

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

**SENATE BILLS NOS. 907, 1154 &
1272**

103RD GENERAL ASSEMBLY

5627S.05C

KRISTINA MARTIN, Secretary

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
2 one new section, to be known as section 537.1250, to read as
3 follows:

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

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

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

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

2. (1) The attorney general under section 507.070 on
12 behalf of a class of residents of this state who are subject
13 to litigation that alleges any website access violation, or
14 any resident of this state who is subject to litigation that
15 alleges any website access violation, may file a civil

16 action in any court of competent jurisdiction within this
17 state against the party, attorney, or law firm that
18 initiated such litigation for a determination as to whether
19 such litigation alleging a website access violation is
20 abusive litigation.

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

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

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

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

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

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

46 (3) A defendant who receives written notice of an
47 alleged website access violation and in good faith initiates

48 substantial steps to correct it within ninety days shall
49 have a rebuttable presumption that any subsequent claim for
50 a website access violation is abusive. Nothing in this
51 section shall be construed to prohibit a defendant from
52 filing a motion to dismiss or from notifying the plaintiff,
53 prior to the expiration of the ninety-day period, that the
54 alleged access violation has been corrected in good faith.
55 There shall not be a rebuttable presumption that such
56 litigation is abusive litigation if the alleged website
57 access violation is not corrected, as determined by the
58 court, within ninety days after being provided written
59 notice or being served a petition or complaint with
60 sufficient detail to identify and correct the alleged access
61 violation. The trier of fact shall not determine whether
62 such litigation is abusive litigation until after such
63 ninety-day period expires or the alleged access violation is
64 corrected, as determined by the court, whichever occurs
65 first.

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

73 4. If the trier of fact determines that an initiator
74 of an action under subsection 2 of this section is a
75 defendant in abusive litigation, the court may award
76 reasonable attorney's fees and costs in bringing the action
77 under subsection 2 of this section as well as defending
78 against the abusive litigation to be paid by the party
79 bringing the abusive litigation. In addition, the court may

80 award punitive damages or sanctions not to exceed three
81 times the amount of attorney's fees awarded by the court.

82 5. At the conclusion of the litigation alleging a
83 website access violation, the court shall review any
84 determination that such litigation is abusive and any award
85 of attorney's fees under the Missouri rules of professional
86 conduct to determine the reasonableness of the award before
87 issuing a judgment.

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

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