

HB0115S01 compared with HB0115

~~{deleted text}~~ shows text that was in HB0115 but was deleted in HB0115S01.

Inserted text shows text that was not in HB0115 but was inserted into HB0115S01.

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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

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;~~{~~

~~—▶ authorizes bond requirements;}~~ and

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- ▶ 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

78B-6-2202, Utah Code Annotated 1953

78B-6-2203, Utah Code Annotated 1953

78B-6-2204, Utah Code Annotated 1953

78B-6-2205, Utah Code Annotated 1953

~~{ **78B-6-2206**, Utah Code Annotated 1953~~

}

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

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

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

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

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

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

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

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78B-6-2202. Definitions.

As used in this part:

(1) (a) "Demand letter" means a letter, email, or other written communication directed to a target before ~~for after~~ filing a claim ~~and asserting~~ that:

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

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

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

~~(2) the court of competent jurisdiction.~~

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

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

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

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

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

~~(3)~~4) "Public accommodations protections of the Americans with Disabilities Act" means a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. Sec. 12181 through 12189.

~~(4)~~5) "Sponsor" means a party responsible, directly or indirectly, for distribution of a demand letter.

~~(5)~~6) "Target" means a person residing in, incorporated in, or organized under the laws of this state that receives a demand letter.

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

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

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

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

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sponsor has distributed a bad faith demand letter, but no one factor may be considered conclusive as to whether a demand letter is a bad faith demand letter:

(a) whether the demand letter ~~{does not contain all of the following information:~~
~~—— (i) the name of the person who asserts a violation of the public accommodations protections of the Americans with Disabilities Act;~~
~~—— (ii) a statement of when the person described in Subsection (2)(a)(i) was at the target's public accommodation; and~~
~~—— (iii) }~~contains a description of at least one instance ~~{ at the time specified in Subsection (2)(a)(ii)}~~ that constitutes a violation of the public accommodations protections of the Americans with Disabilities Act in sufficient detail to allow the target to assess the merits of the assertion of the violation of the public accommodations protections of the Americans with Disabilities Act; or

(b) whether the demand letter contains any of the following:
(i) an assertion of a violation of the public accommodations protections of the Americans with Disabilities Act that the sponsor knows has been previously held invalid in a final judicial action from which no appeal is possible;
(ii) an assertion that a complaint has been filed alleging that the target has violated the public accommodations protections of the Americans with Disabilities Act when no complaint has been filed;
(iii) an assertion of a violation of the public accommodations protections of the Americans with Disabilities Act for which the sponsor does not have the right to file a complaint;

(iv) an assertion ~~or threat~~ that the settlement amount~~{ of compensation demanded}~~ will increase if the target:

(A) retains counsel to defend against the assertions in the demand letter; or
(B) does not pay the sponsor within a period of 60 days or less;
(v) a false or misleading statement;
(vi) a demand for payment of compensation within an unreasonably short period of time depending on the number and complexity of the claims; or
(vii) the sponsor has sent an excessive number of demand letters within a ~~{12-month}~~ 12 consecutive month period.

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

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

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

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

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

~~{a}~~i) equitable relief;

~~{b}~~ii) actual damages;

~~{c}~~iii) ~~{ costs and fees, including }~~ reasonable attorney fees and court costs; and

~~{d}~~iv) punitive damages, in an amount to be established by the court, of not more than the greater of ~~{ \$50 }~~ \$10,000 or three times the total of damages, costs, and fees.

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

(a) equitable relief;

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

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

~~{ — } (3) This part may not be construed to limit other rights and remedies available to the state or to any person under any other law.~~

~~{ 4 }~~3) The attorney general shall annually provide an electronic report to the Executive Appropriations Committee regarding the number of investigations and actions brought under this part. The report shall include:

(a) the number of investigations commenced;

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

(c) the current status of actions brought under Subsection ~~{ 4 }~~3(b); and

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

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

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

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

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

78B-6-2205. ~~Bond.~~

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

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

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

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

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

~~78B-6-2206. Exceptions:~~

~~A} **Exceptions.**~~

The following are exempt from this part:

(1) a protection and advocacy agency ~~is exempt from this part.~~

Legislative Review Note

Office of Legislative Research and General Counsel}; or

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(2) a disability advocate agency.