

Senator Todd Weiler 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

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;
- ▶ provides for exceptions; and
- ▶ provides for severability.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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. Abuse of Process Concerning Americans with Disabilities Act**

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

37 (1) This part is known as the "Abuse of Process Concerning Americans with
38 Disabilities Act."

39 (2) This part seeks to protect Utah persons, businesses, and property owners from
40 abuse of process when a person wrongfully asserts a violation of the public accommodations
41 protections of the Americans with Disabilities Act and demands settlement compensation by
42 threatening to commence litigation alleging violation of public accommodations protections of
43 the Americans with Disabilities Act by the persons, business owners, or property owners to
44 induce or compel payment of unjust compensation.

45 (3) This part is intended to apply only to public accommodations protections of the
46 Americans with Disabilities Act and is not intended to apply to demands or communications in
47 other areas of the law.

48 Section 2. Section [78B-6-2202](#) is enacted to read:

49 **78B-6-2202. Definitions.**

50 As used in this part:

51 (1) "Abusive compensation demand" means a letter, email, or other written
52 communication directed to a target that wrongfully asserts, as determined under Section
53 [78B-6-2203](#), that the target has violated the public accommodations protections of the
54 Americans with Disabilities Act to obtain compensation in excess of reasonable attorney fees
55 as a condition of forbearance of filing threatened litigation.

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

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

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

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

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

64 (4) "Public accommodations protections of the Americans with Disabilities Act" means
65 a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. Secs. 12181 through
66 12189.

67 (5) "Sponsor" means a party responsible, in whole or in part, directly or indirectly, for
68 issuance of an abusive compensation demand.

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

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

72 **78B-6-2203. Prohibition against abusive compensation demands.**

73 (1) A sponsor may not issue an abusive compensation demand to a target under threat
74 of litigation.

75 (2) A court may consider the following factors as evidence in determining whether a
76 sponsor has issued an abusive compensation demand:

77 (a) whether the demand fails to contain a description of a valid instance that constitutes
78 a violation of the public accommodations protections of the Americans with Disabilities Act in
79 sufficient detail to allow the target to assess the merits of the alleged violation of the public
80 accommodations protections of the Americans with Disabilities Act;

81 (b) whether the demand 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 adjudicated or
84 settled;

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 or threat that the settlement amount will increase if the target retains
92 counsel to defend against the assertions in the demand;

93 (v) a false or misleading statement; or

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

96 (c) the sponsor has shown a pattern or practice of issuing abusive compensation
97 demands in excess of reasonable attorney fees; and

98 (d) any other factor the court considers relevant.

99 (3) A court may consider as mitigating evidence that a sponsor has not violated this
100 part and the extent to which the sponsor is able to show that the sponsor did not receive any
101 unjust enrichment or engage in abusive compensation demands as defined in this part.

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

103 **78B-6-2204. Action -- Enforcement -- Remedies -- Damages.**

104 (1) (a) A target who receives an abusive compensation demand, as defined in this part,
105 may bring an action in district court.

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

108 (A) equitable relief; and

109 (B) actual damages.

110 (ii) A court may award reasonable attorney fees and court costs to the prevailing party.

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

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

115 **78B-6-2205. Exceptions.**

116 The following are exempt from this part:

117 (1) a protection and advocacy agency;

118 (2) a disability advocate agency; or

- 119 (3) an individual or professional who:
- 120 (a) acts in good faith and with civility; and
- 121 (b) does not have a pattern of abusive compensation demands.

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

123 **78B-6-2206. Severability.**

124 If any provision of this part, or the application of any provision to any person or
125 circumstance, is held invalid, the invalidity does not affect other provisions or applications of
126 this part that can be given effect without the invalid provision or application, and to this end
127 the provisions of this part are severable.