

Representative LaVar Christensen proposes the following substitute bill:

ABUSE OF PROCESS AND DEMANDS CONCERNING

AMERICANS WITH DISABILITIES ACT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K. Thurston

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill enacts a cause of action for abuse of process and demands concerning the Americans with Disabilities Act.

Highlighted Provisions:

This bill:

- ▶ provides legislative findings;
- ▶ defines terms;
- ▶ prohibits abuse of process and payment demands;
- ▶ establishes remedies; and
- ▶ provides for exceptions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-6-2201, Utah Code Annotated 1953



- 26 [78B-6-2202](#), Utah Code Annotated 1953
- 27 [78B-6-2203](#), Utah Code Annotated 1953
- 28 [78B-6-2204](#), Utah Code Annotated 1953
- 29 [78B-6-2205](#), Utah Code Annotated 1953



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **78B-6-2201** is enacted to read:

33 **Part 22. Abuse of Process Concerning Americans with Disabilities Act**

34 **78B-6-2201. Title -- Purpose.**

35 (1) This part is known as the "Abuse of Process Concerning Americans with
36 Disabilities Act."

37 (2) This part seeks to protect persons, Utah businesses, and property owners from
38 abuse of process when a person wrongfully asserts a violation of the public accommodations
39 protections of the Americans with Disabilities Act to demand unjust settlement compensation
40 by commencing or threatening to file litigation alleging violation of public accommodations
41 protections of the Americans with Disabilities Act against persons or business owners to
42 induce or compel payment and unjust compensation. Abusive compensation demands that may
43 inequitably result in unjust enrichment or compensation may also constitute vexatious,
44 frivolous, and unethical litigation and be subject to sanctions as may be ordered by the court
45 pursuant to Rule 11, Utah Rules of Civil Procedure, or other just and proper relief.

46 (3) This part is intended to apply only to public accommodations protections of the
47 Americans with Disabilities Act and is not intended to apply to demands, communications, or
48 settlements in other areas of the law.

49 Section 2. Section **78B-6-2202** is enacted to read:

50 **78B-6-2202. Definitions.**

51 As used in this part:

52 (1) "Abusive compensation demand" means a letter, email, or other written
53 communication directed to a target that asserts that the target has violated the public
54 accommodations protections of the Americans with Disabilities Act to obtain unjust
55 compensation in excess of actual and reasonable attorney fees as a condition of forbearance of
56 filing threatened litigation or settlement of a vexatious or frivolous claim.

57 (2) "Disability advocate agency" means an entity that:
58 (a) has as its primary purpose advocating or assisting persons with a disability;
59 (b) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue
60 Code; and

61 (c) is primarily funded from federal grants, charitable contributions, and money from
62 the state.

63 (3) "Protection and advocacy agency" means an entity designated by the governor
64 pursuant to federal law for the protection and advocacy of persons with disabilities.

65 (4) "Public accommodations protections of the Americans with Disabilities Act" means
66 a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. Sec. 12181 through
67 12189.

68 (5) "Sponsor" means a party responsible, directly or indirectly, for issuance of an
69 abusive compensation demand.

70 (6) "Target" means a person residing in, incorporated in, or organized under the laws of
71 this state that receives an abusive compensation demand.

72 (7) "Vexatious or frivolous claim" means any claim that is in violation of Rule 11,
73 Utah Rules of Civil Procedure, for which sanctions may be issued.

74 Section 3. Section **78B-6-2203** is enacted to read:

75 **78B-6-2203. Prohibition against abusive compensation demands.**

76 (1) A sponsor may not issue an abusive compensation demand to a target under threat
77 of litigation or settlement of a vexatious or frivolous claim.

78 (2) A court may consider the following factors as evidence in determining whether a
79 sponsor has issued an abusive compensation demand for which sanctions may be imposed by
80 the court as recognized in Rule 11, Utah Rules of Civil Procedure:

81 (a) whether the demand fails to contain a description of a valid instance that constitutes
82 a violation of the public accommodations protections of the Americans with Disabilities Act in
83 sufficient detail to allow the target to assess the intent and merits of the alleged violation of the
84 public accommodations protections of the Americans with Disabilities Act;

85 (b) whether the demand contains any of the following:

86 (i) an assertion of a violation of the public accommodations protections of the
87 Americans with Disabilities Act that the sponsor knows has been previously held invalid in a

88 final judicial action from which no appeal is possible;

89 (ii) an assertion that a complaint has been filed alleging that the target has violated the
90 public accommodations protections of the Americans with Disabilities Act when no complaint
91 has been filed;

92 (iii) an assertion of a violation of the public accommodations protections of the
93 Americans with Disabilities Act for which the sponsor does not have the right to file a
94 complaint;

95 (iv) an assertion or threat that the settlement amount will increase if the target retains
96 counsel to defend against the assertions in the demand;

97 (v) a false or misleading statement; or

98 (vi) a demand for payment of compensation within an unreasonably short period of
99 time depending on the number and complexity of the claims; and

100 (c) the sponsor has shown a pattern or practice of issuing abusive compensation
101 demands in excess of actual and reasonable attorney fees or asserting vexatious or frivolous
102 claims.

103 (3) A court may consider as mitigating evidence that a sponsor has not violated this
104 part and the extent to which the sponsor is able to show that the sponsor did not receive any
105 unjust enrichment or engage in abusive compensation demands as defined in this part.

106 Section 4. Section **78B-6-2204** is enacted to read:

107 **78B-6-2204. Action -- Enforcement -- Remedies -- Damages.**

108 (1) (a) A target who receives an abusive compensation demand, as defined in this part,
109 may bring an action in district court.

110 (b) A court may award or impose any relief the court considers prudent, including the
111 following remedies to a target who prevails in an action brought pursuant to this part:

112 (i) equitable relief;

113 (ii) actual damages; and

114 (iii) reasonable attorney fees and court costs.

115 (2) (a) A court may summarily dismiss with prejudice a case brought under this part if
116 the court determines that the person bringing the action is doing so for a purpose that violates
117 42 U.S.C. Sec. 12203 or this part.

118 (b) In addition to any remedy provided in 42 U.S.C. Sec. 12203, the court may award

119 attorney fees and court costs.

120 Section 5. Section **78B-6-2205** is enacted to read:

121 **78B-6-2205. Exceptions.**

122 The following are exempt from this part:

123 (1) a protection and advocacy agency;

124 (2) a disability advocate agency ~~§~~ ; **or** ~~§~~

125 (3) an individual or professional who:

126 (a) acts in good faith and with civility; and

127 (b) does not have a pattern or practice of vexatious or frivolous claims or abusive

128 compensation demands.