



**KANSAS
TRIAL LAWYERS
ASSOCIATION**

To: Rep. Sen. Kellie Warren, Chair
Members of the Senate Judiciary Committee

From: Callie Jill Denton, Executive Director
Kansas Trial Lawyers Association

Date: March 6, 2023

Re: SB 258 (abusive litigation; access violations under the Americans with disabilities act)
OPPOSE – written only

The Kansas Trial Lawyers Association is an organization of Kansas personal injury and workers compensation litigators. KTLA supports the right to trial by jury and access to courts. KTLA opposes the passage of SB 258 and urges the committee to vote no.

SB 258 creates specific penalties for individuals, lawyers, and law firms that seek to enforce public accommodation laws in court. KTLA opposes SB 258 because it will have a chilling effect on the constitutional right to trial by jury, access to the courts, and the civil rights of persons with disabilities. It also discourages attorneys from accepting meritorious cases seeking to protect the rights of disabled Kansans. SB 258 is unnecessary because there are already laws to address litigation that is frivolous or abusive.

SB 258 will permit a civil suit by a resident or the attorney general on behalf of a class of residents to determine if litigation alleging an access violation has as its primary purpose to obtain a payment from the defendant. SB 258 allows a defendant to sidestep a public access lawsuit by filing a separate lawsuit and asking the trier of fact to consider evidence that would not be relevant in the initial access lawsuit. Such evidence includes:

- reasonableness of settlement offers and refusals to settle;
- whether the venue or jurisdiction is a substantial obstacle to the defendant;
- defendant's attempts to fix the problem after being sued; or
- the reputation and practice area of the plaintiff's lawyer and law firm.

The Americans with Disabilities Act of 1990 is a civil rights law. It protects equal access and specifically prohibits discrimination and segregation in places of public accommodation for persons with disabilities. Citizens with disabilities have a right to seek enforcement of their rights through the courts and juries. The civil action created in SB 258 interferes with disabled persons' ability to go to court to enforce their legal rights to equal access.

Under SB 258, a disabled plaintiff could prevail on their meritorious claim of an access violation, but still lose as a defendant in a case alleging the claim was an abusive lawsuit and be forced to pay fees and costs. SB 258 creates an unfair and threatening deterrent to disabled plaintiffs who will think twice about the risk of an abusive lawsuit claim and the possibility of paying attorney fees, costs, and punitive damages three times the amount of attorney fees. It will also have a chilling effect on the attorneys and law firms willing to accept access cases.

SB 258 is broadly written and could be applied to public access claims beyond those relating to websites. Yet there is no indication that abusive access litigation is increasing or rampant in Kansas. KTLA is aware only of anecdotal stories from other states that may not have a correlation to Kansas, and it is our impression that most cases are filed in Federal, not state court.

Kansas already has laws to address lawsuits that are filed for frivolous or abusive purposes. Prior to filing any case in Kansas, attorneys must sign and represent to the court that the pleading is not being brought for any improper purpose, such as to harass, cause unnecessary delay, or to needlessly increase the cost of litigation. If a court finds a violation, the court may impose an appropriate sanction on the attorney, law firm, or party, which may include an order to pay the other parties' reasonable expenses including attorney's fees, K.S.A. 60-211. There is a comparable federal law, Rule 11 of the Federal Rules of Civil Procedure.

The State has an interest in protecting the rights of disabled Kansans and encouraging compliance with public accommodation laws. SB 258 is an overreach, and it is unnecessary. It favors those who may resist or not be complying with state and Federal laws, and it increases burdens on persons with disabilities who have a legal right to equal access. Current sanctions in both state and federal law are sufficient to hold any individual, attorney, or law firm accountable if the court finds they have filed abusive litigation.

On behalf of the members of the Kansas Trial Lawyers Association, I respectfully request that you vote no on SB 258.