

HB0449S03 compared with HB0449S02

~~{deleted text}~~ shows text that was in HB0449S02 but was deleted in HB0449S03.

inserted text shows text that was not in HB0449S02 but was inserted into HB0449S03.

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~~{Representative Ken Ivory}~~Senator Scott D. Sandall 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 prohibits a ~~{person}~~company 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;
- ▶ subject to exceptions. prohibits a ~~{person}~~company from coordinating with another to 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 for a violation of the prohibition;

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- ▶ ~~{subject to exceptions, }~~requires a court to award ~~{three times the damages sustained plus }~~attorney fees and costs to the prevailing party in the civil action; and
- ▶ ~~{creates rebuttable presumptions related to }~~prohibits a court from reducing damages ~~{and costs }~~in the civil action to an amount less than the actual damages. †

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

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 **13-63-101** is enacted to read:

CHAPTER 63. BUSINESS SERVICES BOYCOTT RESTRICTIONS

Part 1. General Provisions

13-63-101. Definitions.

As used in this chapter:

(1) "Boycotted company" means a company 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; or

(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}company engages in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based or nuclear energy, timber, mining, or agriculture; or~~

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~~(~~iii~~)ii~~ 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) "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 **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 prohibited -- Civil action -- Damages -- ~~{Attorney fees -- Rebuttable presumptions}~~Exceptions.

(1) ~~{A person who}~~Except as provided in Subsection (4), a company that offers a product or service may not, with the specific intent of destroying a boycotted company and without an ordinary business purpose, coordinate or conspire with another ~~{person}~~company 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 property by a violation of Subsection (1) may bring an action for injunctive relief or damages.

(b) ~~{Subject to Subsections (3) through (5), in an action for a violation of 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 (3)(b), if the court determines that a judgment in the amount of three times the damages awarded plus~~:

(i) shall award 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~~

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~~cause the defendant's insolvency:~~

~~— (b) The court, prevailing party; and~~

~~(ii) may not reduce a judgment to an amount less than the amount of actual damages sustained, plus the costs of suit and reasonable attorney fees:~~

~~— (4) Damages, costs, and attorney fees may not be recovered;~~

~~(3) A person may not recover damages under this section from:~~

~~(a) a political subdivision;~~

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

~~(c) ~~an~~ another 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 (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 (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 (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) 4 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.~~~~

~~engaging in an activity to the extent the activity is regulated or supervised by state government~~

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officers or agencies under the laws of this state or federal government officers or agencies under the laws of the United States.