website access violation, the court
59 shall review any determination that such litigation is abusive and any award of
60 attorney's fees under the Missouri rules of professional conduct to determine the
61 reasonableness of the award before issuing a judgment.

62 6. If the federal Department of Justice issues standards concerning website
63 accessibility under Title III of the federal Americans with Disabilities Act, the attorney
64 general shall notify the revisor of statutes that such standards have been issued. Upon
65 receipt of such notification by the revisor, the provisions of this section shall expire.

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