

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

**HOUSE BILL NOS. 1694, 1674, 1780,
2056, 2312 & 1755**

103RD GENERAL ASSEMBLY

3951H.05P

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**

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.

16 state against the party, attorney, or law firm that initiated such litigation for a
17 determination as to whether such litigation alleging a website access violation is abusive
18 litigation.

19 (2) In determining whether any litigation that alleges any website access
20 violation constitutes abusive litigation, the court shall consider the totality of the
21 circumstances to determine if the primary purpose of the litigation that alleges a website
22 access violation is obtaining a payment from a defendant. For the purposes of making
23 this determination, the court may assess the following factors and any other factors the
24 court deems relevant for assessing:

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

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

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

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

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

38 (f) Whether any factors under Missouri supreme court rule 55.03(c) exist in the
39 litigation and whether sanctions are appropriate under Missouri supreme court rule
40 55.03(d).

41 (3) A defendant who receives written notice of an alleged website accessibility
42 violation and in good faith initiates substantial steps to correct it within ninety days shall
43 have a rebuttable presumption that any subsequent claim for a website accessibility
44 violation is abusive. Nothing in this section shall be construed to prohibit a defendant
45 from filing a motion to dismiss or from notifying the plaintiff, prior to the expiration of
46 the ninety-day period, that the alleged accessibility violation has been corrected in good
47 faith. The presumption may be overcome by showing that the defendant failed to
48 complete reasonable corrective measures within ninety days or acted in bad faith. The
49 trier of fact shall not determine whether such litigation is abusive litigation until after
50 such ninety-day period expires or the alleged violation is corrected, as determined by the
51 court, whichever occurs first.

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

57 **4. If the trier of fact determines that an initiator of an action under subsection 2**
58 **of this section is a defendant in abusive litigation, the court may award reasonable**
59 **attorney's fees and costs in bringing the action under subsection 2 of this section as well**
60 **as defending against the abusive litigation to be paid by the party bringing the abusive**
61 **litigation. In addition, the court may award punitive damages or sanctions not to exceed**
62 **three times the amount of attorney's fees awarded by the court.**

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

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

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