

**EMPLOYMENT PRACTICES AND PROTECTION FROM
VIOLENCE**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patricia W. Jones

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Labor Code to enact provisions addressing employment practices related to an employee who is the victim of an act of violence.

Highlighted Provisions:

This bill:

- ▶ enacts the Employment Practices and Protection from Violence Act, including:
 - defining terms;
 - establishing required employment practices for an employer;
 - addressing the obligations of an employee;
 - addressing prohibited employment practices; and
 - providing a remedy through a private right of action.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

34A-12-101, Utah Code Annotated 1953

34A-12-102, Utah Code Annotated 1953



- 28 **34A-12-201**, Utah Code Annotated 1953
- 29 **34A-12-202**, Utah Code Annotated 1953
- 30 **34A-12-203**, Utah Code Annotated 1953
- 31 **34A-12-301**, Utah Code Annotated 1953



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

34 Section 1. Section **34A-12-101** is enacted to read:

35 **CHAPTER 12. EMPLOYMENT PRACTICES AND PROTECTION FROM**
 36 **VIOLENCE ACT**

37 **Part 1. General Provisions**

38 **34A-12-101. Title.**

39 This chapter is known as the "Employment Practices and Protection from Violence
 40 Act."

41 Section 2. Section **34A-12-102** is enacted to read:

42 **34A-12-102. Definitions.**

43 As used in this chapter:

44 (1) "Act of violence" means an act of:

45 (a) domestic violence;

46 (b) child abuse, if the child abuse is related to domestic violence;

47 (c) stalking;

48 (d) sexual assault; or

49 (e) any other crime, the underlying factual basis of which is found by a court on the
 50 record to include an act of domestic violence.

51 (2) "Child abuse" means the commission or attempt to commit against a child a
 52 criminal offense described in:

53 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

54 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;

55 (c) Subsections 76-9-702(1) through (4), Lewdness -- Sexual battery -- Public
 56 urination; or

57 (d) Section 76-9-702.5, Lewdness involving a child.

58 (3) (a) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a

59 person who is 16 years of age or older who:

60 (i) is or was a spouse of the other person;

61 (ii) is or was living as if a spouse of the other person;

62 (iii) is related by blood or marriage to the other person;

63 (iv) has one or more children in common with the other person;

64 (v) is the biological parent of the other person's unborn child; or

65 (vi) resides or has resided in the same residence as the other person.

66 (b) Notwithstanding Subsection (3)(a), "cohabitant" does not include:

67 (i) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

68 (ii) the relationship between natural, adoptive, step, or foster siblings who are under 18

69 years of age.

70 (4) (a) "Domestic violence" means the following when committed by one cohabitant

71 against another:

72 (i) a criminal offense involving violence or physical harm or threat of violence or

73 physical harm; or

74 (ii) an attempt, conspiracy, or solicitation to commit a criminal offense involving

75 violence or physical harm.

76 (b) "Domestic violence" includes the commission or attempt to commit one or more of

77 the following offenses by one cohabitant against another:

78 (i) aggravated assault, as described in Section 76-5-103;

79 (ii) assault, as described in Section 76-5-102;

80 (iii) criminal homicide, as described in Section 76-5-201;

81 (iv) harassment, as described in Section 76-5-106;

82 (v) electronic communication harassment, as described in Section 76-9-201;

83 (vi) kidnaping, child kidnaping, or aggravated kidnaping, as described in Section

84 76-5-301, 76-5-301.1, or 76-5-302;

85 (vii) mayhem, as described in Section 76-5-105;

86 (viii) a sexual offense, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, or

87 Title 76, Chapter 5a, Sexual Exploitation of Children;

88 (ix) stalking, as described in Section 76-5-106.5;

89 (x) unlawful detention, as described in Section 76-5-304;

90 (xi) violation of a protective order or ex parte protective order, as described in Section
91 76-5-108;

92 (xii) an offense against property described in Title 76, Chapter 6, Part 1, Property
93 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;

94 (xiii) possession of a deadly weapon with intent to assault, as described in Section
95 76-10-507;

96 (xiv) discharge of a firearm from a vehicle, near a highway, or in the direction of a
97 person, building, or vehicle, as described in Section 76-10-508; or

98 (xv) disorderly conduct, as defined in Section 76-9-102, if the conviction of disorderly
99 conduct is the result of a plea agreement in which the defendant is originally charged with a
100 domestic violence offense otherwise described in this Subsection (4).

101 (5) "Employee" means a person employed by an employer.

102 (6) "Employer" means:

103 (a) the state;

104 (b) a political subdivision;

105 (c) a school district;

106 (d) one of the following of the state or a political subdivision:

107 (i) a board;

108 (ii) a commission;

109 (iii) a department;

110 (iv) an institution; or

111 (v) a trust or agent; or

112 (e) a person employing 25 or more employees within the state for each working day in
113 each of 20 calendar weeks or more in the current or preceding calendar year.

114 (7) "Medical care" means any of the following intended for use in the diagnosis,
115 treatment, mitigation, or prevention of a human ailment or impairment:

116 (a) a professional service;

117 (b) a personal service;

118 (c) a facility;

119 (d) equipment;

120 (e) a device;

121 (f) supplies; or

122 (g) medicine.

123 (8) "Mental health counseling" means outpatient and inpatient counseling necessitated
124 as a result of an act of violence.

125 (9) "Stalking" means stalking, as described in Section 76-5-106.5.

126 (10) "Victim of an act of violence" means a person who is the subject of an act of
127 violence.

128 Section 3. Section **34A-12-201** is enacted to read:

129 **Part 2. Required and Prohibited Employment Practices**

130 **34A-12-201. Required employment practices.**

131 (1) Subject to the other provisions of this chapter, an employer shall permit an
132 employee who is a victim of an act of violence to use up to three days of leave from work in a
133 12-month period, with or without pay, if the leave is used by the employee to:

134 (a) (i) seek a protective order to prevent an act of violence pursuant to Section
135 78B-7-103 or Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or

136 (ii) seek a stalking injunction pursuant to Title 77, Chapter 3a, Stalking Injunctions;

137 (b) obtain medical care, mental health counseling, or both for the employee or the
138 employee's children to address physical or psychological injuries resulting from the act of
139 violence;

140 (c) make the employee's home secure from the perpetrator of the act of violence or seek
141 new housing to escape the perpetrator of the act of violence;

142 (d) seek legal assistance to address issues arising from the act of violence; or

143 (e) attend and prepare for a court-related proceeding arising from an act of violence.

144 (2) An employer shall keep confidential information related to the employee's leave
145 pursuant to this chapter.

146 (3) Leave used under this section is in addition to a right to leave under Section
147 78B-1-132 or the Family and Medical Leave Act of 1993, 29 U.S.C. Sec. 2601 et seq.

148 Section 4. Section **34A-12-202** is enacted to read:

149 **34A-12-202. Obligations of employee.**

150 (1) Except in cases of imminent danger to the health or safety of the employee, an
151 employee seeking leave from work pursuant to this chapter shall provide the employee's

152 employer with:

153 (a) the appropriate advance notice of the leave as may be required by the employer's
154 policy; and

155 (b) the reasonable documentation required by the employer.

156 (2) An employee seeking leave pursuant to this chapter, before receiving the leave,
157 shall exhaust the following that is available to the employee, unless the employer waives this
158 requirement:

159 (a) annual leave;

160 (b) vacation leave;

161 (c) personal leave; and

162 (d) sick leave.

163 Section 5. Section **34A-12-203** is enacted to read:

164 **34A-12-203. Prohibited employment practices.**

165 (1) An employer may not interfere with, restrain, or deny the exercise of or an attempt
166 to exercise a right provided under this chapter.

167 (2) An employer may not discharge or in any other manner discriminate against a
168 person for exercising the person's rights under this chapter.

169 (3) (a) An employee has no greater right to continued employment or to a benefit or
170 condition of employment than if the employee were not entitled to leave under this chapter.

171 (b) This chapter may not be construed to limit the employer's right to discipline or
172 terminate an employee for any reason, including:

173 (i) reduction in work force; or

174 (ii) termination, with or without cause, other than the exercise of a right under this
175 chapter.

176 Section 6. Section **34A-12-301** is enacted to read:

177 **Part 3. Remedy**

178 **34A-12-301. Private right of action.**

179 (1) As used in this section, "damages" means the wages and benefits that would have
180 been due an employee up to and including the date of the judgment had the act violating this
181 chapter not occurred.

182 (2) The sole remedy for a person claiming to be aggrieved by a violation of this chapter

183 is to bring a civil suit for damages, equitable relief, or both in a district court of competent
184 jurisdiction.

185 (3) If sought in an action under this section and the court finds a violation of this
186 chapter, the court may award damages against an employer.

187 (4) Notwithstanding Subsection (3), this chapter may not be construed to relieve a
188 person who brings an action under this chapter from the obligation to mitigate the person's
189 damages.

Legislative Review Note
as of 1-19-11 7:43 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 40

SHORT TITLE: **Employment Practices and Protection from Violence**

SPONSOR: **Jones, P.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.