

SECOND REGULAR SESSION

HOUSE BILL NO. 2312

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COSTLOW.

5852H.01I

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 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 Against Abusive Website Access Litigation".

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

(a) "Access violation", any allegation that a public accommodation does not provide sufficient access under the federal Americans with Disabilities Act or under state law or any other similar allegation under state or federal law;

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

(c) "Resident of this state", any person residing in Missouri and any entity that has filed with the Missouri secretary of state's office under chapter 351.

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

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.

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

24 (a) The number of substantially similar actions filed by the same plaintiff,
25 lawyer, or law firm and any history of such plaintiff, lawyer, or law firm bringing
26 frivolous litigation or other litigation declared by a court to be abusive litigation in the
27 past ten years;

28 (b) The number of full-time employees employed by the defendant and the
29 resources available to the defendant to engage in the litigation;

30 (c) The resources available to the defendant to correct the alleged website access
31 violation;

32 (d) Whether the jurisdiction or venue where the action is brought is a substantial
33 obstacle to defending against the litigation;

34 (e) Whether the filing party or lawyer filing the litigation is a resident of this
35 state or is licensed to practice law in this state;

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

40 (g) Whether any factors under Missouri supreme court rule 55.03(c) exist in the
41 litigation and whether sanctions are appropriate under Missouri supreme court rule
42 55.03(d).

43 (3) Except as provided further, if the defendant in any litigation that alleges a
44 website access violation in good faith attempts to correct the alleged violation within
45 thirty days after being provided written notice or being served a petition or complaint
46 with sufficient detail to identify and correct the alleged violation, there shall be a
47 rebuttable presumption that the subsequent initiation or continuance of litigation that
48 alleges a website access violation constitutes abusive litigation. There shall not be a
49 rebuttable presumption that such litigation is abusive litigation if the alleged website
50 access violation is not corrected, as determined by the court, within ninety days after
51 being provided written notice or being served a petition or complaint with sufficient
52 detail to identify and correct the alleged violation. The trier of fact shall not determine
53 whether such litigation is abusive litigation until after such ninety-day period expires or
54 the alleged violation is corrected, as determined by the court, whichever occurs first.

55 **3. If the attorney general determines in writing that the litigation alleging a**
56 **website access violation is not abusive and such written determination is attached to the**
57 **petition in the litigation alleging a website access violation, there shall be a rebuttable**
58 **presumption that such litigation is not abusive.**

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

65 **5. At the conclusion of the litigation alleging a website access violation, the court**
66 **shall review any determination that such litigation is abusive and any award of**
67 **attorney's fees under the Missouri rules of professional conduct to determine the**
68 **reasonableness of the award before issuing a judgment. The results obtained in the**
69 **litigation alleging a website access violation shall be weighed heavily, particularly if the**
70 **litigation was resolved in favor of the plaintiff.**

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

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