

**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

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**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
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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.

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.