	WORKPLACE ACCOMMODATION OF BREAST							
	FEEDING 2010 GENERAL SESSION STATE OF UTAH							
	Chief Sponsor: Christine A. Johnson Senate Sponsor:							
	LONG TITLE							
	General Description:							
	This bill modifies the provisions related to labor in general to provide for requirements							
related to an employer accommodating an employee who chooses to breast feed.								
Highlighted Provisions:								
	This bill:							
	<ul><li>defines terms;</li></ul>							
	<ul><li>provides for rulemaking;</li></ul>							
	<ul> <li>specifies what accommodations are required to be made;</li> </ul>							
	<ul><li>requires posting;</li></ul>							
	<ul> <li>provides for investigations by the Antidiscrimination and Labor Division of the</li> </ul>							
	Labor Commission;							
	<ul><li>establishes complaint procedures; and</li></ul>							
	• establishes sanctions.							
	Monies Appropriated in this Bill:							
	None							
	Other Special Clauses:							
	None							
	<b>Utah Code Sections Affected:</b>							
	ENACTS:							



28 **34-47-101**, Utah Code Annotated 1953 29 **34-47-102**, Utah Code Annotated 1953 **34-47-103**, Utah Code Annotated 1953 30 **34-47-201**, Utah Code Annotated 1953 31 32 **34-47-202**, Utah Code Annotated 1953 33 **34-47-301**, Utah Code Annotated 1953 34 **34-47-302**, Utah Code Annotated 1953 35 36 *Be it enacted by the Legislature of the state of Utah:* 37 Section 1. Section **34-47-101** is enacted to read: CHAPTER 47. WORKPLACE ACCOMMODATIONS FOR BREAST FEEDING ACT 38 39 Part 1. General Provisions 40 34-47-101. Title. 41 This chapter is known as the "Workplace Accommodations for Breast Feeding Act." 42 Section 2. Section **34-47-102** is enacted to read: 43 **34-47-102.** Definitions. 44 As used in this chapter: 45 (1) "Commission" means the Labor Commission. (2) "Division" means the commission's Division of Antidiscrimination and Labor. 46 (3) "Employer" means a person employing 15 or more employees within the state for 47 48 each working day in each of 20 calendar weeks or more in the current or preceding calendar 49 year. 50 (4) "Reasonable" means that an accommodation does not impose an undue hardship on 51 the operation of the employer's business. 52 (5) "Record" means information that is: 53 (a) inscribed on a tangible medium; or 54 (b) (i) received or stored in an electronic or other medium; and (ii) retrievable in a perceivable and reproducible form. 55 56 (6) "Undue hardship" means an accommodation that requires significant difficulty or 57 expense when considered in relation to factors such as: 58 (a) size of the employer;

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59	(b) the financial resources of the employer;
60	(c) the nature and structure of the employer's operations; and
61	(d) special circumstances of public safety.
62	Section 3. Section 34-47-103 is enacted to read:
63	<u>34-47-103.</u> Rulemaking.
64	In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
65	commission may make rules regarding:
66	(1) the terms defined in Section 34-47-102;
67	(2) the form and content of the notice required to be posted under Section 34-47-202;
68	<u>and</u>
69	(3) the process to file a written complaint with the division.
70	Section 4. Section 34-47-201 is enacted to read:
71	Part 2. Accommodations Required
72	34-47-201. Employer to accommodate.
73	(1) Subject to the other requirements of this chapter, if an employee is breast feeding a
74	child to whom the employee gave birth, an employer shall:
75	(a) for at least one year after the day on which the employee gives birth to the child,
76	provide time for the employee to express breast milk for the child; and
77	(b) make reasonable efforts to provide a location in close proximity to the employee's
78	work area, other than a toilet stall, where the employee can express breast milk in privacy.
79	(2) An employer may comply with Subsection (1)(a) by:
80	(a) providing an employee reasonable unpaid break time; or
81	(b) permitting an employee to use paid break time, meal time, or both.
82	(3) An employer that makes reasonable efforts to accommodate an employee who
83	chooses to express breast milk at work is considered to be in compliance with this section.
84	Section 5. Section 34-47-202 is enacted to read:
85	<u>34-47-202.</u> Posting required.
86	(1) An employer shall post a notice that the employer is required to accommodate in
87	accordance with this chapter an employee who chooses to breast feed a child to whom the
88	employee gave birth.
89	(2) An employer shall post the notice required under this section conspicuously at or

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90	near the place of work where the employer posts notices related to employment discrimination					
91	or workers' compensation.					
92	Section 6. Section 34-47-301 is enacted to read:					
93	Part 3. Enforcement					
94	<u>34-47-301.</u> Investigations.					
95	(1) The division may investigate an alleged violation of this chapter. Except as					
96	provided in Section 34-47-302, the division is not required to audit, monitor, or investigate					
97	whether an employer is in compliance with this chapter.					
98	(2) As part of an investigation, a representative of the division may enter a place of					
99	employment during business hours to inspect:					
100	(a) a record; or					
101	(b) a location provided by the employer at which an employee may express breast milk					
102	at work.					
103	(3) An effort of an employer to obstruct the division in the performance of its duties					
104	under this section is a violation of this chapter and subject to sanctions under Section					
105	<u>34-47-302.</u>					
106	Section 7. Section <b>34-47-302</b> is enacted to read:					
107	34-47-302. Complaint procedures Sanctions.					
108	(1) (a) An individual claiming to be aggrieved by an alleged violation of this chapter by					
109	the individual's employer may file with the division a request for agency action subject to Title					
110	63G, Chapter 4, Administrative Procedures Act.					
111	(b) On receipt of a request for agency action under Subsection (1)(a), the division shall:					
112	(i) promptly assign an investigator to attempt a settlement between the parties by					
113	conference, conciliation, or persuasion before a hearing is scheduled or held as part of an					
114	adjudicative proceeding; and					
115	(ii) if no settlement is reached, make a prompt impartial investigation of the allegation					
116	made in the request for agency action.					
117	(2) (a) If the division determines that a violation has occurred, the division may order					
118	that the employer:					
119	(i) cease and desist the action;					
120	(ii) pay a fine to the division of up to \$500 for a violation; or					

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121	(iii) comply with a combination of Subsections (2)(a)(i) and (ii).
122	(b) Money received under this section shall be deposited as a dedicated credit to the
123	division to pay for the costs of administering this chapter.
124	(3) (a) An employee or employer who disputes a determination, imposition, or amount
125	of a penalty imposed under this section may request a hearing before an administrative law
126	judge.
127	(b) An employee or employer shall make a request for a hearing under this Subsection
128	(3) within 30 days of the day on which the division imposes a penalty under this section or the
129	administrative action becomes a final order of the commission.
130	(c) A request for a hearing under this Subsection (3) shall specify the facts and grounds
131	that are the basis of the objection to the determination, imposition, or amount of the penalty.
132	(d) An administrative law judge's decision under this Subsection (3) may be reviewed
133	in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Legislative Review Note as of 1-26-10 2:35 PM

Office of Legislative Research and General Counsel

## H.B. 252 - Workplace Accommodation of Breast Feeding

## **Fiscal Note**

2010 General Session State of Utah

## **State Impact**

Enacting this bill will require a \$25,000 on-going General Fund appropriation for additional staff work and will generate about \$5,000 from enforcement penalties.

	FY 2010 <u>Approp.</u>	FY 2011 <u>Approp.</u>	FY 2012 <u>Approp.</u>	FY 2010	FY 2011	FY 2012
				Revenue	Revenue	Revenue
General Fund	\$0	\$25,000	\$25,000	0.9	90	
Dedicated Credits	\$0	\$5,000	\$5,000	30	\$5,000	\$5,000
Total	\$0	\$30,000	\$30,000	\$0	\$5,000	\$5,000

## Individual, Business and/or Local Impact

Enacting this bill will not likely result in direct, measurable costs and/or benefits for local governments. Individuals and businesses may be impacted due to the proposed changes in statute.

2/2/2010, 11:48:30 AM, Lead Analyst: Schoenfeld, J.D./Attny: PO

Office of the Legislative Fiscal Analyst