

HB0449S01 compared with HB0449

~~{deleted text}~~ shows text that was in HB0449 but was deleted in HB0449S01.

inserted text shows text that was not in HB0449 but was inserted into HB0449S01.

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.

~~{FINANCIAL SERVICES REQUIREMENTS}~~ Representative Ken Ivory proposes the following substitute bill:

UNLAWFUL ANTICOMPETITIVE ACTIVITY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses ~~{requirements for providing certain financial services}~~ unlawful activity under the Utah Antitrust Act.

Highlighted Provisions:

This bill:

▶ defines ~~{terms};~~

→ ~~under certain circumstances, prohibits a financial institution from coordinating with another to deny a person a financial service;~~

→ ~~requires a financial institution to:~~

• ~~disclose a subjective standard incorporated as part of a financial service to current and potential customers; and~~

• ~~obtain consent from a potential customer to incorporate the subjective standard~~

HB0449S01 compared with HB0449

~~as part of the financial service;~~

~~allows a person to bring a civil action for injunctive relief or damages if a financial institution denies a financial service in coordination with another; and~~

~~exempts certain violations of the provisions in this bill from damage and fine caps} "monopolized company";~~

▶ modifies the definition of "attempt to monopolize" under the Utah Antitrust Act to include intentionally destroying a monopolized company by eliminating the viable options for the company to obtain a product or service; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{76-10-3108}~~ 76-10-3103, as last amended by Laws of Utah ~~{2019}~~ 2015, Chapter ~~{348}~~ 76-10-3112, as last amended by Laws of Utah 2013, Chapter 285 and renumbered and amended by Laws of Utah 2013, Chapter 187

ENACTS:

~~7-1-811~~, Utah Code Annotated 1953

~~{}~~ 140

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

Section 1. Section ~~{7-1-811}~~ 76-10-3103 is ~~{enacted to read:~~

~~7-1-811. Denial of financial services -- Disclosure and consent for use of subjective standards -- Civil action:~~

~~(1) As used in this section, "subjective standard" means a standard that is intended to penalize, inflict economic harm to, or change or limit the activities of another person who does not further the following interests:~~

~~(a) elimination, reduction, offset, or disclosure of greenhouse gas emissions;~~

~~(b) institution or assessment of a board of directors or employment, composition;~~

HB0449S01 compared with HB0449

~~compensation, or disclosure criteria that incorporates race, color, sex, religion, ancestry, or national origin;~~

~~—— (c) limitation on the activities or investments of a company for:~~

~~—— (i) failing or not committing to meet environmental standards or disclosures; or~~

~~—— (ii) facilitating or supporting the manufacture, importation, distribution, marketing,~~

~~advertisement, sale, or lawful use of a firearm, ammunition, or a component or accessory of a firearm or ammunition; or~~

~~—— (d) access to abortion or sex characteristic surgical procedures.~~

~~—— (2) A financial institution may not, based on a subjective standard, deny, in coordination with another person, a financial product or service that the financial institution offers:~~

~~—— (3) (a) A financial institution may not offer a potential customer a financial product or service that incorporates a subjective standard unless, before providing the financial product or service to the potential customer, the financial institution:~~

~~—— (i) provides the potential customer a written explanation of:~~

~~—— (A) the subjective standard; and~~

~~—— (B) the process to opt-out of the financial product or service; and~~

~~—— (ii) obtains the potential customer's written consent to incorporate the subjective standard as part of the financial product or service.~~

~~—— (b) A financial institution shall, upon request, provide a customer a written explanation of:~~

~~—— (i) any subjective standards incorporated as part of a financial product or service the financial institution provides the customer; and~~

~~—— (ii) the process to opt-out of the financial product or service.~~

~~—— (4) (a) A person may bring an action to:~~

~~—— (i) enjoin a continuance of an act in violation of Subsection (2); or~~

~~—— (ii) recover damages for an injury caused by a violation of Subsection (2).~~

~~—— (b) The plaintiff in an action for a violation of Subsection (2) is entitled to recover, in addition to injunctive relief, the amount of actual damages or \$10,000, whichever is greater.~~

~~—— (5) This section does not prohibit a person from seeking a remedy available to the person independent of this section, including a remedy under this title, Title 61, Chapter 1,~~

HB0449S01 compared with HB0449

Utah Uniform Securities Act, or Title 76, Chapter 10, Part 31, Utah Antitrust Act.

amended to read:

76-10-3103. Definitions.

As used in this part:

(1) "Attempt to monopolize" means action taken:

(a) without a legitimate business purpose; and

(b) (i) with a specific intent of destroying competition or controlling prices to substantially lessen competition, or creating a monopoly, where there is a dangerous probability of creating a monopoly; ~~(b) (i) with a specific intent of destroying competition or controlling prices to substantially lessen competition, or creating a monopoly;~~ or

(ii) with specific intent of destroying a monopolized company by eliminating the viable options for the monopolized company to obtain a product or service.

(2) "Attorney general" means the attorney general of the state or one of the attorney general's assistants.

(3) "Commodity" includes any product of the soil, any article of merchandise or trade or commerce, and any other kind of real or personal property.

(4) "Manufacturer" means the producer or originator of any commodity or service.

(5) "Monopolized company" means an entity that:

(a) engages in, facilitates, or supports the manufacture, import, distribution, advertising, sale, or lawful use of a firearm, ammunition, or another component or accessory of a firearm or ammunition;

(b) does not meet or commit to meet:

(i) diversity, equity, or inclusion criteria, including corporate board, or employment, composition, compensation, or disclosure criteria that incorporates race, color, sex, religion, ancestry, or national origin;

(ii) environmental, social, or governance criteria in that the entity engages in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based or nuclear energy, timber, mining, or agriculture; or

(iii) environmental standards, including standards for eliminating, reducing, offsetting, or disclosing greenhouse gas-emissions, beyond applicable state and federal law requirements;

or

(c) does not facilitate or commit to facilitate access to abortion or sex characteristic

HB0449S01 compared with HB0449

surgical procedures.

~~[(5)]~~ [(6)] "Service" includes any activity that is performed in whole or in part for the purpose of financial gain including, but not limited to, personal service, professional service, rental, leasing or licensing for use.

~~[(6)]~~ [(7)] "Trade or commerce" includes all economic activity involving, or relating to, any commodity, service, or business activity, including the cost of exchange or transportation.

~~{~~ ~~Section 2. Section 76-10-3108 is amended to read:~~

~~76-10-3108. Attorney general may bring action for injunctive relief, damages, and civil penalty.~~

~~(1) (a) The attorney general may bring an action for appropriate injunctive relief, a civil penalty, and damages in the name of the state, any of [its] the state's political subdivisions or agencies, or as parens patriae on behalf of natural persons in this state, for a violation of this act. [Actions]~~

~~(b) An action may be brought under this section regardless of whether the plaintiff dealt directly or indirectly with the defendant. [This]~~

~~(c) The remedy under this subsection is an additional remedy to any other remedies provided by law[. It] and may not diminish or offset any other remedy.~~

~~(2) [Any]~~

~~(a) (i) Except as provided in Subsection (2)(b), an individual who violates this act is subject to a civil penalty of not more than \$100,000 for each violation. [Any]~~

~~(ii) A person, other than an individual, who violates this act is subject to a civil penalty of not more than \$500,000 for each violation.~~

~~(b) The damage caps described in Subsection (2)(a) do not apply to a person whose violation of this act is a violation of Subsection 7-1-811(2).~~

~~Section 3. Section 76-10-3112 is amended to read:~~

~~76-10-3112. Fine for violation -- Certain vertical agreements excluded -- Nolo contendere:~~

~~(1) (a) [Any] A person who violates Section 76-10-3104 by price fixing, bid rigging, agreeing among competitors to divide customers or territories, or by engaging in a group boycott with specific intent of eliminating competition is guilty of a third degree felony and, notwithstanding Sections 76-3-301 and 76-3-302, is subject to:~~

HB0449S01 compared with HB0449

~~—— (i) if an individual, a fine not to exceed \$100,000; or~~

~~—— (ii) if by a person other than an individual, a fine not to exceed \$500,000.~~

~~—— (b) Subsection (1)(a) [may not be construed to] does not include vertical agreements between a manufacturer, its distributors, or their subdistributors dividing customers and territories solely involving the manufacturer's commodity or service where the manufacturer distributes its commodity or service both directly and through distributors or subdistributors in competition with itself.~~

~~—— (c) The fine caps described in Subsection (1)(a) do not apply to a person whose violation of this act is a violation of Subsection 7-1-811(2).~~

~~—— (2) (a) A defendant may plead nolo contendere to a charge brought under this title but only with the consent of the court.~~

~~—— (b) The court may accept the defendant's plea only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.~~

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