

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 907, 1154 & 1272

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 website fails to comply with the accessibility requirements of the federal Americans with Disabilities Act or under state law;

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

2. (1) The attorney general under section 507.070 on behalf of a class of residents of this state who are subject to litigation that alleges any website access violation, or 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.

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

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

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

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

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

(e) Whether any factors under Missouri supreme court rule 55.03(b) exist in the litigation and whether sanctions are appropriate under Missouri supreme court rule 55.03(c).

(3) A defendant who receives written notice of an alleged website access violation and in good faith initiates substantial steps to correct it within ninety days shall have a rebuttable presumption that any subsequent claim for a website access violation is abusive. Nothing in this section shall be construed to prohibit a defendant from filing a motion to dismiss or from notifying the plaintiff, prior to the expiration of the ninety-day period, that the

alleged access violation has been corrected in good faith. There shall not be a rebuttable presumption that such litigation is abusive litigation if the alleged website access violation is not corrected, as determined by the court, within ninety days after being provided written notice or being served a petition or complaint with sufficient detail to identify and correct the alleged access violation. The trier of fact shall not determine whether such litigation is abusive litigation until after such ninety-day period expires or the alleged access violation is corrected, as determined by the court, whichever occurs first.

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

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

5. At the conclusion of the litigation alleging a website access violation, the court shall review any determination that such litigation is abusive and any award of attorney's fees under the Missouri rules of professional

conduct to determine the reasonableness of the award before
issuing a judgment.

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