

House Bill 1470

By: Representatives Kelley of the 16<sup>th</sup>, Williamson of the 112<sup>th</sup>, Efstration of the 104<sup>th</sup>, Oliver of the 84<sup>th</sup>, and Smith of the 18<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 51 of the Official Code of Georgia Annotated, relating to false  
2 arrest, false imprisonment, malicious prosecution, and abusive litigation, so as to create a  
3 cause of action for abusive litigation based on alleged website access violations under federal  
4 and state law; to provide factors for evaluating a claim of abusive website access litigation;  
5 to provide for a rebuttable presumption when corrective action is taken after receiving notice  
6 of an alleged website access violation; to provide for damages; to authorize the Attorney  
7 General to intervene and seek certain relief and to make investigative demands for evidence  
8 in certain circumstances; to provide for definitions; to provide for related matters; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 7 of Title 51 of the Official Code of Georgia Annotated, relating to false arrest, false  
13 imprisonment, malicious prosecution, and abusive litigation, is amended by adding a new  
14 article to read as follows:

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15 "ARTICLE 6

16 51-7-100.

17 As used in this article, the term:

18 (1) 'Civil proceeding' shall have the same meaning as set forth in Code Section 51-7-80.

19 (2) 'Claim' shall have the same meaning as set forth in Code Section 51-7-80.

20 (3) 'Person' shall have the same meaning as set forth in Code Section 51-7-80.

21 (4) 'Resident of this state' means any individual residing in this state or any entity that  
22 is registered with the Secretary of State.

23 (5) 'Website access violation' means any allegation that a website operated by a resident  
24 of this state does not provide sufficient access under the federal Americans with  
25 Disabilities Act of 1990, 42 U.S.C. Section 12101, et seq., as amended, or under state law  
26 or any other similar allegation under federal or state law.

27 51-7-101.

28 (a) Any person who takes active part in the initiation, continuation, or procurement of a  
29 civil proceeding against a resident of this state asserting a website access violation for the  
30 primary purpose of obtaining a payment from the defendant due to the costs of defending  
31 against such proceeding in court shall be liable for abusive website access litigation.

32 (b) Any resident of this state who is subject to a civil proceeding alleging a website access  
33 violation may file a civil action in a court of competent jurisdiction against the plaintiff,  
34 attorney, and law firm that initiated such proceeding to determine whether such proceeding  
35 constitutes abusive website access litigation. In making such determination, the trier of fact  
36 shall consider the totality of the circumstances in the underlying civil proceeding,  
37 including, but not limited to:

- 38 (1) The number of substantially similar civil proceedings filed by the same plaintiff,  
39 attorney, or law firm without any meaningful efforts to resolve or improve website  
40 accessibility;
- 41 (2) Any history of the plaintiff, attorney, or law firm in bringing frivolous litigation or  
42 litigation declared by a court to be in bad faith or abusive litigation in the past ten years;
- 43 (3) The number of full-time employees employed by the defendant and the resources  
44 available to the defendant to engage in the underlying civil proceeding;
- 45 (4) The resources available to the defendant to correct the alleged website access  
46 violation;
- 47 (5) Whether the jurisdiction or venue where the underlying civil proceeding is filed  
48 presents a substantial obstacle to defending against such proceeding;
- 49 (6) Whether the plaintiff or plaintiff's attorney are residents of this state or licensed to  
50 practice law in this state;
- 51 (7) The nature of any settlement discussions and the reasonableness of settlement offers  
52 and refusals to settle; provided, however, that the information under this paragraph shall  
53 not be used in violation of Code Section 24-4-408; and
- 54 (8) Whether the plaintiff or plaintiff's attorney submitted any filings in violation of Code  
55 Section 9-11-11 or 9-15-14.
- 56 (c)(1) If a resident of this state against whom a website access violation is alleged  
57 attempts in good faith to correct the alleged violation within 30 days of receiving written  
58 notice or being served with a petition or complaint that contains sufficient detail to  
59 identify and correct the alleged violation, whichever occurs first, there shall be a  
60 rebuttable presumption that the subsequent initiation or continuance of a civil proceeding  
61 alleging a website access violation constitutes abusive website access litigation under this  
62 Code section; provided, however, that such presumption shall not apply if the court  
63 determines that the alleged website access violation is not corrected within 90 days of  
64 receiving proper notice under this paragraph.

65 (2) The trier of fact shall not determine whether the underlying civil proceeding  
66 constitutes abusive website access litigation until after the alleged website access  
67 violation is corrected or the 90 day period under paragraph (1) of this subsection expires,  
68 whichever occurs first.

69 (d) A resident of this state who prevails in an action under this Code section shall be  
70 entitled to all damages allowed by law as proven by the evidence, including costs and  
71 expenses of litigation and reasonable attorney fees related to the defense of the underlying  
72 civil proceeding and the filing of a claim under this Code section. An award may also be  
73 entered for punitive damages.

74 51-7-102.

75 (a) The Attorney General shall be authorized to intervene in any civil action filed pursuant  
76 to this article whenever it may appear to the Attorney General that a violation of Code  
77 Section 51-7-101 has occurred and that such intervention would be in the public interest.  
78 In such actions, the Attorney General may seek:

79 (1) To enjoin any person, including, but not limited to, an attorney or law firm, from  
80 engaging in abusive website access litigation against residents of this state;

81 (2) A civil penalty of up to a maximum of \$50,000.00 per violation of Code  
82 Section 51-7-101;

83 (3) A declaratory judgment; and

84 (4) Any other relief as the court deems just and equitable.

85 (b)(1) When it reasonably appears to the Attorney General that a person has engaged in,  
86 is engaging in, or is about to engage in a violation of Code Section 51-7-101, or the  
87 Attorney General believes it to be in the public interest that an investigation should be  
88 made to ascertain whether a person has in fact engaged in, is engaging in, or is about to  
89 engage in a violation of Code Section 51-7-101, he or she may serve an investigative  
90 demand upon any person who is believed to have information, documentary materials,

91 or physical evidence relevant to the alleged or suspected violation. Such demand may  
92 require the person to furnish a written statement under oath setting forth the relevant facts  
93 and circumstances about which he or she has knowledge or to appear and testify and to  
94 produce relevant documentary materials or physical evidence for examination at such  
95 reasonable time and place as may be stated in the investigative demand.

96 (2) If the subject of an investigative demand is located outside of this state, the person  
97 receiving such demand may make any sworn statement, testimony, documentary  
98 materials, or physical evidence available by electronic means, where applicable; make  
99 such statement, testimony, materials, and evidence available at a convenient location  
100 within this state; or pay the reasonable and necessary expenses for the Attorney General  
101 or his or her representative to obtain such statement or testimony and to examine such  
102 materials and evidence in the state where the person with information, materials, and  
103 evidence is located. The Attorney General is authorized to designate representatives,  
104 including officials of the state in which the person with information, materials, and  
105 evidence is located, to obtain such information, materials, and evidence on his or her  
106 behalf, and may respond to similar requests from officials of other states.

107 (3) Each investigative demand under this Code section shall:

108 (A) State the nature of the conduct constituting the alleged violation of Code  
109 Section 51-7-101 that is under investigation;

110 (B) Describe the documentary materials and physical evidence to be produced with  
111 such definiteness and certainty as to permit such materials and evidence to be fairly  
112 identified;

113 (C) Describe the nature, scope, and purpose of the investigation with such definiteness  
114 and certainty as to permit any person whose sworn statement or testimony is sought to  
115 be fairly appraised of the subject matter of the inquiry;

116 (D) Provide a reasonable period of time for the materials and evidence demanded to  
117 be produced or made available for inspection and for the person or persons whose  
118 statement or testimony is sought to prepare; and  
119 (E) Identify the person or persons to whom such statement, testimony, materials, and  
120 evidence shall be made available.  
121 (4) No investigative demand under this Code section shall require the production of  
122 information, materials, or evidence that are privileged from disclosure under federal or  
123 state law."

124 **SECTION 2.**

125 All laws and parts of laws in conflict with this Act are repealed.