

**UTAH ANTIDISCRIMINATION ACT AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derek L. Kitchen**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Utah Antidiscrimination Act to provide protection for immutable traits and hairstyles historically associated with race.

**Highlighted Provisions:**

This bill:

- ▶ defines "protective hairstyle";
- ▶ defines "race" as including an immutable trait historically associated with race and a protective hairstyle; and
- ▶ makes technical and conforming 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 2016, Chapters 330 and 370

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

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

**34A-5-102. Definitions -- Unincorporated entities -- Joint employers --**



28 **Franchisors.**

29 (1) As used in this chapter:

30 (a) "Affiliate" means the same as that term is defined in Section [16-6a-102](#).

31 (b) "Apprenticeship" means a program for the training of apprentices including a  
32 program providing the training of those persons defined as apprentices by Section [35A-6-102](#).

33 (c) "Bona fide occupational qualification" means a characteristic applying to an  
34 employee that:

35 (i) is necessary to the operation; or

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

37 (d) "Court" means:

38 (i) the district court in the judicial district of the state in which the asserted unfair  
39 employment practice occurs; or

40 (ii) if the district court is not in session at that time, a judge of the court described in  
41 Subsection (1)(d)(i).

42 (e) "Director" means the director of the division.

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

45 (g) "Division" means the Division of Antidiscrimination and Labor.

46 (h) "Employee" means a person applying with or employed by an employer.

47 (i) (i) "Employer" means:

48 (A) the state;

49 (B) a political subdivision;

50 (C) a board, commission, department, institution, school district, trust, or agent of the  
51 state or a political subdivision of the state; or

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

54 (ii) "Employer" does not include:

55 (A) a religious organization, a religious corporation sole, a religious association, a  
56 religious society, a religious educational institution, or a religious leader, when that individual  
57 is acting in the capacity of a religious leader;

58 (B) any corporation or association constituting an affiliate, a wholly owned subsidiary,

59 or an agency of any religious organization, religious corporation sole, religious association, or  
60 religious society; or

61 (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.

62 (j) "Employment agency" means a person:

63 (i) undertaking to procure employees or opportunities to work for any other person; or

64 (ii) holding the person out to be equipped to take an action described in Subsection

65 (1)(j)(i).

66 (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.

67 105, of the federal government.

68 (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

69 (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

70 (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

71 (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical  
72 Manual (DSM-5). A person's gender identity can be shown by providing evidence, including,  
73 but not limited to, medical history, care or treatment of the gender identity, consistent and  
74 uniform assertion of the gender identity, or other evidence that the gender identity is sincerely  
75 held, part of a person's core identity, and not being asserted for an improper purpose.

76 (p) "Joint apprenticeship committee" means an association of representatives of a labor  
77 organization and an employer providing, coordinating, or controlling an apprentice training  
78 program.

79 (q) "Labor organization" means an organization that exists for the purpose in whole or  
80 in part of:

81 (i) collective bargaining;

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

83 or

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

85 (r) "National origin" means the place of birth, domicile, or residence of an individual or  
86 of an individual's ancestors.

87 (s) "On-the-job-training" means a program designed to instruct a person who, while  
88 learning the particular job for which the person is receiving instruction:

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

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

92 (t) "Person" means:

93 (i) one or more individuals, partnerships, associations, corporations, legal  
94 representatives, trusts or trustees, or receivers;

95 (ii) the state; and

96 (iii) a political subdivision of the state.

97 (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or  
98 medical conditions related to breastfeeding.

99 (v) "Presiding officer" means the same as that term is defined in Section 63G-4-103.

100 (w) "Prohibited employment practice" means a practice specified as discriminatory,  
101 and therefore unlawful, in Section 34A-5-106.

102 (x) (i) "Protective hairstyle" is a hairstyle:

103 (A) necessitated by, or resulting from, the immutable characteristics of hair texture or  
104 type; and

105 (B) historically associated with race.

106 (ii) "Protective hairstyle" includes braids, locks, afros, curls, and twists.

107 (y) "Race" includes:

108 (i) an immutable trait historically associated with, or perceived to be associated with,  
109 race, including hair texture or type; and

110 (ii) a protective hairstyle.

111 [~~(x)~~] (z) "Religious leader" means an individual who is associated with, and is an  
112 authorized representative of, a religious organization or association or a religious corporation  
113 sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual  
114 advisor.

115 [~~(y)~~] (aa) "Retaliate" means the taking of adverse action by an employer, employment  
116 agency, labor organization, apprenticeship program, on-the-job training program, or vocational  
117 school against one of its employees, applicants, or members because the employee, applicant,  
118 or member:

119 (i) opposes an employment practice prohibited under this chapter; or

120 (ii) files charges, testifies, assists, or participates in any way in a proceeding,

121 investigation, or hearing under this chapter.

122 ~~[(z)]~~ (bb) "Sexual orientation" means an individual's actual or perceived orientation as  
123 heterosexual, homosexual, or bisexual.

124 ~~[(aa)]~~ (cc) "Undue hardship" means an action that requires significant difficulty or  
125 expense when considered in relation to factors such as the size of the entity, the entity's  
126 financial resources, and the nature and structure of the entity's operation.

127 ~~[(bb)]~~ (dd) "Unincorporated entity" means an entity organized or doing business in the  
128 state that is not:

- 129 (i) an individual;
- 130 (ii) a corporation; or
- 131 (iii) publicly traded.

132 ~~[(cc)]~~ (ee) "Vocational school" means a school or institution conducting a course of  
133 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to  
134 pursue a manual, technical, industrial, business, commercial, office, personal services, or other  
135 nonprofessional occupations.

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

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

- 144 (i) is an active manager of the unincorporated entity;
- 145 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
146 entity; or
- 147 (iii) is not subject to supervision or control in the performance of work by:
  - 148 (A) the unincorporated entity; or
  - 149 (B) a person with whom the unincorporated entity contracts.
- 150 (c) As part of the rules made under Subsection (2)(b), the commission may define:
  - 151 (i) "active manager";

152 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

153 (iii) "subject to supervision or control in the performance of work."

154 (3) For purposes of determining whether two or more persons are considered joint  
155 employers under this chapter, an administrative ruling of a federal executive agency may not be  
156 considered a generally applicable law unless that administrative ruling is determined to be  
157 generally applicable by a court of law, or adopted by statute or rule.

158 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

159 (i) a franchisee; or

160 (ii) a franchisee's employee.

161 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
162 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise  
163 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
164 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
165 and brand.