

## HB0115S03 compared with HB0115S02

~~{deleted text}~~ shows text that was in HB0115S02 but was deleted in HB0115S03.

Inserted text shows text that was not in HB0115S02 but was inserted into HB0115S03.

**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 LaVar Christensen}~~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

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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}~~

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- ▶ provides for exceptions ~~{.}~~; and
- ▶ provides for severability.

### 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

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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. Abuse of Process Concerning Americans with Disabilities Act**

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

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

(2) This part seeks to protect Utah persons, ~~{Utah}~~ businesses, and property owners from abuse of process when a person wrongfully asserts a violation of the public accommodations protections of the Americans with Disabilities Act ~~{to demand unjust}~~ and demands settlement compensation by ~~{commencing or}~~ threatening to ~~{file}~~ commence litigation alleging violation of public accommodations protections of the Americans with Disabilities Act ~~{against}~~ by the persons ~~{or}~~ business owners, or property owners to induce or compel payment ~~{and}~~ of 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.}~~

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(3) This part is intended to apply only to public accommodations protections of the Americans with Disabilities Act and is not intended to apply to demands ~~};~~ or 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) "Abusive compensation demand" means a letter, email, or other written communication directed to a target that **wrongfully asserts, as determined under Section 78B-6-2203**, that the target has violated the public accommodations protections of the Americans with Disabilities Act to obtain ~~{unjust }~~compensation in excess of~~{ actual and}~~ reasonable attorney fees as a condition of 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 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}~~**Secs.** 12181 through 12189.

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

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

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(1) A sponsor may not 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 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 fails to contain a description of 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 alleged violation of the public accommodations protections of the Americans with Disabilities Act;~~

(b) whether the demand 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 } adjudicated or settled;~~

(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 retains counsel to defend against the assertions in the demand;

(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; ~~{ and };~~

(c) the sponsor has shown a pattern or practice of issuing abusive compensation demands in excess of  ~~{ actual and } reasonable attorney fees { or asserting vexatious or frivolous claims };~~ and

(d) any other factor the court considers relevant.

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

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

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

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

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

(~~fi~~)A) equitable relief; ~~and~~

(~~fi~~)B) actual damages ~~; and~~;

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

(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.~~

‡ 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;

(2) a disability advocate agency ~~; or~~ or

(3) an individual or professional who:

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

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

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

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

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

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