

UTAH ANTIDISCRIMINATION ACT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek L. Kitchen

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Antidiscrimination Act to provide protection for a trait historically associated with race, including a protective hairstyle.

Highlighted Provisions:

This bill:

- ▶ establishes that a "protective hairstyle" includes braids, locks, afros, curls, and twists;
- ▶ establishes that "race" includes a trait historically associated with race, including 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

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

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



28 **34A-5-102. Definitions -- Unincorporated entities -- Joint employers --**

29 **Franchisors.**

30 (1) As used in this chapter:

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

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

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

36 (i) is necessary to the operation; or

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

38 (d) "Court" means:

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

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

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

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

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

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

48 (i) (i) "Employer" means:

49 (A) the state;

50 (B) a political subdivision;

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

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

55 (ii) "Employer" does not include:

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

59 (B) any corporation or association constituting an affiliate, a wholly owned subsidiary,
60 or an agency of any religious organization, religious corporation sole, religious association, or
61 religious society; or

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

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

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

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

66 (1)(j)(i).

67 (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
68 105, of the federal government.

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

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

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

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

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

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

82 (i) collective bargaining;

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

84 or

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

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

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

90 (i) is also employed at that job; or
91 (ii) may be employed by the employer conducting the program during the course of the
92 program, or when the program is completed.

93 (t) "Person" means:

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

96 (ii) the state; and

97 (iii) a political subdivision of the state.

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

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

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

103 (x) "Protective hairstyle" includes braids, locks, afros, curls, and twists.

104 (y) "Race" includes a trait historically associated with race, including:

105 (i) hair texture; and

106 (ii) a protective hairstyle.

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

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

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

116 (ii) files charges, testifies, assists, or participates in any way in a proceeding,
117 investigation, or hearing under this chapter.

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

120 [~~(aa)~~] (cc) "Undue hardship" means an action that requires significant difficulty or

121 expense when considered in relation to factors such as the size of the entity, the entity's
122 financial resources, and the nature and structure of the entity's operation.

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

- 125 (i) an individual;
- 126 (ii) a corporation; or
- 127 (iii) publicly traded.

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

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

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

- 140 (i) is an active manager of the unincorporated entity;
- 141 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
142 entity; or
- 143 (iii) is not subject to supervision or control in the performance of work by:
 - 144 (A) the unincorporated entity; or
 - 145 (B) a person with whom the unincorporated entity contracts.

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

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

150 (3) For purposes of determining whether two or more persons are considered joint
151 employers under this chapter, an administrative ruling of a federal executive agency may not be

152 considered a generally applicable law unless that administrative ruling is determined to be
153 generally applicable by a court of law, or adopted by statute or rule.

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

155 (i) a franchisee; or

156 (ii) a franchisee's employee.

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