

SENATE BILL NO. 1154

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR NICOLA.

5684S.02I

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".

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

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

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

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

16 2. (1) The attorney general, on behalf of a class of
17 residents of this state under section 507.070 who are

18 subject to litigation that alleges any website access
19 violation and any resident of this state who is subject to
20 litigation that alleges any website access violation, may
21 file a civil action in any court of competent jurisdiction
22 within this state against the party, attorney, or law firm
23 that initiated such litigation for a determination as to
24 whether such litigation alleging a website access violation
25 is abusive litigation.

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

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

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

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

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

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

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

52 (3) A defendant who receives written notice of an
53 alleged website accessibility violation and in good faith
54 initiates substantial steps to correct it within ninety days
55 shall have a rebuttable presumption that any subsequent
56 litigation is not abusive. The presumption may be overcome
57 by showing that the defendant failed to complete reasonable
58 corrective measures within ninety days or acted in bad
59 faith. The trier of fact shall not determine whether such
60 litigation is abusive litigation until after such ninety-day
61 period expires or the alleged violation is corrected, as
62 determined by the court, whichever occurs first.

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

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

79 5. At the conclusion of the litigation alleging a
80 website access violation, the court shall review any

81 determination that such litigation is abusive and any award
82 of attorney's fees under the Missouri rules of professional
83 conduct to determine the reasonableness of the award before
84 issuing a judgment.

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

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