

Representative Justin J. Miller proposes the following substitute bill:

ANTIDISCRIMINATION MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Justin J. Miller

Senate Sponsor: Jani Iwamoto

LONG TITLE

General Description:

This bill modifies the Utah Antidiscrimination Act to address breastfeeding or medical conditions related to breastfeeding.

Highlighted Provisions:

This bill:

- ▶ includes breastfeeding or medical conditions related to breastfeeding under pregnancy, childbirth, or pregnancy-related conditions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-5-102, as last amended by Laws of Utah 2011, Chapter 413

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-5-102** is amended to read:



26 **34A-5-102. Definitions -- Unincorporated entities.**

27 (1) As used in this chapter:

28 (a) "Apprenticeship" means a program for the training of apprentices including a
29 program providing the training of those persons defined as apprentices by Section 35A-6-102.

30 (b) "Bona fide occupational qualification" means a characteristic applying to an
31 employee that:

32 (i) is necessary to the operation; or

33 (ii) is the essence of the employee's employer's business.

34 (c) "Court" means:

35 (i) the district court in the judicial district of the state in which the asserted unfair
36 employment practice occurred; or

37 (ii) if this court is not in session at that time, a judge of the court described in
38 Subsection (1)(c)(i).

39 (d) "Director" means the director of the division.

40 (e) "Disability" means a physical or mental disability as defined and covered by the
41 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

42 (f) "Division" means the Division of Antidiscrimination and Labor.

43 (g) "Employee" means any person applying with or employed by an employer.

44 (h) (i) "Employer" means:

45 (A) the state;

46 (B) any political subdivision;

47 (C) a board, commission, department, institution, school district, trust, or agent of the
48 state or its political subdivisions; or

49 (D) a person employing 15 or more employees within the state for each working day in
50 each of 20 calendar weeks or more in the current or preceding calendar year.

51 (ii) "Employer" does not include:

52 (A) a religious organization or association;

53 (B) a religious corporation sole; or

54 (C) any corporation or association constituting a wholly owned subsidiary or agency of
55 any religious organization or association or religious corporation sole.

56 (i) "Employment agency" means any person:

57 (i) undertaking to procure employees or opportunities to work for any other person; or
58 (ii) holding the person out to be equipped to take an action described in Subsection
59 (1)(i)(i).

60 (j) "Joint apprenticeship committee" means any association of representatives of a
61 labor organization and an employer providing, coordinating, or controlling an apprentice
62 training program.

63 (k) "Labor organization" means any organization that exists for the purpose in whole or
64 in part of:

65 (i) collective bargaining;

66 (ii) dealing with employers concerning grievances, terms or conditions of employment;

67 or

68 (iii) other mutual aid or protection in connection with employment.

69 (l) "National origin" means the place of birth, domicile, or residence of an individual or
70 of an individual's ancestors.

71 (m) "On-the-job-training" means any program designed to instruct a person who, while
72 learning the particular job for which the person is receiving instruction:

73 (i) is also employed at that job; or

74 (ii) may be employed by the employer conducting the program during the course of the
75 program, or when the program is completed.

76 (n) "Person" means one or more individuals, partnerships, associations, corporations,
77 legal representatives, trusts or trustees, receivers, the state and all political subdivisions and
78 agencies of the state.

79 (o) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or
80 medical conditions related to breastfeeding.

81 ~~[(o)]~~ (p) "Presiding officer" means the same as that term is defined in Section
82 [63G-4-103](#).

83 ~~[(p)]~~ (q) "Prohibited employment practice" means a practice specified as
84 discriminatory, and therefore unlawful, in Section [34A-5-106](#).

85 ~~[(q)]~~ (r) "Retaliate" means the taking of adverse action by an employer, employment
86 agency, labor organization, apprenticeship program, on-the-job training program, or vocational
87 school against one of its employees, applicants, or members because the employee, applicant,

88 or member has:

- 89 (i) opposed any employment practice prohibited under this chapter; or
- 90 (ii) filed charges, testified, assisted, or participated in any way in any proceeding,
- 91 investigation, or hearing under this chapter.

92 [~~(r)~~] (s) "Unincorporated entity" means an entity organized or doing business in the
93 state that is not:

- 94 (i) an individual;
- 95 (ii) a corporation; or
- 96 (iii) publicly traded.

97 [~~(s)~~] (t) "Vocational school" means any school or institution conducting a course of
98 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to
99 pursue a manual, technical, industrial, business, commercial, office, personal services, or other
100 nonprofessional occupations.

101 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
102 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
103 be the employer of each individual who, directly or indirectly, holds an ownership interest in
104 the unincorporated entity.

105 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
106 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
107 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that
108 the individual:

- 109 (i) is an active manager of the unincorporated entity;
- 110 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
111 entity; or
- 112 (iii) is not subject to supervision or control in the performance of work by:
 - 113 (A) the unincorporated entity; or
 - 114 (B) a person with whom the unincorporated entity contracts.

115 (c) As part of the rules made under Subsection (2)(b), the commission may define:

- 116 (i) "active manager";
- 117 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 118 (iii) "subject to supervision or control in the performance of work."