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MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 2, 2023

Subject: Bill Brief on HB 2423

HB 2423 enacts the act against abusive access litigation to create a civil action for determining whether litigation that alleges any access violation under the Americans with disabilities act or similar law constitutes abusive litigation and authorizes penalties for such abusive litigation.

The bill authorizes a resident or the attorney general on behalf of a class of residents who is subject to litigation that alleges an access violation to file a civil action in state court against the party that initiated the litigation for a determination as to whether or not the litigation alleging an access violation is abusive litigation. In determining whether the litigation is abusive, the trier of fact shall consider the totality of the circumstances to determine if the primary purpose of the litigation is obtaining a payment from a defendant due to the costs of defending the action in court.

The trier of fact may assess any factors the trier of fact deems relevant, including (1) the number of substantially similar actions filed by the same plaintiff or law firm and the history of other litigation declared abusive by the court in the last 10 years, (2) whether the jurisdiction or venue is a substantial obstacle in defending the litigation, (3) the nature of the settlement discussions and reasonableness of settlement offers and refusals to settle, and (4) whether the defendant in good faith attempts to cure the alleged violation within 30 days of written notice or service of the petition. If the defendant in good faith attempts to cure the violation, there shall be a rebuttable presumption that the subsequent initiation or continuance of litigation is abusive.

If the trier of fact determines that the litigation is abusive, the court may award reasonably attorney fees and costs to be paid by the party bringing the abusive litigation. The court may also award punitive damages or sanctions not to exceed three times the amount of the

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attorney fees awarded. The bill also provides definitions for “access violation”, “public accommodation” and “resident of this state”.