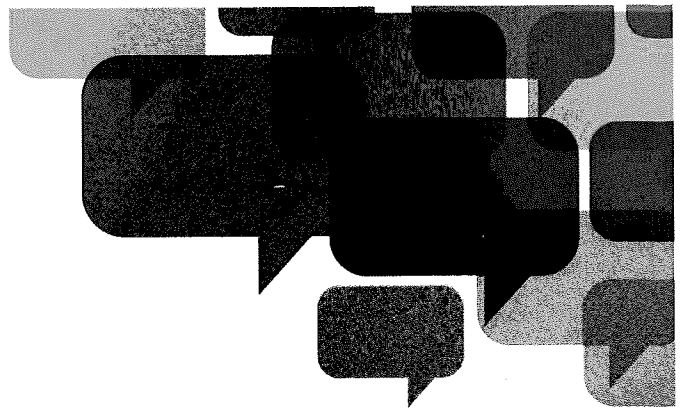




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February 7, 2024

Senator Anne Carney, Chair
Representative Matthew Moonen, Chair
Members of the Judiciary Committee

RE: Testimony in SUPPORT of LD 2195, An Act to Protect Businesses from Fraudulent or Predatory Financial Settlements by Allowing Those Businesses Opportunities to Remove Architectural Barriers in Noncompliance with the Maine Human Rights Act

Dear Senator Carney, Representative Moonen and members of the Judiciary Committee:

My name is Curtis Picard and I am the President and CEO of the Retail Association of Maine. I am a resident of Topsham. We have more than 350 members statewide and represent retailers of all sizes. Maine's retailers employ more than 85,000 Mainers. I am here today to testify in strong support of the genesis of LD 2195, An Act to Protect Businesses from Fraudulent or Predatory Financial Settlements by Allowing Those Businesses Opportunities to Remove Architectural Barriers in Noncompliance with the Maine Human Rights Act, and to present an amendment to the bill for your consideration.

First, thank you to Senator Daughtry for bringing forward this concept in an after-deadline bill to the Legislative Council recently. In fact, we were working perhaps getting a bill on this topic submitted when we saw Senator Daughtry's bill title, which was originally titled, "*An Act to Protect Small Businesses from Fraudulent or Predatory Financial Settlements by Allowing Those Businesses Opportunities to Remove Barriers Associated with the Federal Americans with Disabilities Act of 1990.*"

In our opinion, this is a critically important issue for Maine's small businesses that have been subject to these predatory lawsuits that results in these small businesses paying out thousands of dollars to settle these claims out of court. While we have been aware of this issue for quite a while, it seems that Maine businesses are more popular targets recently as we have heard from a number of our members in the last year.

Here is the issue at hand. An individual working with a New York based trial attorney is systematically going to Maine's businesses websites and testing their compatibility with WCAG (Web Content Accessibility Guidelines). WCAG is the international standard for accessibility. When websites and web tools are properly designed and coded, people with disabilities can use them. However, currently many sites and tools are developed with accessibility barriers that make them difficult or impossible for some people to use. Making the web accessible benefits individuals, businesses, and society.

Many of the issues with websites are easily fixable. Sometimes the issues are as simple as changing a background color, adding text captions to photos, or changing the font or font size. E-commerce platforms can change frequently with new products, and a business's website can sometimes fall out of compliance unintentionally. If the business was alerted to the issue, most problems are easily fixed.

However, these out-of-state trial attorneys are instead filing lawsuits against Maine businesses, and the business has no opportunity to fix the problem or to provide an accommodation to the individual. In fact, many of these plaintiffs have no intention of actually ordering products. They are solely interested in receiving a quick, financial settlement.

Affected businesses have told us that it is cost prohibitive to fight these cases in court, and this is exactly what the plaintiff's attorneys are banking on. Instead, they settle out of court for \$10,000¹ or more which is a huge sum for many small businesses.

Let me be clear, we have no intention of changing Maine's existing human rights act statute, nor are we urging businesses to not comply with WCAG standards, or with provisions of the ADA. Instead, we are hopeful that we can mitigate these predatory lawsuits.

We reached out to our counterparts in other states, and we were pleased to see how Utah addressed this issue. Utah set up an alternative resolution process which essentially gives the business a "right to cure" the issue before a lawsuit can proceed. A non-compliant business can still be sued, but a business that fixes the issue can prevent a costly settlement.

Attached is Utah's law (passed in 2020) for your consideration as an amendment to LD 2195. In essence, it makes Utah a less hospitable place for these types of lawsuits without changing the underlying standards.

¹ <https://wgme.com/news/i-team/maine-businesses-sued-websites-ada-compliant-paying-9000-23000-damages-american-disabilities-act>

It is also worth noting that many of the businesses that have been sued in Maine first found out about the lawsuit not from being served, but by other New York law firms that are looking to represent them in their defense. Evidently, when the suit gets filed with the court in New York, the suit is a public record and enterprising attorneys use these lists for prospecting. You can imagine the surprise of the Maine business owner fielding a call from someone looking to represent them before they even know they have a problem.

One final note: We asked some of these affected businesses to come testify today, and tell their story. Because of their settlement agreement, they are unable to speak publicly about their ordeal, but I am proud to help tell their story.

I welcome your questions, and we are open to working with you, Senator Daughtry and any other stakeholders to get something passed that hopefully improves this issue. We can't fix it for the businesses that have already been sued, but we can hopefully prevent more businesses from dealing with similar issues.

Please support LD 2195 with appropriate amendments.

Sincerely,

Curtis Picard, CAE, President and CEO

UD 2195,
Curtis Picard

Enrolled Copy

H.B. 366

UTAH ALTERNATIVE DISPUTE PROCESS FOR ADA

COMPLAINTS ACT

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K. Thurston

Senate Sponsor: Todd Weiler

Cosponsors: Karianne Lisonbee

Sandra Hollins

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-8-701, Utah Code Annotated 1953

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.