

SENATE BILL NO. 1471

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

6397S.011

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 does not provide sufficient access under the
7 federal Americans with Disabilities Act or under state law
8 or any other similar allegation under state or federal law;
9 (b) "Public accommodation", the same term as described
10 in 42 U.S.C. Section 2000, et seq. For the purposes of this
11 section, the term "public accommodation" includes a website
12 operated by a resident of this state;

13 (c) "Resident of this state", any person residing in
14 this state and any entity that has filed with the secretary
15 of state 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) In determining whether any litigation that alleges
27 any website access violation constitutes abusive litigation,
28 the trier of fact shall consider the totality of the
29 circumstances to determine if the primary purpose of the
30 litigation that alleges a website access violation is
31 obtaining a payment from a defendant due to the costs of
32 defending the action in court. For the purposes of making
33 this determination, the trier of fact may assess the
34 following factors and any other factors the trier of fact
35 deems relevant:

36 (a) The number of substantially similar actions filed
37 by the same plaintiff, lawyer, or law firm or any history of
38 such plaintiff, lawyer, or law firm in bringing frivolous
39 litigation or other litigation declared by a court to be
40 abusive litigation in the past ten years;

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

44 (c) The resources available to the defendant to
45 correct the alleged website access violation;

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

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

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

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

60 (3) Except as provided further, if the defendant in
61 any litigation that alleges a website access violation in
62 good faith attempts to correct the alleged violation within
63 thirty days after being provided written notice or being
64 served a petition or complaint with sufficient detail to
65 identify and correct the alleged violation, there shall be a
66 rebuttable presumption that the subsequent initiation or
67 continuance of litigation that alleges a website access
68 violation constitutes abusive litigation. There shall not
69 be a rebuttable presumption that such litigation is abusive
70 litigation if the alleged website access violation is not
71 corrected, as determined by the court, within ninety days
72 after being provided written notice or being served a
73 petition or complaint with sufficient detail to identify and
74 correct the alleged violation. The trier of fact shall not
75 determine whether such litigation is abusive litigation
76 until after such ninety-day period expires or the alleged
77 violation is corrected, as determined by the court,
78 whichever occurs first.

79 3. If the attorney general determines in writing that
80 the litigation alleging a website access violation is not

81 abusive and such written determination is attached to the
82 petition in the litigation alleging a website access
83 violation, there shall be a rebuttable presumption that such
84 litigation is not abusive.

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

94 5. At the conclusion of the litigation alleging a
95 website access violation, the court shall review any
96 determination that such litigation is abusive and any award
97 of attorney's fees under the Missouri supreme court rules of
98 professional conduct to determine the reasonableness of the
99 award before issuing a judgment. The results obtained in
100 the litigation alleging a website access violation shall be
101 weighed heavily, particularly if the litigation was resolved
102 in favor of the plaintiff.

103 6. If the United States Department of Justice issues
104 standards concerning website accessibility under Title III
105 of the Americans with Disabilities Act, the attorney general
106 shall notify the revisor of statutes that such standards
107 have been issued. Upon receipt of such notification by the
108 revisor of statutes, the provisions of this section shall
109 expire.

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