



**KANSAS BAR
ASSOCIATION**

TO: **The Honorable Kellie Warren, Chair**
 And Members of the Senate Judiciary Committee

FROM: **Joseph Molina**
 On behalf of the Kansas Bar Association

RE: **KBA Opposition to SB 258** – Enacting 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 authorize penalties for such abusive litigation.

DATE: **March 6, 2023**

Chairman Warren and members of the Senate Judiciary Committee, my name is Joseph Molina and I provide this written testimony on behalf of the Kansas Bar Association in opposition to **SB 258** – Enacting 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 authorize penalties for such abusive litigation.

The KBA opposes SB 258 for the following reasons: In its present form, SB 258 is overly broad, could possibly punish a merit-based cause of action, discourages law firms in Kansas from accepting meritorious ADA compliance cases on behalf of disabled Kansans and neglects the current laws that address frivolous lawsuits in Kansas.

SB 258 is overly broad because it applies all types of ADA access violations and all lawyers who may happen to file these actions. Proponents discuss out-of-state law firms abusing the legal system by filing compliance cases against websites hosted by Kansas businesses, but SB 258 does more than what the proponents suggest. SB 258 would apply to all ADA access lawsuits, even those filed in Kansas by disabled individuals or through one of Kansas' law firms specializing in ADA issues. For instance, ADA accessibility issues can include accessibility routes, parking space dimensions, missing parking and/or egress signage and improper counter heights. All things that may happen in Kansas to disabled Kansas citizens. The ADA gives Kansas citizens the right to seek redress for these violations through court action. SB 258 will interfere with this right.

SB 258 may create an absurd circumstance where a disabled person wins their lawsuit in federal court but is forced to pay the defendant's legal fees because SB 258 does not require a showing that the lawsuit was meritless. All SB 258 requires is a finding by a state court tier of fact that the plaintiff initiated an abusive lawsuit, nothing more. This is a particularly chilling

circumstance for the few nonprofit agencies that deal with ADA access issues. These entities routinely file ADA lawsuits, discuss curative actions and engage in settlement discussions. According to SB 258, these actions may be evidence that a law firm, lawyer engaged in abusive litigation. Thereby awarding the defendant attorney fees even when the plaintiff was victorious.

Kansas and Federal rules exist that can be used to deal with frivolous lawsuits. KSA 60-211(c) states “... *the court may impose an appropriate sanction on any attorney, law firm or party that violated the statute or is responsible for a violation committed by its partner, associate or employee. The sanction may include an order to pay to the other party or parties that* reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper. A motion for sanctions under this section may be served and filed at any time during pendency of the action, but must be filed not later than 14 days after the entry of judgment*”. The Kansas rule is fashioned after the Rule 11 of the Federal Rules of Civil Procedure.

For these reasons, the Kansas Bar Association opposes passage of SB 258.

Thank you for your time and attention.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 7,200 members include lawyers, judges, law students, and paralegals. www.ksbar.org