

**HEALTH CARE PROVIDER ABUSIVE WORK
ENVIRONMENT PROHIBITION ACT**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Health Care Provider Abusive Work Environment Prohibition Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes the scope of the chapter;
- ▶ prohibits abusive conduct and retaliation;
- ▶ provides for a private right of action;
- ▶ establishes factors in determining abusive conduct;
- ▶ provides for affirmative defenses;
- ▶ provides for remedies;
- ▶ addresses relationship to workers' compensation;
- ▶ provides for waiver of governmental immunity; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **63G-7-301**, as renumbered and amended by Laws of Utah 2008, Chapter 382

30 ENACTS:

31 **34-45-101**, Utah Code Annotated 1953

32 **34-45-102**, Utah Code Annotated 1953

33 **34-45-103**, Utah Code Annotated 1953

34 **34-45-201**, Utah Code Annotated 1953

35 **34-45-202**, Utah Code Annotated 1953

36 **34-45-301**, Utah Code Annotated 1953

37 **34-45-302**, Utah Code Annotated 1953

38 **34-45-303**, Utah Code Annotated 1953

39 **34-45-401**, Utah Code Annotated 1953

40 **34-45-402**, Utah Code Annotated 1953



41
42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **34-45-101** is enacted to read:

44 **CHAPTER 45. HEALTH CARE PROVIDER ABUSIVE WORK ENVIRONMENT**

45 **PROHIBITION ACT**

46 **Part 1. General Provisions**

47 **34-45-101. Title.**

48 This chapter is known as the "Health Care Provider Abusive Work Environment
49 Prohibition Act."

50 Section 2. Section **34-45-102** is enacted to read:

51 **34-45-102. Definitions.**

52 As used in this chapter:

53 (1) (a) "Abusive conduct" means conduct:

54 (i) of an employer or employee in the workplace;

55 (ii) with malice; and

56 (iii) that a reasonable person would find is:

57 (A) hostile;

58 (B) offensive; and

- 59 (C) unrelated to an employer's legitimate business interests.
- 60 (b) "Abusive conduct" includes:
- 61 (i) repeated infliction of verbal abuse such as the use of a derogatory remark, insult, or
- 62 epithet;
- 63 (ii) verbal or physical conduct that a reasonable person would find threatening,
- 64 intimidating, or humiliating; or
- 65 (iii) the gratuitous sabotage or undermining of a person's work performance.
- 66 (2) "Abusive work environment" means a workplace where an employee is subjected to
- 67 abusive conduct that is so severe that it causes physical or psychological harm to the employee.
- 68 (3) "Agent" means a person who directs the activities of an employee under a contract
- 69 with the employee's employer.
- 70 (4) "Aggrieved employee" means an employee who brings an action under this chapter
- 71 alleging that the employee is or has been subject to an unlawful employment practice under this
- 72 chapter.
- 73 (5) "Conduct" is a form of behavior, including an act or an omission of an act.
- 74 (6) "Constructive discharge" means abusive conduct that causes an employee to resign
- 75 when before the employee resigns:
- 76 (a) the employee brings to the employer's attention the existence of the abusive
- 77 conduct; and
- 78 (b) the employer fails to take reasonable steps to eliminate the abusive conduct.
- 79 (7) (a) "Employee" means an individual hired by an employer if:
- 80 (i) the individual's labor is controlled by the employer; or
- 81 (ii) the individual is economically dependent upon the employer in return for labor
- 82 rendered.
- 83 (b) "Employee" includes:
- 84 (i) an independent contractor; or
- 85 (ii) a medical intern or resident.
- 86 (8) (a) "Employer" means a health care provider who compensates an individual in
- 87 return for performing labor.
- 88 (b) "Employer" includes a health care provider of:
- 89 (i) the state;

- 90 (ii) a subdivision of the state;
- 91 (iii) a county, city, or town;
- 92 (iv) a school district; and
- 93 (v) an institution of higher education as defined in Section 53B-3-102.
- 94 (9) "Health care provider" means a person or governmental entity that is described as a
95 "health care provider" in Section 78B-3-403.
- 96 (10) "Malice" means the desire to see another person suffer psychological, physical, or
97 economic harm, without legitimate cause or justification.
- 98 (11) "Negative employment decision" means:
99 (a) termination;
100 (b) constructive discharge;
101 (c) demotion;
102 (d) unfavorable reassignment;
103 (e) refusal to promote; or
104 (f) a disciplinary action.
- 105 (12) "Physical harm" means the material impairment of a person's physical health or
106 bodily integrity:
107 (a) as documented by a competent physician; or
108 (b) supported by competent expert evidence in a civil action.
- 109 (13) "Psychological harm" means the material impairment of a person's mental health:
110 (a) as documented by a competent psychologist, psychiatrist, or psychotherapist; or
111 (b) supported by competent expert evidence in a civil action.
- 112 (14) "Retaliate" means an adverse action against an employee in a term, privilege, or
113 condition of employment.
- 114 (15) "Workplace" means the location at which an employee engages in the labor for
115 which the employee is employed.

116 Section 3. Section **34-45-103** is enacted to read:

117 **34-45-103. Scope of chapter.**

118 This chapter may not be considered to exempt or relieve a person from a liability, duty,
119 penalty, or punishment provided by another law of this state.

120 Section 4. Section **34-45-201** is enacted to read:

121 **Part 2. Abusive Conduct Prohibited**

122 **34-45-201. Abusive conduct prohibited.**

123 (1) It is an unlawful employment practice under this chapter for one or more of the
124 following to subject an employee to an abusive work environment:

- 125 (a) an employer;
- 126 (b) an agent of an employer; or
- 127 (c) an employee of an employer.

128 (2) An employer is vicariously liable for an unlawful employment practice in violation
129 of this chapter committed by the employer's:

- 130 (a) agent; or
- 131 (b) employee.

132 Section 5. Section **34-45-202** is enacted to read:

133 **34-45-202. Retaliation.**

134 It is an unlawful employment practice under this chapter for a person described in
135 Subsection 34-45-201(1) to retaliate against an employee because the employee:

- 136 (1) opposes an unlawful employment practice under this chapter; or
- 137 (2) makes a charge, testifies, assists, or participates in an investigation or proceeding
138 under this chapter including:

- 139 (a) an internal proceeding;
- 140 (b) an arbitration or mediation proceeding; or
- 141 (c) a legal action.

142 Section 6. Section **34-45-301** is enacted to read:

143 **Part 3. Private Enforcement**

144 **34-45-301. Private right of action.**

145 (1) (a) This chapter may be enforced only by a private right of action filed by an
146 aggrieved employee against:

- 147 (i) an employer;
- 148 (ii) an agent of the employer;
- 149 (iii) an employee of the employer; or
- 150 (iv) a combination of persons listed in Subsections (1)(a)(i) through (iii).

151 (b) Civil liability under this chapter is joint and several for a violation committed by

152 two or more persons.

153 (2) An aggrieved employee may commence an action under this chapter by filing a
154 civil action with a court of competent jurisdiction.

155 (3) An aggrieved employee may not commence an action under this chapter later than
156 five years after the day on which occurs the last act that comprises the alleged unlawful
157 employment practice.

158 Section 7. Section **34-45-302** is enacted to read:

159 **34-45-302. Factors in determining the existence of abusive conduct.**

160 (1) In considering whether abusive conduct is present, a court shall weigh the severity,
161 nature, and frequency of the one or more acts that comprise the alleged abusive conduct.

162 (2) A single act normally does not constitute abusive conduct, unless the court finds
163 that the act is especially severe and egregious.

164 (3) A court may infer malice from the presence of a factor such as:

165 (a) an outward expression of hostility;

166 (b) harmful conduct inconsistent with an employer's legitimate business interests;

167 (c) a continuation of harmful, illegitimate conduct after the aggrieved employee;

168 (i) requests that the conduct cease; or

169 (ii) demonstrates outward signs of emotional or physical distress in the face of the
170 conduct; or

171 (d) attempts to exploit an aggrieved employee's known psychological or physical
172 vulnerability.

173 Section 8. Section **34-45-303** is enacted to read:

174 **34-45-303. Affirmative defenses.**

175 (1) (a) It is an affirmative defense to an action for an abusive work environment that:

176 (i) an employer exercises reasonable care to prevent and promptly correct the abusive
177 conduct; and

178 (ii) the aggrieved employee unreasonably fails to take advantage of appropriate
179 preventive or corrective opportunities provided by the employer.

180 (b) The affirmative defense described in Subsection (1)(a) is not available if the
181 abusive conduct culminates in a negative employment decision.

182 (2) It is an affirmative defense to an action for an abusive work environment that the

183 complaint is grounded primarily on:

184 (a) a negative employment decision made consistent with an employer's legitimate
185 business interests; or

186 (b) an employer's reasonable investigation of potentially illegal or unethical activity.

187 Section 9. Section **34-45-401** is enacted to read:

188 **Part 4. Remedies**

189 **34-45-401. Remedies.**

190 (1) If a court finds that a person described in Subsection 34-45-201(1) has committed
191 an unlawful employment practice under this chapter, the court may:

192 (a) enjoin the person from engaging in the unlawful employment practice; and

193 (b) order any other relief that the court considers appropriate, including:

194 (i) reinstatement;

195 (ii) removal of the person who engages in the abusive conduct from the aggrieved
196 employee's work environment;

197 (iii) back pay;

198 (iv) front pay;

199 (v) medical expenses;

200 (vi) subject to Subsection (2), compensation for emotional distress;

201 (vii) punitive damages; and

202 (viii) attorney fees.

203 (2) (a) If an employer is found to have committed an unlawful employment practice
204 under this chapter that does not result in a negative employment decision:

205 (i) the employer's liability for damages for emotional distress may not exceed \$25,000;

206 and

207 (ii) the employer may not be held liable for punitive damages.

208 (b) This Subsection (2) does not apply to an individual named as a defendant in the
209 action who is not an employer.

210 Section 10. Section **34-45-402** is enacted to read:

211 **34-45-402. Relationship to workers' compensation.**

212 (1) The remedies in this chapter are in addition to a remedy under Title 34A, Chapter 2,
213 Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

214 (2) (a) Notwithstanding Subsection (1), an employee who believes that the employee is
215 subjected to an unlawful employment practice under this chapter may elect to in lieu of
216 bringing an action under this chapter accept workers' compensation benefits in connection with
217 the underlying unlawful employment practice to the extent allowed under Title 34A, Chapter 2,
218 Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

219 (b) An employee who elects to accept workers' compensation may not bring an action
220 under this chapter for the same underlying unlawful employment practice.

221 (c) The Labor Commission may make rules in accordance with Title 63G, Chapter 3,
222 Utah Administrative Rulemaking Act, defining for purposes of this Subsection (2) what
223 constitutes an election to accept workers' compensation benefits in connection with an
224 underlying unlawful employment practice.

225 Section 11. Section **63G-7-301** is amended to read:

226 **63G-7-301. Waivers of immunity -- Exceptions.**

227 (1) (a) Immunity from suit of each governmental entity is waived as to:

228 (i) any contractual obligation[-]; or

229 (ii) liability under Title 34, Chapter 45, Health Care Provider Abusive Work
230 Environment Prohibition Act.

231 (b) Actions arising out of contractual rights or obligations are not subject to the
232 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

233 (c) The Division of Water Resources is not liable for failure to deliver water from a
234 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
235 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
236 condition, or safety condition that causes a deficiency in the amount of available water.

237 (2) Immunity from suit of each governmental entity is waived:

238 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
239 personal property;

240 (b) as to any action brought to foreclose mortgages or other liens on real or personal
241 property, to determine any adverse claim on real or personal property, or to obtain an
242 adjudication about any mortgage or other lien that the governmental entity may have or claim
243 on real or personal property;

244 (c) as to any action based on the negligent destruction, damage, or loss of goods,

245 merchandise, or other property while it is in the possession of any governmental entity or
246 employee, if the property was seized for the purpose of forfeiture under any provision of state
247 law;

248 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of
249 Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the
250 governmental entity when the governmental entity has taken or damaged private property for
251 public uses without just compensation;

252 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney
253 fees under Sections 63G-2-405 and 63G-2-802;

254 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
255 Act; or

256 (g) as to any action brought to obtain relief from a land use regulation that imposes a
257 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
258 Land Use Act.

259 (3) (a) Except as provided in Subsection (3)(b), immunity from suit of each
260 governmental entity is waived as to any injury caused by:

261 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
262 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

263 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
264 or other public improvement.

265 (b) Immunity from suit of each governmental entity is not waived if the injury arises
266 out of, in connection with, or results from:

267 (i) a latent dangerous or latent defective condition of any highway, road, street, alley,
268 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

269 (ii) a latent dangerous or latent defective condition of any public building, structure,
270 dam, reservoir, or other public improvement.

271 (4) Immunity from suit of each governmental entity is waived as to any injury
272 proximately caused by a negligent act or omission of an employee committed within the scope
273 of employment.

274 (5) Immunity from suit of each governmental entity is not waived under Subsections
275 (3) and (4) if the injury arises out of, in connection with, or results from:

276 (a) the exercise or performance, or the failure to exercise or perform, a discretionary
277 function, whether or not the discretion is abused;

278 (b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional
279 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of
280 mental anguish, or violation of civil rights;

281 (c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to
282 issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar
283 authorization;

284 (d) a failure to make an inspection or by making an inadequate or negligent inspection;

285 (e) the institution or prosecution of any judicial or administrative proceeding, even if
286 malicious or without probable cause;

287 (f) a misrepresentation by an employee whether or not it is negligent or intentional;

288 (g) riots, unlawful assemblies, public demonstrations, mob violence, and civil
289 disturbances;

290 (h) the collection of and assessment of taxes;

291 (i) the activities of the Utah National Guard;

292 (j) the incarceration of any person in any state prison, county or city jail, or other place
293 of legal confinement;

294 (k) any natural condition on publicly owned or controlled lands;

295 (l) any condition existing in connection with an abandoned mine or mining operation;

296 (m) any activity authorized by the School and Institutional Trust Lands Administration
297 or the Division of Forestry, Fire, and State Lands;

298 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
299 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
300 if:

301 (i) the trail is designated under a general plan adopted by a municipality under Section
302 10-9a-401 or by a county under Section 17-27a-401;

303 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
304 use as evidenced by a written agreement between the owner or operator of the trail
305 right-of-way, or of the right-of-way where the trail is located, and the municipality or county
306 where the trail is located; and

- 307 (iii) the written agreement:
- 308 (A) contains a plan for operation and maintenance of the trail; and
- 309 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
- 310 where the trail is located has, at minimum, the same level of immunity from suit as the
- 311 governmental entity in connection with or resulting from the use of the trail[-];
- 312 (o) research or implementation of cloud management or seeding for the clearing of fog;
- 313 (p) the management of flood waters, earthquakes, or natural disasters;
- 314 (q) the construction, repair, or operation of flood or storm systems;
- 315 (r) the operation of an emergency vehicle, while being driven in accordance with the
- 316 requirements of Section 41-6a-212;
- 317 (s) the activities of:
- 318 (i) providing emergency medical assistance;
- 319 (ii) fighting fire;
- 320 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 321 (iv) emergency evacuations;
- 322 (v) transporting or removing injured persons to a place where emergency medical
- 323 assistance can be rendered or where the person can be transported by a licensed ambulance
- 324 service; or
- 325 (vi) intervening during dam emergencies;
- 326 (t) the exercise or performance, or the failure to exercise or perform, any function
- 327 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or
- 328 (u) unauthorized access to government records, data, or electronic information systems
- 329 by any person or entity.

Legislative Review Note
as of 12-3-08 9:45 AM

Office of Legislative Research and General Counsel

H.B. 224 - Health Care Provider Abusive Work Environment Prohibition Act

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill may increase the State of Utah's liability to lawsuits. It is estimated that the state could pay up \$2,000,000 per year for legal settlements and attorney's fees. Additionally, this bill would require an appropriation from the General Fund of \$142,000 in FY 2010 and \$138,000 in FY 2011 for personal services for defense attorney costs.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$138,000	\$138,000	\$0	\$0	\$0
General Fund, One-Time	\$0	\$4,000	\$0	\$0	\$0	\$0
Total	\$0	\$142,000	\$138,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Local governments and businesses may be subject to increased costs where health care providers are employed. Individuals may benefit from the enactment of statute.
