

## HB0115S02 compared with HB0115S01

~~{deleted text}~~ shows text that was in HB0115S01 but was deleted in HB0115S02.

Inserted text shows text that was not in HB0115S01 but was inserted into HB0115S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative ~~{Norman K. Thurston}~~LaVar Christensen proposes the following substitute bill:

~~{BAD FAITH DEMAND LETTERS}~~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 ~~{sending bad faith demand letters}~~abuse of process and demands concerning the Americans with Disabilities Act.

#### Highlighted Provisions:

This bill:

- ▶ provides legislative findings;
- ▶ defines terms;

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- ▶ prohibits ~~{sending}~~abuse of ~~{bad faith demand letters}~~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

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

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

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

**Part 22. ~~{Distribution}~~Abuse of ~~{Bad Faith}~~Process Concerning 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} Abuse of Process Concerning Americans with Disabilities Act. {~~  
~~However, this} "~~

(2) This part seeks to protect persons, Utah businesses, and property owners from ~~{the bad faith use}~~abuse of ~~{demand letters asserting}~~process when a person wrongfully asserts a 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} to demand unjust settlement compensation by commencing or threatening to file litigation alleging~~

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violation of public accommodations protections of the 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}against persons  
or business owners to induce or compel payment and unjust compensation. Abusive  
compensation demands that may inequitably result in unjust enrichment or compensation may  
also constitute vexatious, frivolous, and unethical litigation and be subject to sanctions as may  
be ordered by the court pursuant to Rule 11, Utah Rules of Civil Procedure, or other just and  
proper relief.

(3) This part is intended to apply only to public {accommodation by any person who  
owns, leases, or leases to, or operates a place of public accommodation}accommodations  
protections of the Americans with Disabilities Act and is not intended to apply to demands,  
communications, or settlements in other areas of the law.

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

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

As used in this part:

- (1) ~~{(a)}~~ "~~{Demand letter}~~Abusive compensation demand" means a letter, email, or other written communication directed to a target ~~{before filing a claim}~~ that ~~{~~:
- ~~—— (i) }~~ asserts that the target has violated the public accommodations protections of the Americans with Disabilities Act ~~{; and~~
  - ~~—— (ii) asks for money}~~ to obtain unjust compensation in excess of actual and reasonable attorney fees as a condition of ~~{settlement.~~
  - ~~—— (b) "Demand letter" does not include a complaint filed in a 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 the court of competent jurisdiction}~~ forbearance of filing threatened litigation or settlement of a vexatious or frivolous claim.
- (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

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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.

(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.

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

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

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

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

**78B-6-2203. Prohibition against ~~distribution of bad faith demand letters~~ abusive compensation demands.**

(1) A sponsor may not ~~distribute a bad faith demand letter to a target~~ issue an abusive compensation demand to a target under threat of litigation or settlement of a vexatious or frivolous claim.

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

(a) whether the demand ~~letter contains~~ fails to contain a description of ~~at least one~~ a valid instance 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 intent and merits of the ~~assertion of the~~ alleged 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

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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 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; ~~or~~

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

(~~vii~~)~~c~~) the sponsor has ~~sent an excessive number of demand letters within a 12 consecutive month period~~; ~~shown a pattern or practice of issuing abusive compensation demands in excess of actual and reasonable attorney fees or asserting vexatious or frivolous claims.~~

(3) A court may consider as ~~mitigating~~ evidence ~~to mitigate a conclusion~~ that a sponsor has ~~distributed a bad faith demand letter~~; ~~not violated this part and the extent to which the sponsor is able to show~~ 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~~; ~~did not receive any unjust enrichment or engage in abusive compensation demands as defined in this part.~~

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~~ ~~an abusive compensation~~ demand ~~letter~~, ~~for a person aggrieved by a violation of~~ ~~as defined in~~ this part, may bring an action in district court.

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

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(i) equitable relief;

(ii) actual damages; and

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

~~(iv) punitive damages, in an amount to be established by the court, of not more than the greater of \$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) 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 (3)(b); and~~

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

~~(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);~~

(2) (a) A court may summarily 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 or this part.

(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. Exceptions.**

The following are exempt from this part:

(1) a protection and advocacy agency; ~~or~~

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(2) a disability advocate agency.

(3) an individual or professional who:

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

(b) does not have a pattern or practice of vexatious or frivolous claims or abusive compensation demands.