

HB0449S02 compared with HB0449

~~{deleted text}~~ shows text that was in HB0449 but was deleted in HB0449S02.

inserted text shows text that was not in HB0449 but was inserted into HB0449S02.

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

BUSINESS SERVICES AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: ~~{_____}~~ Scott D. Sandall

LONG TITLE

General Description:

This bill ~~{addresses requirements for providing certain financial services.}~~ prohibits a person from coordinating with another to intentionally destroy certain companies by eliminating the viable options for the companies to obtain a product or service.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~{under certain circumstances,}~~ prohibits a ~~{financial institution}~~ person 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~~

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- obtain consent from a potential customer to incorporate the subjective standard as part of the financial; intentionally destroy certain companies by eliminating the viable options for the companies to obtain a product or 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 under the Utah Antitrust Act. for a violation of the prohibition;
- ▶ subject to exceptions, requires a court to award three times the damages sustained plus attorney fees and costs in the civil action; and
- ▶ creates rebuttable presumptions related to damages and costs in the civil action.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

~~{AMENDS:~~

— ~~76-10-3108~~, as last amended by Laws of Utah 2019, 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}~~ 13-63-101, Utah Code Annotated 1953

13-63-201, Utah Code Annotated 1953

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

Section 1. Section ~~{7-1-811}~~ 13-63-101 is enacted to read:

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

~~(1)~~ CHAPTER 63. BUSINESS SERVICES BOYCOTT RESTRICTIONS

Part 1. General Provisions

13-63-101. Definitions.

As used in this ~~{section, "subjective standard" means a standard that is intended to~~

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~~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, 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} chapter:~~

(1) "Boycotted company" means a company that:

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

~~— (d) }~~

(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 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~~

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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, Utah Uniform Securities Act, or Title 76, Chapter 10, Part 31, Utah Antitrust Act.)~~ (a)

"Company" means a corporation, partnership, limited liability company, or similar entity.

(b) "Company" includes any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of an entity described in Subsection (2)(a).

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

~~76-10-3108. Attorney general may bring}~~ 13-63-201 is enacted to read:

Part 2. Prohibitions

13-63-201. Coordinated elimination of boycotted company's options to obtain a product or service -- Civil action -- Damages -- Attorney fees -- Rebuttable presumptions.

(1) A person who offers a product or service may not, with the specific intent of destroying a boycotted company, coordinate or conspire with another person to eliminate the viable options for the boycotted company to obtain the product or service.

(2) (a) A person who is injured or is threatened with injury to the person's business or

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property by a violation of Subsection (1) may bring an 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, } or damages.~~

~~(b) Subject to Subsections (3) through (5), in an action 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) Subsection (1), the court shall:~~

~~(i) award three times the amount of damages sustained plus the cost of suit and reasonable attorney fees; and~~

~~(ii) grant appropriate temporary, preliminary, or permanent injunctive relief.~~

~~(c) In an action for a violation of Subsection (1), the court shall approve any attorney fees and arrangements for the payment of attorney fees, including contingency fee agreements.~~

~~(3) (a) Except as provided in Subsection (f2)(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 }3)(b), if the court determines that a judgment in the amount of three times the damages awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the court shall reduce the amount of judgment to the highest sum that would not cause the defendant's insolvency.~~

~~(b) The court may not reduce a judgment to an amount less than the amount of damages sustained plus the costs of suit and reasonable attorney fees.~~

~~(4) Damages, costs, and attorney fees may not be recovered under this section from:~~

~~(a) a political subdivision;~~

~~(b) an official or employee of a political subdivision acting in an official capacity; or~~

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(c) a person based on an official action directed by a political subdivision or a political subdivision's official or employee acting in an official capacity.

(5) (a) (i) In an action for a violation of Subsection (1), there is a rebuttable presumption that:

(A) the injured person who dealt directly with the defendant incurred at least 1/3 of the damages and is entitled to recover at least 1/3 of the awarded damages; and

(B) the injured person who dealt indirectly with the defendant incurred at least 1/3 of the damages and is entitled to recover at least 1/3 of the awarded damages.

(ii) The court shall award the remaining 1/3 of the damages after the awards described in Subsection ~~(2)(a)~~ do not apply to a person whose violation of this act is ~~(2)(a)~~ (5)(a)(i) to the injured person the court determines is most likely to have absorbed the damages.

(b) In an action for 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:~~

~~(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 ~~(1)~~, there is a rebuttable presumption that:~~

(i) each level in a product's or service's distribution chain passed on the increments in the product's or service's cost due to an increase in the cost of an ingredient or a component product or service that was caused by a violation of Subsection ~~{7-1-811(2)}~~:

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~~—— (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.~~

~~‡(1); and~~

~~(ii) the product's or service's cost under Subsection (5)(b)(i) is equal to the change in the cost, in dollars and cents, of the ingredient, component product, or service to the product's or service's first purchaser.~~

~~(6) This section does not prohibit a person from seeking a remedy available to the person independent of this section, including a remedy under Title 7, Financial Institutions Act, Title 61, Chapter 1, Utah Uniform Securities Act, or Title 76, Chapter 10, Part 31, Utah Antitrust Act.~~