

March 26, 2023

Dear Kansas Senators:

We the undersigned strongly oppose the unprecedented attack on the Americans with Disabilities Act (ADA) contained in Kansas Senate Substitute for HB 2016. This dangerous bill, which has been fast-tracked through a procedural shortcut called a “gut and go”, would effectively take away the ADA rights of Kansans with disabilities to challenge accessibility violations by public accommodations. Because Kansas law can’t change federal law, the bill uses a “back door” approach to take away Kansans’ ADA rights.

When the ADA was signed into law by President George H.W. Bush, Senator Bob Dole (Republican – Kansas) said, “The ADA is fair and balanced legislation that carefully blends the rights of people with disabilities with the legitimate needs of the American business community.” Unfortunately, special interests lobbyists for businesses now want to undo the balance struck in the ADA by Senator Bob Dole by punishing people with disabilities who have no choice but to access the courts to make businesses accessible.

The design of this bill is downright diabolical. Under this bill a Kansan who brings an ADA claim (whether in federal or state court) can then be sued in state court by the same business violating the ADA. This could make the person with a disability pay the business' attorney fees and costs not only for their countersuit against the person with the disability but also the businesses fees and costs for defending against the original ADA access violation suit. Even if the person with a disability wins their accessibility lawsuit, they could still have to pay some or all of those fees and costs. The person with the disability also gets nothing to reimburse them their attorney fees and costs if the business loses its lawsuit against them. Under this bill, the rules are different for businesses. In fact, the bill says that attorney’s fees and costs paid to the business “shall” be ordered by the judge (previously it said “may”). The entire bill is outrageous and nefarious. This bill will be used by bad actors for evil purposes.

It gets worse. Under the bill, the Kansas court can also award triple the amount of attorney’s fees as punitive damages to the business, but NOT to the person with a disability whose ADA rights were violated. Again, all of this can happen even if the business was found to have violated the ADA. The ADA was specifically set up to make society accessible, without punitive damage awards on either side. Now business lobbyists want to undo the balance struck in the ADA. They want to warp scales of justice by punishing disabled people who are simply forced to use the courts to make businesses accessible.

This bill won’t just have a “chilling effect” on the ability of Kansans with disabilities to enforce their ADA rights. This bill ships ADA rights off to the deep freeze of Siberia! People with disabilities are often forced to live on extremely fixed incomes (SSI disability is only \$914 per month). The significant threat of having to pay the business' expensive monetary damages, attorney’s fees (for both their attorney and the business' high-priced attorney) and other costs will so greatly intimidate Kansans with disabilities that most simply will not file ADA complaints, even when legitimate. Attorneys will stop filing accessibility claims on behalf of Kansans with disabilities because the bill allows the business to also sue them along with their clients. Businesses will get a free pass to violate the ADA with impunity, knowing they won’t be held accountable.

If passed, this bill would turn back the disability rights of Kansans by more than 30 years, back to the dark times before the ADA.

We are also extremely concerned that Kansas is being used as a guinea pig by powerful national business lobbyists. Kansas is the test case for this horrible bill. If this bill passes in Kansas, we know that other states will follow suit. The impact will be catastrophic across the nation, as states play a game of “race to

the bottom” to dismantle disability rights.

Finally, this bill is unnecessary. Kansas already has remedies in current law and case law that would allow businesses to hold bad actors accountable for frivolous lawsuits, including:

- K.S.A. 60-211(c) allows for sanctions in Kansas for frivolous lawsuits.
- Almost all jurisdictions in the United States have laws similar to Kansas. For example, in New York, N.Y. Comp. Codes R. & Regs. tit. 22 Section 130-1.1.
- Kansas common law allows for the civil action of Abuse of Process. PIK CIVL 127.80. This common law can already accomplish in a far more reasonable manner what this bill seeks to do.
- K.S.A. 60-901 allows for general restraining orders to prevent unfair and abusive litigation.

Sincerely,

The Undersigned Organizations

**Kansas Organizations & Individuals**

Disability Rights Center of Kansas  
Self Advocate Coalition of Kansas  
KanCare Advocates Network  
Kansas Commission for the Deaf and Hard of Hearing  
Brain Injury Association of Kansas  
Arcare, Inc.  
Kansas State Long Term Care Ombudsman  
Kansas Association of the Deaf  
Kansas Action for Children  
Center for Research on Aging and Disability Option, KU  
Kansas Disability Caucus  
Families Together, Inc.  
Kansas Advocates for Better Care  
NAMI Kansas  
Association of Community Mental Health Centers of Kansas  
Kansas Trial Lawyers Association  
Kansas Commission for Deaf and Hard of Hearing  
National Federation of the Blind Of Kansas  
Twin Lakes Educational Cooperative/USD379  
Autism Society - The Heartland  
The Arc of Douglas County  
Minds Matter LLC  
Independent Living Resource Center, Inc.  
Born to Blossom LLC  
PDAB  
Southeast Kansas Independent Living Resource Center  
Independence, Inc.  
Beyond Barriers Kansas, Inc.  
Three Rivers Inc.  
Barney Mayse  
David P Calvert, PA  
Jennifer and Jerry Kucinski

## **National Organizations**

National Disability Rights Network (NDRN)  
ADA Watch  
The Partnership for Inclusive Disaster Strategies  
National Council on Independent Living  
The Coelho Center for Disability Law, Policy and Innovation  
Disability Rights Education & Defense Fund  
World Institute on Disability  
Autistic People of Color Fund  
Designing Accessible Communities  
The Myalgic Encephalomyelitis Action Network  
Brain Injury Association of America  
RespectAbility  
Association of People Supporting Employment First  
Canadian Educators for Safe Technology  
National Down Syndrome Congress  
Autistic Women & Nonbinary Network  
National Disability Institute  
National Federation of the Blind  
Christopher & Dana Reeve Foundation

## **Organizations & Individuals from Other States**

Alabama Disabilities Advocacy Program  
Accessible Alabama  
Disability Rights California  
California Coalition of Agencies Serving the Deaf & HH  
Colorado State Independent Living Council  
Disability Law Colorado  
CT State Independent Living Council (Connecticut)  
Center for Disability Rights (Connecticut)  
Independence Unlimited (Connecticut)  
The Arc of Connecticut, Inc.  
Friends of Autistic People – FAP (Connecticut)  
Georgia ADAPT  
The Statewide Independent Living Council of Illinois  
Disability Rights Iowa  
Indiana Disability Rights  
Disability Revolution (Indiana)  
Disability Rights Louisiana  
Disability Rights Maine  
NAMI Mississippi  
Mississippi Coalition for Citizens with Disabilities  
Disability Rights Mississippi  
Families as Allies (Mississippi)  
Disability Rights NC (North Dakota)  
Dakota Center for Independent Living, Inc. (North Dakota)  
Disability Rights New York  
Disability Rights Oregon  
Disability Rights Tennessee

## **Organizations and Individuals from Other States Continued**

Disability Law Center of Utah

Disability Rights Vermont

Disability Rights of West Virginia

Rolling Start, Inc. (California)

Center for Independent Living – Berkeley (California)

Community Access Center (California)

Placer Independent Resource Services (California)

Agency on Aging of South Central CT (Connecticut)

Farmington human relations commission (Connecticut)

Independence Northwest, Inc. (Connecticut)

Citizens Coalition For Equal Access (Connecticut)

Walton Options for Independent Living, Inc. (Georgia)

Progress Center for Independent Living (Illinois)

Disability Resource Center (Illinois)

accessABILITY Center for Independent Living, Inc. (Indiana)

Disability Network Southwest Michigan

Options Interstate Resource Center for Independent Living (Minnesota & North Dakota)

Paraquad (Missouri)

Rural Advocates For Independent Living (Missouri)

Summit Independent Living (Montana)

Rockland Independent Living Center (New York)

Brooklyn Center for Independence of the Disabled (New York)

Resource Center for Accessible Living, Inc. (New York)

SPOKES Unlimited (Oregon)

Oregon SILC

Walton Options for Independent Living Inc. (South Carolina)

Faith Housing Coalition (South Carolina)

San Antonio Independent Living Services (Texas)

ENDependence Center of Northern Virginia

The Disability Resource Center of the Rappahannock Area, Inc. (Virginia)

Blue Ridge Independent Living Center (Virginia)

Vermont Center for Independent Living

Independence First (Wisconsin)

Lisa Abbey James (Connecticut)

Gloria Shen (North Carolina)

Jennifer Mason (Missouri)