

**ANTIDISCRIMINATION ACT AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christine A. Johnson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Antidiscrimination Act to address discrimination on the basis of sexual orientation or gender identity.

**Highlighted Provisions:**

This bill:

- ▶ defines "gender identity" and "sexual orientation";
  - ▶ includes sexual orientation and gender identity as a prohibited basis for discrimination in employment in a manner consistent with the Utah Antidiscrimination Act;
  - ▶ addresses advertisements;
  - ▶ prohibits quotas or preferences on the basis of sexual orientation or gender identity;
- and
- ▶ makes technical and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**34A-5-102**, as last amended by Laws of Utah 2001, Chapter 73



- 28           **34A-5-104**, as last amended by Laws of Utah 1999, Chapter 161
- 29           **34A-5-105**, as last amended by Laws of Utah 2003, Chapter 65
- 30           **34A-5-106**, as last amended by Laws of Utah 2003, Chapter 65
- 31           **34A-5-107**, as last amended by Laws of Utah 2003, Chapter 65
- 32           **67-19-6.3**, as last amended by Laws of Utah 2006, Chapter 139



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

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

36           **34A-5-102. Definitions.**

37           As used in this chapter:

38           (1) "Apprenticeship" means a program for the training of [~~apprentices~~] an apprentice,  
39 including a program providing the training of [~~those persons~~] a person defined as [~~apprentices~~]  
40 an apprentice by Section 35A-6-102.

41           (2) "Bona fide occupational qualification" means a characteristic applying to an  
42 employee:

43           (a) that is necessary to the operation of the employee's employer's business; or

44           (b) is the essence of the employee's employer's business.

45           (3) "Court" means:

46           (a) the district court in the judicial district of the state in which the asserted unfair  
47 employment practice [~~occurred~~] occurs; or

48           (b) if [~~this court~~] the district court described in Subsection (3)(a) is not in session at  
49 [~~that~~] the time the asserted unfair employment practice occurs, a judge of the court described in  
50 Subsection (3)(a).

51           (4) "Director" means the director of the division.

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

54           (6) "Discriminate in matters of compensation" means the payment of differing wages  
55 or salaries to employees having substantially equal experience, responsibilities, and skill for a  
56 particular job.

57           [~~(6)~~] (7) "Division" means the Division of Antidiscrimination and Labor.

58           [~~(7)~~] (8) "Employee" means [~~any~~] a person applying with or employed by an employer.

- 59            ~~[(8)]~~ (9) (a) "Employer" means:
- 60            (i) the state;
- 61            (ii) ~~[any]~~ a political subdivision;
- 62            (iii) a board, commission, department, institution, school district, trust, or agent of:
- 63            (A) the state; or [its]
- 64            (B) a political ~~[subdivisions]~~ subdivision; or
- 65            (iv) a person employing 15 or more employees within the state for each working day
- 66 in each of 20 calendar weeks or more in the current or preceding calendar year.
- 67            (b) "Employer" does not include:
- 68            (i) a religious organization or association;
- 69            (ii) a religious corporation sole; or
- 70            (iii) ~~[any]~~ a corporation or association constituting a wholly owned subsidiary or
- 71 agency of ~~[any]~~:
- 72            (A) a religious organization or association; or
- 73            (B) a religious corporation sole.
- 74            ~~[(9)]~~ (10) "Employment agency" means ~~[any]~~ a person:
- 75            (a) undertaking to procure ~~[employees or opportunities]~~ an employer or an opportunity
- 76 to work for ~~[any other]~~ another person; or
- 77            (b) holding itself out to be equipped to take an action described in Subsection ~~[(9)]~~
- 78 (10)(a).
- 79            (11) "Gender identity" means a person's self-perception, or the perception by another
- 80 person, of the person's identity as a male or female:
- 81            (a) on the basis of the person's appearance, behavior, or physical characteristics; and
- 82            (b) whether or not it is different than the person's:
- 83            (i) physical anatomy; or
- 84            (ii) designated sex at birth.
- 85            ~~[(10)]~~ (12) "Joint apprenticeship committee" means ~~[any]~~ an association of the
- 86 following that provides, coordinates, or controls an apprentice training program:
- 87            (a) representatives of a labor organization; and
- 88            (b) an employer ~~[providing, coordinating, or controlling an apprentice training~~
- 89 program].

90           ~~[(11)]~~ (13) "Labor organization" means ~~[any]~~ an organization that exists for the  
91 purpose in whole or in part of:

- 92           (a) collective bargaining;
- 93           (b) dealing with ~~[employers]~~ an employer concerning:
  - 94           (i) grievances~~[-];~~ or
  - 95           (ii) terms or conditions of employment; or
- 96           (c) other mutual aid or protection in connection with employment.

97           ~~[(12)]~~ (14) "National origin" means the place of birth, domicile, or residence of an  
98 individual or of an individual's ancestors.

99           ~~[(13)]~~ (15) "On-the-job-training program" means ~~[any]~~ a program designed to instruct a  
100 person who, while learning the particular job for which the person is receiving instruction:

- 101           (a) is also employed at that job; or
- 102           (b) may be employed by the employer conducting the program:
  - 103           (i) during the course of the program~~[-];~~ or
  - 104           (ii) when the program is completed.

105           ~~[(14)]~~ (16) "Person" means ~~[one or more individuals, partnerships, associations,~~  
106 ~~corporations, legal representatives, trusts or trustees, receivers, the state and all political~~  
107 ~~subdivisions and agencies of the state.]~~:

- 108           (a) an individual;
- 109           (b) a partnership;
- 110           (c) an association;
- 111           (d) a corporation;
- 112           (e) a legal representative;
- 113           (f) a trust or trustee;
- 114           (g) a receiver;
- 115           (h) the state;
- 116           (i) a political subdivision; and
- 117           (j) an agency of the state.

118           ~~[(15)]~~ (17) "Presiding officer" ~~[means the same as that term]~~ is as defined in Section  
119 63-46b-2.

120           ~~[(16)]~~ (18) "Prohibited employment practice" means a practice specified as

121 discriminatory, and therefore unlawful, in Section 34A-5-106.

122 (19) "Religious educational institution" means a school, college, university, or other  
123 educational institution that:

124 (a) is, in whole or in substantial part, owned, supported, controlled, or managed by a  
125 particular religious corporation, association, or society; or

126 (b) has a curriculum that is directed toward the propagation of a particular religion.

127 [~~(17)~~] (20) "Retaliate" means the taking of adverse action:

128 (a) by:

129 (i) an employer[;];

130 (ii) an employment agency[;];

131 (iii) a labor organization[;];

132 (iv) an apprenticeship program[;];

133 (v) an on-the-job training program[;]; or

134 (vi) a vocational school [against one of its employees, applicants, or members];

135 (b) against an employee, applicant, or member of a person described in Subsection

136 (20)(a); and

137 (c) because the employee, applicant, or member described in Subsection (20)(b):

138 [~~(a) has opposed any~~] (i) opposes an employment practice prohibited under this

139 chapter; or

140 [~~(b) filed charges, testified, assisted, or participated]~~

141 (ii) files charges, testifies, assists, or participates in any way in [~~any~~] a proceeding,

142 investigation, or hearing under this chapter.

143 (21) "Sexual orientation" means:

144 (a) a person's:

145 (i) bisexuality;

146 (ii) heterosexuality; or

147 (iii) homosexuality; or

148 (b) that the person is perceived by another person to be:

149 (i) bisexual;

150 (ii) heterosexual; or

151 (iii) homosexual.

152 [(18)] (22) "Vocational school" means [~~any~~] a school or institution conducting a course  
153 of instruction, training, or retraining to prepare [~~individuals~~] an individual to:

154 (a) follow an occupation or trade~~[-];~~ or [~~to~~]

155 (b) pursue a manual, technical, industrial, business, commercial, office, personal  
156 services, or other nonprofessional [~~occupations~~] occupation.

157 Section 2. Section **34A-5-104** is amended to read:

158 **34A-5-104. Powers.**

159 (1) (a) The commission has jurisdiction over the subject of employment practices and  
160 discrimination made unlawful by this chapter.

161 (b) The commission may adopt, publish, amend, and rescind rules, consistent with, and  
162 for the enforcement of this chapter.

163 (2) The division may:

164 (a) appoint and prescribe the duties of [~~investigators and other employees and agents~~  
165 ~~that it~~] an investigator or other employee or agent that the division considers necessary for the  
166 enforcement of this chapter;

167 (b) receive, reject, investigate, and pass upon [~~complaints~~] a complaint alleging:

168 (i) discrimination in:

169 (A) employment;

170 (B) an apprenticeship [~~programs~~] program;

171 (C) an on-the-job training [~~programs; and~~] program; or

172 (D) a vocational [~~schools~~] school; or

173 (ii) the existence of a discriminatory or prohibited employment practice by:

174 (A) a person;

175 (B) an employer;

176 (C) an employment agency;

177 (D) a labor organization;

178 (E) [~~the employees or members~~] an employee or member of an employment agency or  
179 labor organization;

180 (F) a joint apprenticeship committee; and

181 (G) a vocational school;

182 (c) investigate and study the existence, character, causes, and extent of discrimination

183 in employment, an apprenticeship [~~programs;~~] program, an on-the-job training [~~programs, and~~]  
184 program, or a vocational [~~schools~~] school in this state by one or more of the following:

- 185 (i) employers;  
186 (ii) employment agencies;  
187 (iii) labor organizations;  
188 (iv) joint apprenticeship committees; and  
189 (v) vocational schools;  
190 (d) formulate one or more plans for the elimination of discrimination by educational or

191 other means;

- 192 (e) hold [~~hearings~~] a hearing upon a complaint made against:

- 193 (i) a person;  
194 (ii) an employer;  
195 (iii) an employment agency;  
196 (iv) a labor organization;  
197 (v) [~~the employees or members~~] an employee or member of an employment agency or  
198 labor organization;

- 199 (vi) a joint apprenticeship committee; or

- 200 (vii) a vocational school;

- 201 (f) issue one or more publications [~~and~~] or reports of investigations and research that:

- 202 (i) promote good will among the various racial, religious, and ethnic groups of the  
203 state; and

- 204 (ii) minimize or eliminate discrimination in employment [~~because~~] on the basis of race,  
205 color, sex, religion, national origin, age, [~~or~~] disability, sexual orientation, or gender identity;

- 206 (g) prepare and transmit to the governor, at least once each year, [~~reports~~] a report  
207 describing:

- 208 (i) [~~its~~] the division's proceedings, investigations, and hearings;

- 209 (ii) the outcome of [~~those hearings~~] a hearing described in Subsection (2)(g)(i);

- 210 (iii) decisions the division [~~has rendered~~] renders; and

- 211 (iv) the other work performed by the division;

- 212 (h) recommend one or more policies to the governor, and submit [~~recommendation~~]

213 one or more recommendations to employers, employment agencies, and labor organizations to

214 implement those policies;

215 (i) recommend [~~any~~] legislation concerning discrimination [~~because~~] on the basis of  
216 race, sex, color, national origin, religion, age, [~~or~~] disability, sexual orientation, or gender  
217 identity to the governor that [~~it~~] the division considers necessary; and

218 (j) within the limits of [~~any~~] appropriations made for [~~its~~] the division's operation,  
219 cooperate with other agencies or organizations, both public and private, in the planning and  
220 conducting of educational programs designed to eliminate discriminatory practices prohibited  
221 under this chapter.

222 (3) The division shall investigate an alleged discriminatory [~~practices~~] practice  
223 involving [~~officers or employees~~] an officer or employee of state government if requested to do  
224 so by the Career Service Review Board.

225 (4) (a) In [~~any~~] a hearing held under this chapter, the division may:

226 (i) subpoena [~~witnesses~~] a witness and compel [~~their~~] the witness' attendance at the  
227 hearing;

228 (ii) administer [~~oaths~~] an oath and take the testimony of [~~any~~] a person under oath; and

229 (iii) compel [~~any~~] a person to produce for examination [~~any books, papers,~~] a book,  
230 paper, or other information relating to the matters raised by the complaint.

231 (b) The division director or a hearing examiner appointed by the division director may  
232 conduct [~~hearings~~] a hearing.

233 (c) If a witness fails or refuses to obey a subpoena issued by the division, the division  
234 may petition the district court to enforce the subpoena.

235 (d) [~~In the event~~] If a witness asserts a privilege against self-incrimination, testimony  
236 and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of  
237 Immunity.

238 Section 3. Section **34A-5-105** is amended to read:

239 **34A-5-105. Antidiscrimination and Labor Advisory Council -- Membership --**  
240 **Appointment -- Term -- Powers and duties -- Chair.**

241 (1) There is created in the commission an Antidiscrimination and Labor Advisory  
242 Council consisting of:

243 (a) 13 voting members appointed by the commissioner as follows:

244 (i) three employer representatives;

245 (ii) three employee representatives;  
246 (iii) two representatives of persons who seek to rent or purchase dwellings as defined  
247 in Section 57-21-2;

248 (iv) two representatives of persons who:  
249 (A) sell or rent dwellings; and  
250 (B) are subject to Title 57, Chapter 21, Utah Fair Housing Act; and  
251 (v) three representatives of the general public; and  
252 (b) the commissioner or the commissioner's designee as a nonvoting member of the  
253 council.

254 (2) In making ~~[the appointments]~~ an appointment under Subsection (1), the  
255 commissioner shall consider representation of the following ~~[protected]~~ covered classes:

256 (a) race;  
257 (b) color;  
258 (c) national origin;  
259 (d) ~~[gender]~~ sex;  
260 (e) religion;  
261 (f) age;  
262 (g) persons with disabilities;  
263 (h) sexual orientation;  
264 (i) gender identity;  
265 ~~[(h)]~~ (j) familial status as defined in Section 57-21-2; and  
266 ~~[(i)]~~ (k) source of income as defined in Section 57-21-2.

267 (3) The division shall provide ~~[any]~~ necessary staff support for the council.

268 (4) (a) Except as required by Subsection (4)(b), as ~~[terms of current council members~~  
269 ~~expire]~~ a term of a council member expires, the commissioner shall appoint ~~[each]~~ a new  
270 member or reappointed member to a four-year term.

271 (b) Notwithstanding the requirements of Subsection (4)(a), the commissioner shall, at  
272 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
273 council members are staggered so that approximately half of the council is appointed every two  
274 years.

275 (5) (a) When a vacancy occurs in the membership for any reason, the commissioner

276 shall appoint a replacement [~~shall be appointed~~] for the unexpired term.

277 (b) The commissioner shall terminate the term of a council member who ceases to be  
278 representative as designated by the original appointment.

279 (6) (a) (i) [~~Members~~] A member who [~~are~~] is not a government [~~employees shall~~  
280 employee may not receive [~~no~~] compensation or benefits for [~~their~~] the member's services, but  
281 may receive per diem and expenses incurred in the performance of the member's official duties  
282 at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

283 (ii) [~~Members~~] A member who is not a government employee may decline to receive  
284 per diem and expenses for [~~their~~] the member's service.

285 (b) (i) [~~State~~] A state government officer [~~and employee members who do~~] or  
286 employee member who does not receive salary, per diem, or expenses from [~~their~~] the  
287 member's agency for [~~their~~] the member's service may receive per diem and expenses incurred  
288 in the performance of [~~their~~] the member's official duties from the council at the rates  
289 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

290 (ii) [~~State~~] A state government officer [~~and~~] or employee [~~members~~] member may  
291 decline to receive per diem and expenses for [~~their~~] the member's service.

292 (7) (a) The advisory council shall:

293 (i) offer advice on issues requested by:

294 (A) the commission;

295 (B) the division; or

296 (C) the Legislature; and

297 (ii) make recommendations to the commission and division regarding issues related to:

298 (A) employment discrimination;

299 (B) housing discrimination; and

300 (C) the administration by the commission of:

301 (I) the provisions of Title 34, Labor in General, that are administered by the  
302 commission;

303 (II) Title 34A, Chapter 5, Utah Antidiscrimination Act; and

304 (III) Title 57, Chapter 21, Utah Fair Housing Act.

305 (b) The council shall [~~confer~~] meet at least quarterly for the purpose of advising the  
306 commission, division, and the Legislature regarding issues described in Subsection (7)(a).

307 (8) (a) The commissioner or the commissioner's designee shall serve as chair of the  
308 council.

309 (b) The chair [~~is charged with the responsibility of calling the necessary meetings~~] shall  
310 call a necessary meeting.

311 Section 4. Section **34A-5-106** is amended to read:

312 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**  
313 **practices.**

314 (1) It is a discriminatory or prohibited employment practice to take [~~any~~] an action  
315 described in Subsections (1)(a) through (f).

316 (a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate  
317 [~~any~~] a person, or to retaliate against, harass, or discriminate in matters of compensation or in  
318 [~~terms, privileges, and conditions~~] a term, privilege, or condition of employment against [~~any~~]  
319 a person otherwise qualified, [~~because~~] on the basis of:

- 320 (A) race;
- 321 (B) color;
- 322 (C) sex;
- 323 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 324 (E) age, if the individual is 40 years of age or older;
- 325 (F) religion;
- 326 (G) national origin; [~~or~~]
- 327 (H) disability[~~;~~];
- 328 (I) sexual orientation; or
- 329 (J) gender identity.

330 (ii) A person may not be considered "otherwise qualified," unless that person possesses  
331 the following required by an employer for [~~any~~] a particular job, job classification, or position:

- 332 (A) education;
- 333 (B) training;
- 334 (C) ability, with or without reasonable accommodation;
- 335 (D) moral character;
- 336 (E) integrity;
- 337 (F) disposition to work;

338 (G) adherence to reasonable rules and regulations; and

339 (H) other job related qualifications required by an employer.

340 [~~(iii) (A) As used in this chapter, "to discriminate in matters of compensation" means~~  
341 ~~the payment of differing wages or salaries to employees having substantially equal experience,~~  
342 ~~responsibilities, and skill for the particular job.]~~

343 [~~(B) (iii) Notwithstanding Subsection [(1)(a)(iii)(A)] 34A-5-102(6):~~

344 (I) nothing in this chapter prevents [~~increases~~] an increase in pay as a result of  
345 longevity with the employer, if the salary [~~increases are~~] increase is uniformly applied and  
346 available to all employees on a substantially proportional basis; and

347 (II) nothing in this section prohibits an employer and employee from agreeing to a rate  
348 of pay or work schedule designed to protect the employee from loss of a Social Security  
349 payment or [benefits] benefit if the employee is eligible for [~~those payments~~] the payment or  
350 benefit.

351 (b) An employment agency may not:

352 (i) refuse to list and properly classify for employment, or refuse to refer an individual  
353 for employment, in a known available job for which the individual is otherwise qualified,  
354 [~~because~~] on the basis of:

355 (A) race;

356 (B) color;

357 (C) sex;

358 (D) pregnancy, childbirth, or pregnancy-related conditions;

359 (E) religion;

360 (F) national origin;

361 (G) age, if the individual is 40 years of age or older; [~~or~~]

362 (H) disability; [~~or~~]

363 (I) sexual orientation; or

364 (J) gender identity; or

365 (ii) comply with a request from an employer for referral of [~~applicants~~] an applicant for  
366 employment if the request indicates either directly or indirectly that the employer discriminates  
367 in employment on account of:

368 (A) race;

369 (B) color;

370 (C) sex;

371 (D) pregnancy, childbirth, or pregnancy-related conditions;

372 (E) religion;

373 (F) national origin;

374 (G) age, if the individual is 40 years of age or older; ~~[or]~~

375 (H) disability[-];

376 (I) sexual orientation; or

377 (J) gender identity.

378 (c) (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):

379 (A) exclude [any] an individual otherwise qualified from full membership rights in the

380 labor organization[-];

381 (B) expel [the] an individual from membership in the labor organization[-]; or

382 (C) otherwise discriminate against or harass [any] a member of the labor

383 [organization's members] organization in full employment of work opportunity, or

384 representation[-, because of:].

385 (ii) An action described in Subsection (1)(c)(i) is prohibited if it is taken on the basis

386 of:

387 [(i)] (A) race;

388 (B) color;

389 [(ii)] (C) sex;

390 [(iii)] (D) pregnancy, childbirth, or pregnancy-related conditions;

391 [(iv)] (E) religion;

392 [(v)] (F) national origin;

393 [(vi)] (G) age, if the individual is 40 years of age or older; [or]

394 [(vii)] (H) disability[-];

395 (I) sexual orientation; or

396 (J) gender identity.

397 (d) Unless based upon a bona fide occupational qualification, or required by and given

398 to an agency of government for a security ~~[reasons]~~ reason, an employer, employment agency,

399 or labor organization may not print, ~~[or]~~ circulate, or cause to be printed or circulated, ~~[any]~~ a

400 statement, advertisement, or publication, use ~~[any]~~ a form of application for employment or  
401 membership, or make ~~[any]~~ an inquiry in connection with prospective employment or  
402 membership that expresses, either directly or indirectly:

403 (i) ~~[any]~~ a limitation, specification, or discrimination as to:

404 (A) race;

405 (B) color;

406 (C) religion;

407 (D) sex;

408 (E) pregnancy, childbirth, or pregnancy-related conditions;

409 (F) national origin;

410 (G) age, if the individual is 40 years of age or older; ~~[or]~~

411 (H) disability;

412 (I) sexual orientation; or

413 (J) gender identity; or

414 (ii) the intent to make ~~[any]~~ a limitation, specification, or discrimination described in  
415 Subsection (1)(d)(i).

416 (e) A person, whether or not an employer, an employment agency, a labor organization,  
417 or ~~[the employees or members]~~ an employee or member of an employer, employment agency,  
418 or labor organization, may not:

419 (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a  
420 discriminatory or prohibited employment practice;

421 (ii) obstruct or prevent ~~[any]~~ a person from complying with this chapter, or ~~[any]~~ an  
422 order issued under this chapter; or

423 (iii) attempt, either directly or indirectly, to commit ~~[any]~~ an act prohibited in this  
424 section.

425 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational  
426 school, providing, coordinating, or controlling an apprenticeship ~~[programs]~~ program, or  
427 providing, coordinating, or controlling an on-the-job-training ~~[programs]~~ program, instruction,  
428 training, or retraining ~~[programs]~~ program may not:

429 (A) deny to, or withhold from, ~~[any]~~ a qualified person, the right to be admitted to, or  
430 participate in ~~[any]~~ the apprenticeship training program, on-the-job-training program, or other

431 occupational instruction, training or retraining program [~~because~~] on the basis of:

432 (I) race;

433 (II) color;

434 (III) sex;

435 (IV) pregnancy, childbirth, or pregnancy-related conditions;

436 (V) religion;

437 (VI) national origin;

438 (VII) age, if the individual is 40 years of age or older; [~~or~~]

439 (VIII) disability;

440 (IX) sexual orientation; or

441 (X) gender identity;

442 (B) discriminate against or harass [~~any~~] a qualified person in that person's pursuit of

443 [~~programs~~] a program described in Subsection (1)(f)(i)(A) [~~, or to~~] on the basis of:

444 (I) race;

445 (II) color;

446 (III) sex;

447 (IV) pregnancy, childbirth, or pregnancy-related conditions;

448 (V) religion;

449 (VI) national origin;

450 (VII) age, if the individual is 40 years of age or older;

451 (VIII) disability;

452 (IX) sexual orientation; or

453 (X) gender identity;

454 (C) discriminate against [~~such a person in the terms, conditions, or privileges of~~

455 programs] a qualified person in a term, condition, or privilege described in Subsection

456 (1)(f)(i)(A), [~~because~~] on the basis of:

457 (I) race;

458 (II) color;

459 (III) sex;

460 (IV) pregnancy, childbirth, or pregnancy-related conditions;

461 (V) religion;

462 (VI) national origin;  
 463 (VII) age, if the individual is 40 years of age or older; [or]  
 464 (VIII) disability; [or]  
 465 (IX) sexual orientation; or  
 466 (X) gender identity; or  
 467 [~~C~~] (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be  
 468 printed or published, [~~any~~] a notice or advertisement relating to employment by the employer,  
 469 or membership in or [~~any~~] a classification or referral for employment by a labor organization,  
 470 or relating to [~~any~~] a classification or referral for employment by an employment agency,  
 471 indicating [~~any~~] a preference, limitation, specification, or discrimination [~~based~~] on the basis  
 472 of:

- 473 (I) race;
- 474 (II) color;
- 475 (III) sex;
- 476 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 477 (V) religion;
- 478 (VI) national origin;
- 479 (VII) age, if the individual is 40 years of age or older; [or]
- 480 (VIII) disability[-];
- 481 (IX) sexual orientation; or
- 482 (X) gender identity.

483 (ii) Notwithstanding Subsection (1)(f)(i)[~~C~~](D), if the following is a bona fide  
 484 occupational qualification for employment, a notice or advertisement described in Subsection  
 485 (1)(f)(i)[~~C~~](D) may indicate a preference, limitation, specification, or discrimination [~~based~~]  
 486 on the basis of:

- 487 [~~A~~] (A) religion;
- 488 [~~B~~] (B) sex;
- 489 [~~C~~] (C) pregnancy, childbirth, or pregnancy-related conditions;
- 490 [~~D~~] (D) age;

493 ~~[(G)]~~ (E) national origin; ~~[or]~~

494 ~~[(H)]~~ (F) disability~~[-]~~;

495 (G) sexual orientation; or

496 (H) gender identity.

497 (2) ~~[Nothing contained in]~~ Subsections (1)(a) through (1)(f) ~~[shall]~~ may not be  
498 construed to prevent:

499 (a) the termination of employment of an individual who, with or without reasonable  
500 accommodation, is physically, mentally, or emotionally unable to perform the duties required  
501 by that individual's employment;

502 (b) the variance of an insurance ~~[premiums]~~ premium or coverage on account of age; or

503 (c) a restriction on the activities of ~~[individuals]~~ a person licensed ~~[by the liquor~~  
504 authority] in accordance with Title 32A, Alcoholic Beverage Control Act, with respect to  
505 ~~[persons]~~ a person under 21 years of age.

506 (3) (a) It is not a discriminatory or prohibited employment practice:

507 (i) to do the following on the basis of religion, sex, pregnancy, childbirth,  
508 pregnancy-related conditions, age, national origin, disability, sexual orientation, or gender  
509 identity if the conditions of Subsection (3)(b) are met:

510 ~~[(i)]~~ (A) for an employer to hire and employ ~~[employees,]~~ an employee;

511 (B) for an employment agency to classify or refer for employment ~~[any]~~ an  
512 individual~~[-]~~;

513 (C) for a labor organization to classify its membership or to classify or refer for  
514 employment ~~[any]~~ an individual; or

515 (D) for an employer, labor organization, or joint labor-management committee  
516 controlling apprenticeship or other training or retraining ~~[programs]~~ program to admit or  
517 employ ~~[any]~~ an individual in ~~[any such]~~ the program~~[-, on the basis of religion, sex, pregnancy,~~  
518 ~~childbirth, or pregnancy-related conditions, age, national origin, or disability in those certain~~  
519 ~~instances where religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the~~  
520 ~~individual is 40 years of age or older, national origin, or disability is a bona fide occupational~~  
521 ~~qualification reasonably necessary to the normal operation of that particular business or~~  
522 ~~enterprise]~~;

523 (ii) for a ~~[school, college, university, or other]~~ religious educational institution to hire

524 and employ [~~employees~~] an employee of a particular religion [~~if~~];  
525 [~~(A) the school, college, university, or other educational institution is, in whole or in~~  
526 ~~substantial part, owned, supported, controlled, or managed by a particular religious corporation,~~  
527 ~~association, or society; or]~~  
528 [~~(B) the curriculum of the school, college, university, or other educational institution is~~  
529 ~~directed toward the propagation of a particular religion;]~~  
530 (iii) for an employer to give preference in employment to:  
531 (A) the employer's:  
532 (I) spouse;  
533 (II) child; or  
534 (III) son-in-law or daughter-in-law;  
535 (B) [~~any~~] a person for whom the employer is or would be liable to furnish financial  
536 support if [~~those persons~~] the person were unemployed;  
537 (C) [~~any~~] a person to whom the employer during the preceding six months [~~has~~  
538 ~~furnished~~] furnishes more than one-half of total financial support regardless of whether or not  
539 the employer was or is legally obligated to furnish support; or  
540 (D) [~~any~~] a person whose education or training [~~was~~] is substantially financed by the  
541 employer for a period of two years or more.  
542 [~~(b) Nothing in this chapter applies to any]~~  
543 (b) An action described in Subsection (3)(a)(i) is not a discriminatory or prohibited  
544 employment practice if:  
545 (i) religion, sex, pregnancy, childbirth, a pregnancy-related condition, national origin, a  
546 disability, sexual orientation, or gender identity is a bona fide occupational qualification  
547 reasonably necessary to the normal operation of that particular business or enterprise; or  
548 (ii) (A) the individual is 40 years of age or older; and  
549 (B) age is a bona fide occupational qualification reasonably necessary to the normal  
550 operation of that particular business or enterprise.  
551 (c) This chapter does not apply to a business or enterprise on or near an Indian  
552 reservation with respect to [any] a publicly announced employment practice of the business or  
553 enterprise under which preferential treatment is given to [any] an individual because that  
554 individual is a native American Indian living on or near an Indian reservation.

555 ~~[(c) Nothing in this chapter shall]~~

556 (d) (i) This chapter may not be interpreted to require [any] an employer, employment  
557 agency, labor organization, vocational school, joint labor-management committee, or  
558 apprenticeship program subject to this chapter to grant preferential treatment [to any individual  
559 or to any group because] on the basis of the race, color, religion, sex, age, national origin, or  
560 disability of [the] an individual or group on account of an imbalance [which] that may exist;

561 (A) with respect to the total number or percentage of persons of [any] the race, color,  
562 religion, sex, age, national origin, or disability; and

563 (B) in comparison with the total number or percentage of persons of that race, color,  
564 religion, sex, age, national origin, or disability in any community or county or in the available  
565 work force in any community or county.

566 (ii) This Subsection (3)(d) applies to an individual or group:

567 (A) employed by [any] an employer[;];

568 (B) referred or classified for employment by an employment agency or labor  
569 organization[;];

570 (C) admitted to membership or classified by [any] a labor organization[;]; or

571 (D) admitted to or employed in, [any] an apprenticeship or other training program[; in  
572 comparison with the total number or percentage of persons of that race, color, religion, sex,  
573 age, national origin, or disability in any community or county or in the available work force in  
574 any community or county].

575 (e) An employer, employment agency, labor organization, vocational school, joint  
576 labor-management committee, or apprenticeship program subject to this chapter may not:

577 (i) adopt or implement a system under which a specific number or percentage of  
578 persons are employed or selected to participate in a program on the basis of sexual orientation  
579 or gender identity; or

580 (ii) give a preference to an individual on the basis of sexual orientation or gender  
581 identity.

582 (4) It is not a discriminatory or prohibited practice with respect to age to observe the  
583 terms of a bona fide seniority system or [any] a bona fide employment benefit plan such as a  
584 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this  
585 chapter, except that [no such] an employee benefit plan [shall] may not excuse the failure to

586 hire an individual.

587 (5) Notwithstanding Subsection (4), or ~~[any other statutory provision]~~ another statute to  
588 the contrary, a person may not be subject to involuntary termination or retirement from  
589 employment on the basis of age alone, if the individual is 40 years of age or older, except:

590 (a) under Subsection (6);

591 (b) under Section 67-5-8; and

592 (c) when age is a bona fide occupational qualification.

593 (6) ~~[Nothing]~~ (a) If the conditions of Subsection (6)(b) are met, nothing in this section  
594 prohibits compulsory retirement of an employee who ~~[has attained]~~:

595 (i) attains at least 65 years of age~~[-];~~ and ~~[who,~~

596 (ii) for the two-year period immediately before retirement, is employed in a bona fide  
597 executive or a high policymaking position~~[-if:]~~.

598 (b) Subsection (6)(a) applies if:

599 ~~[(a) that]~~ (i) the employee is entitled to an immediate nonforfeitable annual retirement  
600 benefit from the employee's employer's:

601 (A) pension[-] plan;

602 (B) profit-sharing[-] plan;

603 (C) savings[-or] plan;

604 (D) deferred compensation plan[-]; or ~~[any]~~

605 (E) plans described in this Subsection (6)(b)(i) in combination ~~[of those plans]~~; and

606 ~~[(b)]~~ (ii) the benefit described in Subsection (6)~~[(a)](b)(i)~~ equals, in the aggregate, at  
607 least \$44,000.

608 Section 5. Section **34A-5-107** is amended to read:

609 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**

610 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

611 (1) (a) ~~[Any]~~ A person claiming to be aggrieved by a discriminatory or prohibited  
612 employment practice may, or that person's attorney or agent may, make, sign, and file with the  
613 division a request for agency action.

614 (b) ~~[Every]~~ A request for agency action shall be verified under oath or affirmation.

615 (c) A request for agency action made under this section shall be filed within 180 days  
616 after the alleged discriminatory or prohibited employment practice occurred.

617 (d) The division may transfer a request for agency action filed with the division  
618 pursuant to this section to the federal Equal Employment Opportunity Commission in  
619 accordance with the provisions of [~~any~~] a work-share agreement that is:

620 (i) between the division and the Equal Employment Opportunity Commission; and

621 (ii) in effect on the day on which the request for agency action is transferred.

622 (2) [~~Any~~] An employer, labor organization, joint apprenticeship committee, or  
623 vocational school who has an employee or member who refuses or threatens to refuse to  
624 comply with this chapter may file with the division a request for agency action asking the  
625 division for assistance to obtain the employee's or member's compliance by conciliation or  
626 other remedial action.

627 (3) (a) Before a hearing is set or held as part of [~~any~~] an adjudicative proceeding, the  
628 division shall promptly assign an investigator to attempt a settlement between the parties by  
629 conference, conciliation, or persuasion.

630 (b) If no settlement is reached under Subsection (3)(a), the investigator shall make a  
631 prompt impartial investigation of [~~all allegations~~] an allegation made in the request for agency  
632 action.

633 (c) The division and its staff, agents, and employees:

634 (i) shall conduct [~~every~~] an investigation in fairness to all parties and agencies  
635 involved; and

636 (ii) may not attempt a settlement between the parties if it is clear that no discriminatory  
637 or prohibited employment practice has occurred.

638 (d) An aggrieved party may withdraw the request for agency action [~~prior to~~] before the  
639 issuance of a final order.

640 (4) (a) If the initial attempts at settlement are unsuccessful, and the investigator  
641 uncovers insufficient evidence during the investigation to support [~~the allegations~~] an  
642 allegation of a discriminatory or prohibited employment practice set out in the request for  
643 agency action, the investigator shall formally report [~~these findings~~] the finding to the director  
644 or the director's designee.

645 (b) Upon receipt of the investigator's report described in Subsection (4)(a), the director  
646 or the director's designee may issue a determination and order for dismissal of the adjudicative  
647 proceeding.

648 (c) A party may make a written request to the Division of Adjudication for an  
649 evidentiary hearing to review de novo the director's or the director's designee's determination  
650 and order within 30 days of the date the determination and order for dismissal is issued.

651 (d) If the director or the director's designee [~~receives no timely~~] does not receive a  
652 request for a hearing within the time period described in Subsection (4)(c), the determination  
653 and order issued by the director or the director's designee becomes the final order of the  
654 commission.

655 (5) (a) If the initial attempts at settlement are unsuccessful and the investigator  
656 uncovers sufficient evidence during the investigation to support [~~the allegations~~] an allegation  
657 of a discriminatory or prohibited employment practice set out in the request for agency action,  
658 the investigator shall formally report [~~these findings~~] this finding to the director or the  
659 director's designee.

660 (b) (i) Upon receipt of the investigator's report described in Subsection (5)(a), the  
661 director or the director's designee may issue a determination and order [~~based~~] on the basis of  
662 the investigator's report.

663 (ii) A determination and order issued under this Subsection (5)(b) shall:

664 (A) direct the respondent to cease [~~any~~] a discriminatory or prohibited employment  
665 practice; and

666 (B) provide relief to the aggrieved party as the director or the director's designee  
667 determines is appropriate.

668 (c) A party may file a written request to the Division of Adjudication for an evidentiary  
669 hearing to review de novo the director's or the director's designee's determination and order  
670 within 30 days of the date the determination and order is issued.

671 (d) If the director or the director's designee [~~receives no timely~~] does not receive a  
672 request for a hearing within the time period described in Subsection (5)(c), the determination  
673 and order issued by the director or the director's designee in accordance with Subsection (5)(b)  
674 becomes the final order of the commission.

675 (6) In [~~any~~] an adjudicative proceeding to review the director's or the director's  
676 designee's determination that a prohibited employment practice has occurred, the division shall  
677 present the factual and legal basis of the determination or order issued under Subsection (5).

678 (7) (a) [~~Prior to~~] Before the commencement of an evidentiary hearing[:-(i)] the party

679 filing the request for agency action may reasonably and fairly amend [~~any~~] an allegation[ ~~and~~].

680 [~~(ii) the~~] (b) The respondent may amend its answer[-];

681 [~~(b) An amendment permitted under this Subsection (7) may be made:~~]

682 (i) during or after [~~a~~] an evidentiary hearing; and

683 (ii) only with permission of the presiding officer.

684 (8) (a) If, upon all the evidence at a hearing, the presiding officer finds that a  
685 respondent has not engaged in a discriminatory or prohibited employment practice, the  
686 presiding officer shall issue an order dismissing the request for agency action containing the  
687 allegation of a discriminatory or prohibited employment practice.

688 (b) The presiding officer may order that the respondent be reimbursed by the  
689 complaining party for the respondent's [~~attorneys'~~] attorney fees and costs.

690 (9) If upon all the evidence at the hearing, the presiding officer finds that a respondent  
691 has engaged in a discriminatory or prohibited employment practice, the presiding officer shall  
692 issue an order requiring the respondent to:

693 (a) cease [~~any~~] a discriminatory or prohibited employment practice; and

694 (b) provide relief to the complaining party, including:

695 (i) reinstatement;

696 (ii) back pay and benefits;

697 (iii) [~~attorneys'~~] attorney fees; and

698 (iv) costs.

699 (10) Conciliation between the parties is to be urged and facilitated at all stages of the  
700 adjudicative process.

701 (11) (a) Either party may file with the Division of Adjudication a written request for  
702 review before the commissioner or Appeals Board of the order issued by the presiding officer  
703 in accordance with:

704 (i) Section 63-46b-12; and

705 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

706 (b) If there is no timely request for review, the order issued by the presiding officer  
707 becomes the final order of the commission.

708 (12) An order of the commission under Subsection (11)(a) is subject to judicial review  
709 as provided in:

710 (a) Section 63-46b-16; and  
711 (b) Chapter 1, Part 3, Adjudicative Proceedings.

712 (13) The commission [~~shall have authority to~~] may make rules concerning procedures  
713 under this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking  
714 Act.

715 (14) The commission and its staff may not divulge or make public [~~any~~] information  
716 gained from [~~any~~] an investigation, settlement negotiation, or proceeding before the  
717 commission except as provided in Subsections (14)(a) through (d).

718 (a) Information used by the director or the director's designee in making [~~any~~] a  
719 determination may be provided to all interested parties for the purpose of preparation for and  
720 participation in proceedings before the commission.

721 (b) General statistical information may be disclosed [~~provided the identities of the~~  
722 ~~individuals or parties are~~] if the identity of an individual or party is not disclosed.

723 (c) Information may be disclosed for inspection by the attorney general or [~~other~~]  
724 another legal [~~representatives~~] representative of the state or the commission.

725 (d) Information may be disclosed for information and reporting requirements of the  
726 federal government.

727 (15) The procedures contained in this section are the exclusive remedy under state law  
728 for employment discrimination [~~based upon~~] on the basis of:

- 729 (a) race;
- 730 (b) color;
- 731 (c) sex;
- 732 (d) retaliation;
- 733 (e) pregnancy, childbirth, or pregnancy-related conditions;
- 734 (f) age;
- 735 (g) religion;
- 736 (h) national origin; [~~or~~]
- 737 (i) disability[~~:-~~];
- 738 (j) sexual orientation; or
- 739 (k) gender identity.

740 (16) (a) The commencement of an action under federal law for relief [~~based upon any~~]

741 on the basis of an act prohibited by this chapter bars the commencement or continuation of  
742 [~~any~~] an adjudicative proceeding before the commission in connection with the same [~~claims~~]  
743 claim under this chapter.

744 (b) The transfer of a request for agency action to the Equal Employment Opportunity  
745 Commission in accordance with Subsection (1)(d) is considered the commencement of an  
746 action under federal law for purposes of Subsection (16)(a).

747 (c) Nothing in this Subsection (16) is intended to alter, amend, modify, or impair the  
748 exclusive remedy provision set forth in Subsection (15).

749 Section 6. Section **67-19-6.3** is amended to read:

750 **67-19-6.3. Equal employment opportunity plan.**

751 (1) In conjunction with the director's duties under Section 67-19-6, and  
752 notwithstanding the general prohibition in Subsection 34A-5-106(3)[~~(c)~~](d), the executive  
753 director shall prepare an equal employment opportunity plan for state employment consistent  
754 with the guidelines provided in federal equal employment opportunity laws and in related  
755 federal regulations.

756 (2) The equal employment opportunity plan required by this section applies only to  
757 state career service employees described in Section 67-19-15.

758 (3) The Legislature shall review the equal employment opportunity plan required by  
759 this section before it may be implemented.

760 (4) Nothing in this section requires the establishment of hiring quotas or preferential  
761 treatment of any identifiable group.

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**Legislative Review Note**

as of 11-29-07 2:27 PM

**Office of Legislative Research and General Counsel**

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**H.B. 89 - Antidiscrimination Act Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses and local governments. Individuals may benefit from the enactment of bill due to the ability to litigate in anti-discriminatory claims.

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