2020 South Dakota Legislature

Senate Bill 140

ENROLLED

AN ACT

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

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

Section 1. That a NEW SECTION be added:

20-15-1. Definitions.

Terms used in this chapter mean:

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

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

Section 2. That a NEW SECTION be added:

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

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

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

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

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

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

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

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

Section 3. That a NEW SECTION be added:

20-15-3. Notice--Form.

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

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

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

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

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

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

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

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

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

Section 4. That a NEW SECTION be added:

20-15-4. Notice--Response.

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

(1) Expressly state that improvements will be made to bring the property into compliance with applicable accessibility laws;

(2) Challenge the validity of the alleged violation. If the property owner, agent, or other responsible party responds in this manner, the alleged aggrieved party may file an action, subject to any applicable statutes of limitations, any time after receipt of that response; or

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

Section 5. That a NEW SECTION be added:

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

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

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

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

Section 6. That a NEW SECTION be added:

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

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

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

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

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

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

Section 7. That a NEW SECTION be added:

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

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

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

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

I certify that the attached Act originated in the:

Senate as Bill No. 140

Secretary of the Senate

Received at this Executive Office
this _____ day of _____,

2020 at _____M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 2020

Governor

President of the Senate

Attest:

Secretary of the Senate

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Filed _____, 2020
at _____ o'clock __M.

Attest:

Chief Clerk

Secretary of State

Senate Bill No. 140
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State