



EQUALITY ♦ LAW ♦ JUSTICE

**Disability Rights Center of Kansas**  
214 SW 6<sup>th</sup> Avenue, Suite 100 ♦ Topeka, KS 66603  
Phone: 785.273.9661 ♦ Toll Free: 1.877.776.1541  
Toll Free TDD: 1.877.335.3725 ♦ Fax: 785-273-9414  
[www.drckansas.org](http://www.drckansas.org)      [info@drckansas.org](mailto:info@drckansas.org)  
[lane@drckansas.org](mailto:lane@drckansas.org)

**Testimony in Opposition to SB 258**  
**Senate Judiciary Committee**  
**March 6, 2023**

**Chair Warren and members of the Committee:**

My name is Lane Williams. I am the Legal Director at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated and funded organizations empowered to advocate for Kansans with disabilities. DRC is the officially designated protection and advocacy organization in Kansas. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansas with disabilities.

Thank you for allowing me the opportunity to speak in opposition to SB 258.

DRC staff attorneys and advocates provide legal and advocacy services to clients with disabilities to ensure their rights under federal and state law to have equal access to the goods and services provided by public accommodations in Kansas. These primary laws are the Kansas Act Against Discrimination, K.S.A. 44-1001, et seq. (KAAD) and the Americans with Disabilities Act, 42 U.S.C. 12101, et seq. (ADA). Written testimony submitted by Ami Hyten, Executive Director of the Topeka Independent Living Resource Center provides an excellent summary of the purpose of the ADA and its intent to provide the opportunity for people with disabilities and owners of public accommodations to informally identify potential accessibility issues and seek a mutually agreeable resolution. DRC agrees with Ms. Hyten's explanation and will not repeat it here.

DRC staff have met with the proponents of SB 258 to discuss our concerns. We understand the bill is in response to a wave of lawsuits filed by litigants with disabilities in other states claiming that the websites of public accommodations in Kansas are not accessible to them. The lawsuits are filed for the primary purpose of obtaining a settlement requiring the Kansas owners to pay attorney fees to the plaintiff in order to avoid the cost of defending the lawsuit in another state. We also understand that the intent of SB 258 is to deter these out-of-state lawsuits by giving a remedy to the Kansas

Attorney General and Kansas residents to ask a Kansas court to find that the out-of-state lawsuits constitute abusive litigation and to award significant financial penalties against the individual litigants and their legal counsel.

DRC agrees that out-of-state web access lawsuits using the ADA remedies in this way is abusive and clearly not intended within the remedial framework of the ADA. Such lawsuits easily can result in owners of other Kansas public accommodations distrusting the motives a Kansan with a disability trying to address potential accessibility issues aside from web access. DRC supports reasonable efforts to deter this type of out-of-state litigation. We believe, however, that SB 258 in its current form is too broad because it potentially can be used to deter meritorious claims by Kansans with disabilities. Not many Kansas attorneys represent clients is ADA/KAAD accessibility issues. It would not be unusual for a firm to represent numerous clients throughout the state concerning the same or similar accessibility claims. The mere threat of a civil action against the firm and its clients under this act, regardless of its merit, serves as a significant deterrent to bringing the accessibility claim in the first place.

DRC submits that the bill should be revised to specifically identify its purpose and to limit the remedies only to out-of-state web access litigation that meets the criteria in the bill. Any similar litigation filed in Kansas courts can be challenged on the basis of lack of standing by the plaintiff because firms engaged in this type of litigation often recruit “testers” who have not suffered an injury in fact that is fairly traceable to the challenged action of the defendant, and that is likely to be redressed by a favorable decision. *See, Laufer v. Looper*, 22 F.4<sup>th</sup> 871 (2022). Firms engaged in this litigation practice are also subject to sanctions by the court for violating K.S.A. 60-211(b) which requires that by filing the litigation, the firm is certifying that:

- (1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation;
- (2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Sanctions for violations may include an order to pay to the other party’s or parties’ reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper. K.S.A. 60-211(c).

DRC suggests that the act should include a declaration of its purpose and intent that provides clear guidance to Kansas courts whether a lawsuit is outside the intended limited scope of act. The declaration of purpose and intent should be included as the first section of the statute or the first statute of the act if it is finalized in a series of statutes. An example of this statutory scheme is in the Kansas Act Against Discrimination, K.S.A. 44-1001 Title of Act; Declaration of State Policy and Purpose.

We propose that Section 1 of the bill should be revised as follows:

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 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 to websites 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.

Secondly, DRC proposes to revise the text to add "website" before "access" wherever it appears throughout the bill to further define its limited scope. An example of the revision is in line 2 of our proposed Section 1 (a) above: "This section shall be known and may be cited as the act against abusive **website** access litigation."

Finally, DRC proposes that Section 1(b)(1) should be revised as follows to clarify that the website access litigation is limited to those filed in another state:

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

Thank you for considering our concerns. I am available for questions if you desire.