

Section 1. (a) This section shall be known and may be cited as the act against abusive website access litigation. It has long been declared to be the policy of this state pursuant to the Kansas Act Against Discrimination, K.S.A. 44-1001, et seq. that people with disabilities must be assured equal opportunities to full access to public accommodations and that they are empowered to enforce the right to equal access through litigation, if necessary.

The legislature recognizes, however, that in a small minority of cases, the use of litigation to assert the right to equal access is being abused for the primary purpose of obtaining an award of attorney fees for the plaintiff instead of remedying the alleged access violation. These small minority of cases often involve alleged lack of equal access to a public accommodation's internet site and are almost always filed in another state's court system. In most cases, the litigation is filed without notifying the public accommodation of the alleged violation, attempting to resolve the issue pre-litigation, and providing a reasonable opportunity for the public accommodation to revise its website to remedy the alleged access violation. In order to address the abuse of the legal system by litigants claiming lack of equal access under state and federal anti-discrimination statutes, the state intends to provide a process to curb abusive litigation to mitigate the harms abusive litigation perpetuates. The state, however, intends that this process shall not be used to preclude a person with a disability from asserting their right to equal access to a public accommodation under the law either as an individual or as a class through litigation in a court in the state of Kansas brought in good faith to remedy an alleged equal access violation and not for the primary purpose to obtain an award of attorney fees for the plaintiff.

Session of 2023

SENATE BILL No. 258

By Committee on Federal and State Affairs

2-16

1 AN ACT concerning civil actions and civil procedure; enacting the act
2 against abusive access litigation; creating a civil action for determining
3 whether litigation that alleges any access violation under the Americans
4 with disabilities act or similar law constitutes abusive litigation and
5 authorizing penalties for such abusive litigation.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section T. 2 (a) This section shall be known and may be cited as the
9 act against abusive access litigation.

10 (b) (1) Pursuant to chapter 60 of the Kansas Statutes Annotated, and
11 amendments thereto, the attorney general, on behalf of a class of residents
12 under K.S.A. 60-223, and amendments thereto, that is subject to litigation
13 that alleges any access violation and any resident of this state that is
14 subject to litigation that alleges any access violation may file a civil action
15 in any court of competent jurisdiction within this state against the party,
16 attorney or law firm that initiated such litigation for a determination as to
17 whether or not such litigation alleging an access violation is abusive
18 litigation.

19 (2) In determining whether any litigation that alleges any access
20 violation constitutes abusive litigation, the trier of fact shall consider the
21 totality of the circumstances to determine if the primary purpose of the
22 litigation that alleges an access violation is obtaining a payment from a
23 defendant due to the costs of defending the action in court. For the
24 purposes of making this determination, the trier of fact may assess the
25 following factors and any other factors the trier of fact deems relevant:

26 (A) The number of substantially similar actions filed by the same
27 plaintiff, lawyer or law firm or the history of such plaintiff, lawyer or law
28 firm in bringing frivolous litigation or other litigation declared by a court
29 to be abusive litigation in the past 10 years;

30 (B) whether the jurisdiction or venue in which the action is brought is
31 a substantial obstacle to defending against the litigation;

32 (C) the nature of settlement discussions and the reasonableness of
33 settlement offers and refusals to settle; and

34 (D) whether a defendant in the litigation that alleges an access
35 violation in good faith attempts to cure such alleged access violation
36 within 30 days after being provided written notice or being served a

1 petition or complaint with sufficient detail to identify and correct any
2 alleged access violation. If the defendant in good faith attempts to cure
3 such alleged access violation, there shall be a rebuttable presumption that
4 the subsequent initiation or continuance of litigation that alleges an access
5 violation constitutes abusive litigation.

6 (c) If the trier of fact determines that an initiator of an action under
7 subsection (b) is a defendant in abusive litigation, the court may award
8 reasonable attorney fees and costs in bringing the action under subsection
9 (b) as well as defending against the abusive litigation to be paid by the
10 party bringing the abusive litigation. In addition, the court may award
11 punitive damages or sanctions not to exceed three times the amount of
12 attorney fees awarded by the court.

(e)

13 (d) As used in this section:
14 (1) "Access violation" means any allegation that a public
15 accommodation does not provide sufficient access under the federal
16 Americans with disabilities act, chapter 39, 44 or 58 of the Kansas Statutes
17 Annotated, and amendments thereto, or any other similar allegation under
18 state or federal law;

19 (2) "public accommodation" means the same as defined in 42 U.S.C.
20 § 2000 et seq. For the purposes of this section, "public accommodation"
21 includes a website operated by a resident of this state; and

22 (3) "resident of this state" means any person residing in Kansas and
23 any entity that has filed with the Kansas secretary of state's office pursuant
24 to chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the Kansas register.

(E) if the litigation alleging an access violation is brought by a
Kansas designated Protection and Advocacy Agency recognized
under federal law or such a Kansas designated Protection and
Advocacy Agency recognized under federal law authorizes an
litigation alleging an access violation in writing with such
authorization attached to the Petition in the litigation alleging an
access violation, there shall be a rebuttable presumption that the
litigation alleging an access violation is not abusive.

(d) At the conclusion of the litigation alleging an access violation, the court
shall review any determination that litigation is abusive and any award of
attorney fees under Kansas Rules of Professional Conduct, Rule 1.5 to
determine the reasonableness of the award before issuing a judgment. The
results obtained in the litigation alleging an access violation shall be weighed
heavily, particularly if the litigation was resolved in favor of the Plaintiff.

attorney fee lawyer's office