

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 Cosponsors: Karianne Lisonbee

8 Sandra Hollins

9

10 **LONG TITLE**

11 **General Description:**

12 This bill enacts an alternative process for alleged violations of the Americans with
13 Disabilities Act.

14 **Highlighted Provisions:**

15 This bill:

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

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 ENACTS:

27 **78B-8-701**, Utah Code Annotated 1953

28 **78B-8-702**, Utah Code Annotated 1953

29 78B-8-703, Utah Code Annotated 1953
30 78B-8-704, Utah Code Annotated 1953
31 78B-8-705, Utah Code Annotated 1953



32
33 *Be it enacted by the Legislature of the state of Utah:*

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

35 **Part 7. Utah Alternative Dispute Process for ADA Complaints Act.**

36 **78B-8-701. Definitions.**

37 As used in this part:

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

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

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

45 (4) "Public accommodation" means the same as that term is defined in 42 U.S.C. Sec.
46 12181.

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

48 **78B-8-702. Notice of a violation.**

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

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

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

57 violation.

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

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

61 (b) detailed information about the alleged violation of the Americans with Disabilities
62 Act, including:

63 (i) a description of the alleged violation;

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

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

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

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

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

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

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

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

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

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

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

91 (7) A prospective plaintiff may demand no more than the cost of one hour of
92 reasonable attorney fees from the prospective defendant in the written notice described in
93 Subsection (4).

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

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

97 **78B-8-703. Final warning of a violation.**

98 (1) A prospective plaintiff may provide a prospective defendant with a final warning of
99 an alleged violation of the Americans with Disabilities Act if the prospective plaintiff provided
100 the prospective defendant with notice of the alleged violation in accordance with Section
101 [78B-8-702](#) and the prospective defendant failed to remedy the alleged violation within the
102 90-day period described in Section [78B-8-702](#).

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

104 (a) a copy of the written notice and unsworn declaration described in Section
105 [78A-8-702](#);

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

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

112 (d) a statement that the prospective defendant has 14 days from the day on which the

113 prospective defendant receives the final warning to respond and indicate whether the
114 prospective defendant will remedy the alleged violation; and

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

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

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

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

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

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

131 **78B-8-704. Filing a civil action.**

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

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

135 **78B-8-705. Severability.**

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

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