

1 **UTAH ALTERNATIVE DISPUTE PROCESS FOR ADA**

2 **COMPLAINTS ACT**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Norman K. Thurston**

6 Senate Sponsor: Todd Weiler

7

LONG TITLE

8 **General Description:**

9 This bill enacts an alternative process for alleged violations of the Americans with
10 Disabilities Act.
11

12 **Highlighted Provisions:**

- 13 This bill:
- 14 ▶ defines terms;
 - 15 ▶ creates a process to notify persons of alleged violations of the public
16 accommodation protections of the Americans with Disabilities Act;
 - 17 ▶ addresses civil actions brought under the Americans with Disabilities Act; and
 - 18 ▶ provides a severability clause.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 ENACTS:

25 **78B-8-701**, Utah Code Annotated 1953

26 **78B-8-702**, Utah Code Annotated 1953

27 **78B-8-703**, Utah Code Annotated 1953



28 78B-8-704, Utah Code Annotated 1953

29 78B-8-705, Utah Code Annotated 1953



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

32 Section 1. Section **78B-8-701** is enacted to read:

33 **78B-8-701. Definitions.**

34 As used in this part:

35 (1) "Americans with Disabilities Act" means the public accommodation protections of
36 Title III of the Americans with Disabilities Act, 42 U.S.C. Secs. 12181 through 12189.

37 (2) "Prospective defendant" means a person that is an owner, lessor, or operator of a
38 public accommodation, or a designated agent of the owner, lessor, or operator for service of
39 process.

40 (3) "Prospective plaintiff" means an individual with a disability who may bring a cause
41 of action under the Americans with Disabilities Act, 42 U.S.C. Sec. 12188.

42 (4) "Public accommodation" means the same as that term is defined in 42 U.S.C. Sec.
43 12181.

44 Section 2. Section **78B-8-702** is enacted to read:

45 **78B-8-702. Notice of a violation.**

46 (1) Rather than file a civil action for an alleged violation of the Americans with
47 Disabilities Act, a prospective plaintiff may notify the prospective defendant of the alleged
48 violation.

49 (2) A prospective defendant that receives notice of an alleged violation under
50 Subsection (1) shall have a reasonable amount of time to remedy the alleged violation.

51 (3) If a prospective defendant receives notice of an alleged violation in accordance with
52 Subsection (1) and fails to remedy the alleged violation within a reasonable amount of time, a
53 prospective plaintiff may provide the prospective defendant with written notice of the alleged
54 violation.

55 (4) A written notice under Subsection (3) shall include:

56 (a) the name and contact information of the prospective plaintiff, and if applicable, the
57 prospective plaintiff's attorney;

58 (b) detailed information about the alleged violation of the Americans with Disabilities

59 Act, including:

60 (i) a description of the alleged violation;

61 (ii) the date on which the alleged violation occurred or was encountered; and

62 (iii) the location of the alleged violation at the place of public accommodation;

63 (c) a statement that the prospective defendant has 90 days after the day on which the
64 prospective defendant receives written notice to remedy the alleged violation;

65 (d) if possible, the name and contact information of an organization that can provide
66 the prospective defendant with an inspection, reasonably priced or free of charge, to determine
67 whether the public accommodation is in compliance with the Americans with Disabilities Act;

68 (e) a statement that the prospective defendant has 14 days after the day on which the
69 prospective defendant receives the written notice to respond and indicate whether the
70 prospective defendant will remedy the alleged violation;

71 (f) the amount of reasonable attorney fees and costs that the prospective defendant
72 owes the prospective plaintiff under Subsection (7); and

73 (g) an unsworn declaration stating that the prospective plaintiff provided the
74 prospective defendant with the notice described in Subsection (1).

75 (5) If a prospective plaintiff sends a written notice under Subsection (3), the
76 prospective defendant shall be given 90 days after the day on which the prospective defendant
77 receives the written notice to remedy any alleged violation in the written notice.

78 (6) (a) Except as provided in Subsection (6)(b), if a prospective plaintiff sends a
79 written notice under Subsection (3), the prospective defendant shall obtain an inspection of the
80 public accommodation to determine whether the place of public accommodation is in
81 compliance with the Americans with Disabilities Act.

82 (b) If the prospective defendant is unable to obtain an inspection under Subsection
83 (6)(a) for a reasonable price or free of charge, the prospective defendant is not required to
84 obtain the inspection under this section.

85 (c) If the prospective defendant obtains an inspection, the prospective defendant is
86 required to provide the prospective plaintiff with proof of an inspection but is not required to
87 provide the prospective plaintiff with the results of that inspection.

88 (7) A prospective plaintiff may demand no more than the cost of one hour of
89 reasonable attorney fees from the prospective defendant in the written notice described in

90 Subsection (4).

91 (8) An unsworn declaration under this section shall conform to the requirements of
92 Chapter 18a, Uniform Unsworn Declarations Act.

93 Section 3. Section **78B-8-703** is enacted to read:

94 **78B-8-703. Final warning of a violation.**

95 (1) A prospective plaintiff may provide a prospective defendant with a final warning of
96 an alleged violation of the Americans with Disabilities Act if the prospective plaintiff provided
97 the prospective defendant with notice of the alleged violation in accordance with Section
98 78B-8-702 and the prospective defendant failed to remedy the alleged violation within the
99 90-day period described in Section 78B-8-702.

100 (2) A final warning under Subsection (1) shall include:

101 (a) a copy of the written notice and unsworn declaration described in Section
102 78A-8-702;

103 (b) a statement that the prospective defendant has 30 days after the day on which the
104 final warning is received to remedy the alleged violation;

105 (c) a statement that the prospective defendant must provide the prospective plaintiff
106 with proof that an inspection of the public accommodation has been conducted to determine
107 whether the public accommodation is in compliance with the Americans with Disabilities Act
108 and that the prospective defendant is responsible for the costs of the inspection;

109 (d) a statement that the prospective defendant has 14 days from the day on which the
110 prospective defendant receives the final warning to respond and indicate whether the
111 prospective defendant will remedy the alleged violation; and

112 (e) the amount of reasonable attorney fees and costs that the prospective defendant
113 owes the prospective plaintiff under Subsection (5).

114 (3) If a prospective plaintiff sends a final notice under Subsection (1), the prospective
115 defendant shall be given 30 days after the day on which the prospective defendant receives the
116 final warning to remedy an alleged violation.

117 (4) (a) If a prospective plaintiff sends a final warning under this section, the
118 prospective defendant shall obtain an inspection, at the prospective defendant's expense, to
119 determine whether the public accommodation is in compliance with the Americans with
120 Disabilities Act.

121 (b) A prospective defendant is required to provide the prospective plaintiff with proof
122 of the inspection described in Subsection (4)(a) but is not required to provide the prospective
123 plaintiff with the results of that inspection.

124 (5) A prospective plaintiff may demand no more than the cost of one hour of
125 reasonable attorney fees from the prospective defendant in the final warning described in
126 Subsection (2).

127 Section 4. Section **78B-8-704** is enacted to read:

128 **78B-8-704. Filing a civil action.**

129 This part does not prevent a prospective plaintiff from seeking any available remedies
130 for an alleged violation under the Americans with Disabilities Act.

131 Section 5. Section **78B-8-705** is enacted to read:

132 **78B-8-705. Severability.**

133 (1) If any provision of this part or the application of any part to any person or
134 circumstance is held invalid by a court, the remainder of this part shall be given effect without
135 the invalid provision or application.

136 (2) The provisions of this part are severable.