



2020 South Dakota Legislature

Senate Bill 140

HOUSE COMMERCE AND ENERGY ENGROSSED

Introduced by: **Senator Novstrup**

1 **An Act to provide for the resolution of alleged certain disability violations.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **20-15-1. Definitions.**

5 Terms used in this chapter mean:

6 (1) "Accessibility law," a law that applies to a person with a disability or any federal
 7 law that ensures accessibility to websites owned and operated by an entity
 8 physically located in the state, services, programs, places of public
 9 accommodation, public conveyance and modes of transportation, streets,
 10 highways, sidewalks, walkways, buildings, medical facilities, and other public
 11 places for a person with a disability. The term does not mean any discrimination
 12 relating to housing discrimination issues or actions;

13 (2) "Business day," a day of the week excluding Sunday and a legal holiday.

14 **Section 2.** That a NEW SECTION be added:

15 **20-15-2. Notice--Civil Action.**

16 Prior to filing a civil action alleging violation of an accessibility law, the alleged
 17 aggrieved party may notify the owner, agent, or other responsible party of the property
 18 where the alleged violation occurred by personal service, in accordance with applicable
 19 state or federal laws, or by certified mail, of alleged accessibility law violations for which
 20 an action may be filed by the alleged aggrieved party. If an alleged aggrieved party does
 21 not serve notice, the alleged aggrieved party is not entitled to attorney's fees upon the
 22 judgment of a civil action alleging violation of an accessibility law unless the trial court
 23 determines that attorney's fees are appropriate due to the nature of the violations,
 24 including their willfulness, duration, or severity.

1 For the purposes of this chapter, property includes any website owned and
 2 operated by an entity physically located in the state.

3 If an alleged aggrieved party serves notice in accordance with § 20-15-3, the
 4 alleged aggrieved party is precluded from filing such a civil action until one of the following
 5 occurs:

6 (1) The alleged aggrieved party receives a response as described in § 20-15-4 and the
 7 property owner, agent, or other responsible party of the property fails to make the
 8 improvements or bring the property into compliance with accessibility laws and
 9 fails to provide a reasonable explanation for the failure within thirty days as
 10 required by § 20-15-4;

11 (2) The alleged aggrieved party receives a response as described in § 20-15-4;

12 (3) The alleged aggrieved party receives a response as described in § 20-15-4, but the
 13 alleged aggrieved party reasonably believes that the alleged violations continue to
 14 exist; or

15 (4) The property owner, agent, or other responsible party of the property fails to
 16 respond to the notice within fifteen business days as required by § 20-15-4.

17 **Section 3.** That a NEW SECTION be added:

18 **20-15-3. Notice--Form.**

19 A notice provided pursuant to § 20-15-2 shall furnish similar information or be in
 20 substantially similar form to the following:

21 THIS LETTER IS TO INFORM YOU THAT THE PROPERTY LOCATED AT (address of
 22 property), FOR WHICH YOU ARE THE PROPERTY OWNER, AGENT, OR OTHER
 23 RESPONSIBLE PARTY, MAY BE IN VIOLATION OF FEDERAL AND/OR STATE ACCESSIBILITY
 24 LAWS AND CAUSED HARM TO (name of alleged aggrieved party).

25 SPECIFICALLY, THE POSSIBLE VIOLATION(S) HAS/HAVE BEEN IDENTIFIED AS
 26 FOLLOWS:

27 (Notice shall identify the specific facts that constitute the alleged violation,
 28 including the approximate date on which the alleged violation occurred or was observed
 29 and identification of the location of the alleged violation with sufficient detail so that the
 30 location can be identified by the property owner, agent, or other responsible party.)

31 YOU HAVE 15 BUSINESS DAYS TO RESPOND TO THIS NOTICE BY PERSONAL
 32 SERVICE OR CERTIFIED MAIL. YOUR RESPONSE SHALL BE ADDRESSED TO (address
 33 where personal service may be received or certified mail may be sent). SOUTH DAKOTA
 34 LAW ALLOWS YOU TO RESPOND IN ONE OF THREE WAYS:

1 (1) YOU MAY EXPRESSLY STATE THAT IMPROVEMENTS WILL BE MADE TO BRING
2 THE PROPERTY INTO COMPLIANCE WITH APPLICABLE ACCESSIBILITY LAWS. IF YOU
3 RESPOND IN THIS MANNER, YOU HAVE A MAXIMUM OF 30 DAYS TO COMPLETE THESE
4 IMPROVEMENTS. THE 30-DAY PERIOD SHALL BEGIN ON THE DATE YOUR RESPONSE TO
5 THIS NOTICE IS RECEIVED AT THE ADDRESS GIVEN ABOVE. IF THE IMPROVEMENTS
6 NECESSARY TO BRING THE PROPERTY INTO COMPLIANCE WITH THE APPLICABLE
7 ACCESSIBILITY LAWS ARE NOT COMPLETED WITHIN THE 30-DAY PERIOD, THE ALLEGED
8 AGGRIEVED PARTY MAY BRING A LAWSUIT AGAINST YOU. YOU MAY EXTEND THE 30-DAY
9 PERIOD ONLY IF YOU PROVIDE A REASONABLE EXPLANATION AS TO WHY
10 IMPROVEMENTS CANNOT BE MADE WITHIN 30 DAYS. REASONABLE EXPLANATIONS
11 INCLUDE DEMONSTRATED NEED FOR DELAY, SUCH AS CONSTRUCTION AND PERMITTING
12 RELATED ISSUES.

13 (2) YOU MAY CHALLENGE THE VALIDITY OF THE ALLEGED VIOLATIONS. IF YOU
14 RESPOND IN THIS MANNER, THE ALLEGED AGGRIEVED PARTY MAY BRING A LAWSUIT
15 AGAINST YOU IMMEDIATELY.

16 (3) IF THE VIOLATIONS LISTED ABOVE ARE THE SAME AS OR SIMILAR TO
17 PREVIOUS VIOLATIONS THAT YOU BELIEVE HAVE BEEN CORRECTED, YOU MAY RESPOND
18 BY STATING THAT THE NECESSARY IMPROVEMENTS HAVE BEEN MADE TO BRING THE
19 PROPERTY INTO COMPLIANCE WITH THE APPLICABLE ACCESSIBILITY LAWS. YOU SHALL
20 ALSO ATTACH EVIDENCE THAT VERIFIES THOSE IMPROVEMENTS.

21 IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE OR YOUR RIGHTS UNDER
22 FEDERAL OR SOUTH DAKOTA LAW, PLEASE CONTACT YOUR LEGAL COUNSEL.

23 **Section 4.** That a NEW SECTION be added:

24 **20-15-4. Notice--Response.**

25 Within fifteen business days after an alleged aggrieved party serves or sends a
26 notice pursuant to § 20-15-2, the property owner, agent, or other responsible party of the
27 property where the alleged violation occurred shall respond to the notice by personal
28 service or certified mail to the alleged aggrieved party. That response shall:

- 29 (1) Expressly state that improvements will be made to bring the property into
30 compliance with applicable accessibility laws;
31 (2) Challenge the validity of the alleged violation. If the property owner, agent, or
32 other responsible party responds in this manner, the alleged aggrieved party may
33 file an action, subject to any applicable statutes of limitations, any time after
34 receipt of that response; or

1 (3) State that the alleged violations identified by the alleged aggrieved party have
2 been corrected to comply with applicable accessibility laws. The property owner,
3 agent, or other responsible party shall attach evidence to the response that verifies
4 those improvements.

5 **Section 5.** That a NEW SECTION be added:

6 **20-15-5. Remedy--Civil Action.**

7 If a property owner, agent, or responsible party of the property where the alleged
8 accessibility law violation occurred responds in the manner described in subdivision 20-
9 15-4(2), the property owner, agent, or responsible party shall have thirty days to remedy
10 the alleged violation. The thirty-day period shall begin on the date the alleged aggrieved
11 party receives the response described in § 20-15-4. The owner, agent, or other
12 responsible party may extend the thirty-day period by not more than thirty days upon
13 providing a reasonable explanation as to why the improvement requires more than thirty
14 days to complete. Reasonable explanations include demonstrated need for extension, such
15 as construction and permitting related issues.

16 If the property owner, agent, or other responsible party of the property where the
17 alleged accessibility law violation occurred responds in the manner described in division
18 subdivision 20-15-4(1) and makes the improvements to bring the property into
19 compliance with applicable accessibility laws within the thirty-day period described in this
20 section or provides a reasonable explanation as to why those improvements are not
21 completed, the response as described in subdivision 20-15-4(1) may not be considered
22 an admission of guilt and is inadmissible as evidence in any future actions based on the
23 same facts filed against the property owner, agent, or other responsible party.

24 If the property owner, agent, or other responsible party of the property where the
25 alleged accessibility law violation occurred fails to make the improvements to bring the
26 property into compliance with applicable accessibility laws within the thirty-day period
27 described in this section and, in the opinion of the aggrieved party, fails to provide a
28 reasonable explanation as to why those improvements are not completed, the alleged
29 aggrieved party may file a civil action for accessibility law violation against that property
30 owner, agent, or other responsible party.

31 **Section 6.** That a NEW SECTION be added:

1 **20-15-6. Attorney's Fees--Exemption.**

2 In a civil action filed pursuant to § 20-15-5 in which a plaintiff prevails, the plaintiff
3 shall recover reasonable attorney's fees, in addition to any other remedies available to the
4 plaintiff. However, the plaintiff is not entitled to attorney's fees under this section if:

5 (1) The plaintiff filed the civil action prior to the expiration of an extension invoked by
6 the defendant;

7 (2) The court determines that the defendant's explanation as to the necessity of the
8 extension was reasonable; and

9 (3) The defendant makes the improvements to bring the property into compliance with
10 applicable accessibility laws during the period of extension.

11 If the property owner, agent, or other responsible party where the alleged
12 accessibility law violation occurred makes the improvements to bring the property into
13 compliance with the applicable accessibility laws within the thirty-day period described in
14 § 20-15-5 and provides evidence to the alleged aggrieved party that the improvements
15 have been made, or if the property owner, agent, or other responsible party demonstrates
16 to the court's satisfaction that the explanation given for the necessity of an extension was
17 reasonable, the alleged aggrieved party may not receive any damages or attorney's fees
18 for any action arising out of the same or similar facts that served as a basis for the alleged
19 violation. The alleged aggrieved party may receive damages and attorney's fees for actions
20 arising out of a recurrence of the same or similar alleged accessibility law violation if it is
21 determined that the property owner, agent, or other responsible party failed to maintain
22 accessibility following the initial improvements.

23 **Section 7.** That a NEW SECTION be added:

24 **20-15-7. Aggrieved Party--Attorney's Fees.**

25 This section may not be construed to limit actions for recovery of special damages
26 filed by any person who suffers an injury in fact because the person was denied full and
27 equal access to an accommodation as required by federal or state law.

28 This section does not apply to charges filed with the State Commission of Human
29 Rights or deferred to the commission under federal law. This section does not preclude
30 the commission from investigating charges of discrimination against a place of public
31 accommodation.