

**Representative Norman K. Thurston** proposes the following substitute bill:

**BAD FAITH DEMAND LETTERS CONCERNING AMERICANS**

**WITH DISABILITIES ACT**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Norman K. Thurston**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ provides legislative findings;
- ▶ defines terms;
- ▶ prohibits sending of bad faith demand letters;
- ▶ 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. Distribution of Bad Faith Americans with Disabilities Act Demand Letters Act**

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

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

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

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

48 **78B-6-2202. Definitions.**

49 As used in this part:

50 (1) (a) "Demand letter" means a letter, email, or other written communication directed  
51 to a target before filing a claim that:

52 (i) asserts that the target has violated the public accommodations protections of the  
53 Americans with Disabilities Act; and

54 (ii) asks for money as a condition of settlement.

55 (b) "Demand letter" does not include a complaint filed in a court of competent  
56 jurisdiction asserting a violation of the Americans with Disabilities Act or discovery responses

57 or other papers filed in an action filed in the court of competent jurisdiction.

58 (2) "Disability advocate agency" means an entity that:

59 (a) has as its primary purpose advocating or assisting persons with a disability;

60 (b) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue

61 Code; and

62 (c) is primarily funded from federal grants, charitable contributions, and money from

63 the state.

64 (3) "Protection and advocacy agency" means an entity designated by the governor

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

66 (4) "Public accommodations protections of the Americans with Disabilities Act" means

67 a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. Sec. 12181 through

68 12189.

69 (5) "Sponsor" means a party responsible, directly or indirectly, for distribution of a

70 demand letter.

71 (6) "Target" means a person residing in, incorporated in, or organized under the laws of

72 this state that receives a demand letter.

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

74 **78B-6-2203. Prohibition against distribution of bad faith demand letters.**

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

76 (2) A court may consider the following factors as evidence in determining whether a

77 sponsor has distributed a bad faith demand letter, but no one factor may be considered

78 conclusive as to whether a demand letter is a bad faith demand letter:

79 (a) whether the demand letter contains a description of at least one instance that

80 constitutes a violation of the public accommodations protections of the Americans with

81 Disabilities Act in sufficient detail to allow the target to assess the merits of the assertion of the

82 violation of the public accommodations protections of the Americans with Disabilities Act; or

83 (b) whether the demand letter contains any of the following:

84 (i) an assertion of a violation of the public accommodations protections of the

85 Americans with Disabilities Act that the sponsor knows has been previously held invalid in a

86 final judicial action from which no appeal is possible;

87 (ii) an assertion that a complaint has been filed alleging that the target has violated the

88 public accommodations protections of the Americans with Disabilities Act when no complaint  
89 has been filed;

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

93 (iv) an assertion or threat that the settlement amount will increase if the target:

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

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

96 (v) a false or misleading statement;

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

99 (vii) the sponsor has sent an excessive number of demand letters within a 12  
100 consecutive month period.

101 (3) A court may consider as evidence to mitigate a conclusion that a sponsor has  
102 distributed a bad faith demand letter that the sponsor engages in a good faith effort to establish  
103 that the target has violated the public accommodations protections of the Americans with  
104 Disabilities Act and to negotiate an appropriate remedy.

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

106 **78B-6-2204. Action -- Enforcement -- Remedies -- Damages.**

107 (1) (a) A target who receives a bad faith demand letter, or a person aggrieved by a  
108 violation of this part, may bring an action in district court.

109 (b) A court may award the following remedies to a target who prevails in an action  
110 brought pursuant to this part:

111 (i) equitable relief;

112 (ii) actual damages;

113 (iii) reasonable attorney fees and court costs; and

114 (iv) punitive damages, in an amount to be established by the court, of not more than the  
115 greater of \$10,000 or three times the total of damages, costs, and fees.

116 (2) The attorney general may conduct civil investigations and bring civil actions  
117 pursuant to this part. In an action brought by the attorney general under this part, the court may  
118 award or impose any relief the court considers prudent, including the following:

- 119           (a) equitable relief;
- 120           (b) statutory damages of not less than \$750 per bad faith demand letter distributed; and
- 121           (c) costs and fees, including reasonable attorney fees, to the attorney general.

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

- 125           (a) the number of investigations commenced;
- 126           (b) the number of actions brought under the provisions of this part;
- 127           (c) the current status of actions brought under Subsection (3)(b); and
- 128           (d) final resolution of actions brought under this part, including any recovery under

129 Subsection (2).

130           (4) This part may not be construed to limit other rights and remedies available to the  
131 state or to any person under any other law.

132           (5) (a) A court may dismiss with prejudice a case brought under this part if the court  
133 determines that the person bringing the action is doing so for a purpose that violates 42 U.S.C.  
134 Sec. 12203.

135           (b) In addition to any remedy provided in 42 U.S.C. Sec. 12203, the court may award  
136 attorney fees and court costs to the sponsor.

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

138           **78B-6-2205. Exceptions.**

139           The following are exempt from this part:

- 140           (1) a protection and advocacy agency; or
- 141           (2) a disability advocate agency.