

1           **BAD FAITH DEMAND LETTERS CONCERNING AMERICANS**  
2                           **WITH DISABILITIES ACT**

3   2018 GENERAL SESSION

4   STATE OF UTAH

5                           **Chief Sponsor: Norman K. Thurston**

6   Senate Sponsor: Todd Weiler

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8   **LONG TITLE**

9   **General Description:**

10           This bill enacts a cause of action for sending bad faith demand letters concerning the  
11 Americans with Disabilities Act.

12 **Highlighted Provisions:**

13           This bill:

- 14           ▶ provides legislative findings;
- 15           ▶ defines terms;
- 16           ▶ prohibits sending of bad faith demand letters;
- 17           ▶ establishes remedies;
- 18           ▶ authorizes bond requirements; and
- 19           ▶ provides for exceptions.

20 **Money Appropriated in this Bill:**

21           None

22 **Other Special Clauses:**

23           None

24 **Utah Code Sections Affected:**

25 ENACTS:

26           **78B-6-2201**, Utah Code Annotated 1953

27           **78B-6-2202**, Utah Code Annotated 1953



- 28            **78B-6-2203**, Utah Code Annotated 1953
- 29            **78B-6-2204**, Utah Code Annotated 1953
- 30            **78B-6-2205**, Utah Code Annotated 1953
- 31            **78B-6-2206**, Utah Code Annotated 1953



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

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

35            **Part 22. Distribution of Bad Faith Americans with Disabilities Act Demand Letters Act**

36            **78B-6-2201. Title -- Purpose.**

37            (1) This part is known as the "Distribution of Bad Faith Americans with Disabilities  
38 Act Demand Letters Act."

39            (2) The Legislature acknowledges that the Legislature is preempted from passing a law  
40 that conflicts with the federal Americans with Disabilities Act. However, this part seeks to  
41 protect Utah businesses from the bad faith use of demand letters asserting violation of the  
42 public accommodations protections of the Americans with Disabilities Act, while at the same  
43 time respecting federal law and not interfering with legitimate Americans with Disabilities Act  
44 enforcement efforts articulated in 42 U.S.C. Sec.12182 to ensure that no individual shall be  
45 discriminated against on the basis of disability in the full and equal enjoyment of the goods,  
46 services, facilities, privileges, advantages, or accommodations of any place of public  
47 accommodation by any person who owns, leases, or leases to, or operates a place of public  
48 accommodation.

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

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

51            As used in this part:

52            (1) (a) "Demand letter" means a letter, email, or other written communication directed  
53 to a target before or after filing a claim and asserting that the target has violated the public  
54 accommodations protections of the Americans with Disabilities Act.

55            (b) "Demand letter" does not include a complaint filed in a United States District Court  
56 asserting a violation of the Americans with Disabilities Act or discovery responses or other  
57 papers filed in an action filed in a United States District Court.

58            (2) "Protection and advocacy agency" means an entity designated by the governor

59 pursuant to federal law for the protection and advocacy of persons with disabilities.

60 (3) "Public accommodations protections of the Americans with Disabilities Act" means  
61 a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. Sec. 12181 through  
62 12189.

63 (4) "Sponsor" means a party responsible for distribution of a demand letter.

64 (5) "Target" means a person residing in, incorporated in, or organized under the laws of  
65 this state that receives a demand letter.

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

67 **78B-6-2203. Prohibition against distribution of bad faith demand letters.**

68 (1) A sponsor may not distribute a bad faith demand letter to a target.

69 (2) A court may consider the following factors as evidence in determining whether a  
70 sponsor has distributed a bad faith demand letter, but no one factor may be considered  
71 conclusive as to whether a demand letter is a bad faith demand letter:

72 (a) the demand letter does not contain all of the following information:

73 (i) the name of the person who asserts a violation of the public accommodations  
74 protections of the Americans with Disabilities Act;

75 (ii) a statement of when the person described in Subsection (2)(a)(i) was at the target's  
76 public accommodation; and

77 (iii) a description of at least one instance at the time specified in Subsection (2)(a)(ii)  
78 that constitutes a violation of the public accommodations protections of the Americans with  
79 Disabilities Act in sufficient detail to allow the target to assess the merits of the assertion of the  
80 violation of the public accommodations protections of the Americans with Disabilities Act; or

81 (b) the demand letter contains any of the following:

82 (i) an assertion of a violation of the public accommodations protections of the  
83 Americans with Disabilities Act that the sponsor knows has been previously held invalid in a  
84 final judicial action from which no appeal is possible;

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

88 (iii) an assertion of a violation of the public accommodations protections of the  
89 Americans with Disabilities Act for which the sponsor does not have the right to file a

90 complaint;

91 (iv) an assertion that the amount of compensation demanded will increase if the target:

92 (A) retains counsel to defend against the assertions in the demand letter; or

93 (B) does not pay the sponsor within a period of 60 days or less;

94 (v) a false or misleading statement;

95 (vi) a demand for payment of compensation within an unreasonably short period of

96 time depending on the number and complexity of the claims; or

97 (vii) the sponsor has sent an excessive number of demand letters within a 12-month

98 period.

99 (3) A court may consider as evidence to mitigate a conclusion that a sponsor has

100 distributed a bad faith demand letter that the sponsor engages in a good faith effort to establish

101 that the target has violated the public accommodations protections of the Americans with

102 Disabilities Act and to negotiate an appropriate remedy.

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

104 **78B-6-2204. Action -- Enforcement -- Remedies -- Damages.**

105 (1) A target who receives a bad faith demand letter, or a person aggrieved by a

106 violation of this part, may bring an action in district court. The court may award the following

107 remedies to a target who prevails in an action brought pursuant to this part:

108 (a) equitable relief;

109 (b) actual damages;

110 (c) costs and fees, including reasonable attorney fees; and

111 (d) punitive damages, in an amount to be established by the court, of not more than the

112 greater of \$50,000 or three times the total of damages, costs, and fees.

113 (2) The attorney general may conduct civil investigations and bring civil actions

114 pursuant to this part. In an action brought by the attorney general under this part, the court may

115 award or impose any relief the court considers prudent, including the following:

116 (a) equitable relief;

117 (b) statutory damages of not less than \$750 per bad faith demand letter distributed; and

118 (c) costs and fees, including reasonable attorney fees, to the attorney general.

119 (3) This part may not be construed to limit other rights and remedies available to the

120 state or to any person under any other law.

121 (4) The attorney general shall annually provide an electronic report to the Executive  
122 Appropriations Committee regarding the number of investigations and actions brought under  
123 this part. The report shall include:

124 (a) the number of investigations commenced;

125 (b) the number of actions brought under the provisions of this part;

126 (c) the current status of actions brought under Subsection (4)(b); and

127 (d) final resolution of actions brought under this part, including any recovery under  
128 Subsection (2).

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

130 **78B-6-2205. Bond.**

131 (1) Upon motion by a target and a finding by the court that a target has established a  
132 reasonable likelihood that a sponsor has distributed a bad faith demand letter in violation of  
133 this part, the court shall require the sponsor to post a bond in an amount equal to a good faith  
134 estimate of the target's costs to litigate the claim under this part, conditioned upon payment of  
135 any amounts finally determined to be due to the target.

136 (2) A hearing on the appropriateness and amount of a bond under this section shall be  
137 held if either party requests the hearing.

138 (3) A bond ordered pursuant to this section may not exceed \$250,000.

139 (4) A court may waive a bond requirement if the court finds that the sponsor has  
140 available assets equal to the amount of the proposed bond or for other good cause shown.

141 Section 6. Section **78B-6-2206** is enacted to read:

142 **78B-6-2206. Exceptions.**

143 A protection and advocacy agency is exempt from this part.