

# SENATE BILL NO. 907

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HUDSON.

5627S.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 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 person residing in  
14 Missouri and any entity that has filed with the Missouri  
15 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) 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 and any history  
38 of such plaintiff, lawyer, or law firm 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 rules of professional  
98 conduct to determine the reasonableness of the award before  
99 issuing a judgment. The results obtained in the litigation  
100 alleging a website access violation shall be weighed  
101 heavily, particularly if the litigation was resolved in  
102 favor of the plaintiff.

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

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