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NONDISCRIMINATION AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. McCoy

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Antidiscrimination Act and the Utah Fair Housing Act.

Highlighted Provisions:

This bill:

- ▶ defines "military service";
- ▶ modifies the definition of "employer";
- ▶ includes military service as a prohibited basis for discrimination in employment or housing in a manner consistent with the Utah Antidiscrimination Act and the Utah Fair Housing Act;
- ▶ includes civil penalties under the Utah Antidiscrimination Act;
- ▶ addresses preferences permitted by law on the basis of military service; 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

34A-5-104, as last amended by Laws of Utah 1999, Chapter 161



- 28 **34A-5-105**, as last amended by Laws of Utah 2003, Chapter 65
- 29 **34A-5-106**, as last amended by Laws of Utah 2003, Chapter 65
- 30 **34A-5-107**, as last amended by Laws of Utah 2003, Chapter 65
- 31 **57-21-2**, as last amended by Laws of Utah 1997, Chapter 375
- 32 **57-21-3**, as last amended by Laws of Utah 1993, Chapter 114
- 33 **57-21-5**, as last amended by Laws of Utah 1993, Chapter 114
- 34 **57-21-6**, as last amended by Laws of Utah 1993, Chapter 114
- 35 **57-21-7**, as last amended by Laws of Utah 1993, Chapter 114
- 36 **57-21-9**, as last amended by Laws of Utah 1999, Chapters 82 and 160
- 37 **67-19-6.3**, as last amended by Laws of Utah 2006, Chapter 139

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

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

41 **34A-5-102. Definitions.**

42 As used in this chapter:

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

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

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

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

50 (3) "Court" means:

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

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

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

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

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

62 ~~(6)~~ (7) "Division" means the Division of Antidiscrimination and Labor.

63 ~~(7)~~ (8) "Employee" means ~~[any]~~ a person applying with or employed by an employer.

64 ~~(8)~~ (9) (a) "Employer" means:

65 (i) the state;

66 (ii) ~~[any]~~ a political subdivision;

67 (iii) a board, commission, department, institution, school district, trust, or agent of:

68 (A) the state; or ~~[its]~~

69 (B) a political ~~[subdivisions]~~ subdivision; or

70 (iv) a person employing ~~[15]~~ one or more employees within the state for each working
71 day in each of 20 calendar weeks or more in the current or preceding calendar year.

72 (b) "Employer" does not include:

73 (i) a religious organization or association;

74 (ii) a religious corporation sole; or

75 (iii) ~~[any]~~ a corporation or association constituting a wholly owned subsidiary or
76 agency of ~~[any]~~:

77 (A) a religious organization or association; or

78 (B) a religious corporation sole.

79 ~~(9)~~ (10) "Employment agency" means ~~[any]~~ a person:

80 (a) undertaking to procure ~~[employees or opportunities]~~ an employer or an opportunity
81 to work for ~~[any other]~~ another person; or

82 (b) holding itself out to be equipped to take an action described in Subsection ~~(9)~~

83 (10)(a).

84 ~~(10)~~ (11) "Joint apprenticeship committee" means ~~[any]~~ an association of the
85 following that provides, coordinates, or controls an apprentice training program:

86 (a) representatives of a labor organization; and

87 (b) an employer ~~[providing, coordinating, or controlling an apprentice training~~
88 program].

89 ~~(11)~~ (12) "Labor organization" means ~~[any]~~ an organization that exists for the

90 purpose in whole or in part of:

91 (a) collective bargaining;

92 (b) dealing with ~~[employers]~~ an employer concerning:

93 (i) grievances~~[-];~~ or

94 (ii) terms or conditions of employment; or

95 (c) other mutual aid or protection in connection with employment.

96 ~~[(12)]~~ (13) "National origin" means the place of birth, domicile, or residence of an
97 individual or of an individual's ancestors.

98 (14) "Military service" means an individual who:

99 (a) serves or served on active duty in the armed forces of the state or the United States

100 for at least 180 consecutive days;

101 (b) is a member of a reserve component;

102 (c) (i) was a member of a reserve component of the armed forces of the state or the
103 United States; and

104 (ii) separated or retired under honorable conditions;

105 (d) incurs an actual service-related injury or disability in the line of duty in the armed
106 forces of the state or the United States whether or not that person completes 180 days of active
107 duty; or

108 (e) is committed to:

109 (i) serve on active duty in the armed forces for at least 180 consecutive days; or

110 (ii) be a member of a reserve component of the armed forces of the state or the United
111 States.

112 ~~[(13)]~~ (15) "On-the-job-training program" means ~~[any]~~ a program designed to instruct a
113 person who, while learning the particular job for which the person is receiving instruction:

114 (a) is also employed at that job; or

115 (b) may be employed by the employer conducting the program;

116 (i) during the course of the program[-]; or

117 (ii) when the program is completed.

118 ~~[(14)]~~ (16) "Person" means ~~[one or more individuals, partnerships, associations,~~
119 ~~corporations, legal representatives, trusts or trustees, receivers, the state and all political~~
120 ~~subdivisions and agencies of the state.];~~

- 121 (a) an individual;
 122 (b) a partnership;
 123 (c) an association;
 124 (d) a corporation;
 125 (e) a legal representative;
 126 (f) a trust or trustee;
 127 (g) a receiver;
 128 (h) the state;
 129 (i) a political subdivision; and
 130 (j) an agency of the state.
- 131 ~~[(15)]~~ (17) "Presiding officer" ~~[means the same as that term]~~ is as defined in Section
 132 63-46b-2.
- 133 ~~[(16)]~~ (18) "Prohibited employment practice" means a practice specified as
 134 discriminatory, and therefore unlawful, in Section 34A-5-106.
- 135 (19) "Religious educational institution" means a school, college, university, or other
 136 educational institution that:
- 137 (a) is, in whole or in substantial part, owned, supported, controlled, or managed by a
 138 particular religious corporation, association, or society; or
- 139 (b) has a curriculum that is directed toward the propagation of a particular religion.
- 140 ~~[(17)]~~ (20) "Retaliate" means the taking of adverse action;
 141 (a) by;
- 142 (i) an employer[;];
 143 (ii) an employment agency[;];
 144 (iii) a labor organization[;];
 145 (iv) an apprenticeship program[;];
 146 (v) an on-the-job training program[;]; or
 147 (vi) a vocational school [against one of its employees, applicants, or members];
- 148 (b) against an employee, applicant, or member of a person described in Subsection
 149 (20)(a); and
- 150 (c) because the employee, applicant, or member described in Subsection (20)(b):
 151 ~~[(a) has opposed any]~~ (i) opposes an employment practice prohibited under this

152 chapter; or
153 ~~[(b) filed charges, testified, assisted, or participated]~~
154 (ii) files charges, testifies, assists, or participates in any way in ~~[any]~~ a proceeding,
155 investigation, or hearing under this chapter.
156 ~~[(18)]~~ (21) "Vocational school" means ~~[any]~~ a school or institution conducting a course
157 of instruction, training, or retraining to prepare ~~[individuals]~~ an individual to:
158 (a) follow an occupation or trade; or ~~[to]~~
159 (b) pursue a manual, technical, industrial, business, commercial, office, personal
160 services, or other nonprofessional ~~[occupations]~~ occupation.
161 Section 2. Section **34A-5-104** is amended to read:
162 **34A-5-104. Powers.**
163 (1) (a) The commission has jurisdiction over the subject of employment practices and
164 discrimination made unlawful by this chapter.
165 (b) The commission may adopt, publish, amend, and rescind rules, consistent with, and
166 for the enforcement of this chapter.
167 (2) The division may:
168 (a) appoint and prescribe the duties of ~~[investigators and other employees and agents~~
169 ~~that it]~~ an investigator or other employee or agent that the division considers necessary for the
170 enforcement of this chapter;
171 (b) receive, reject, investigate, and pass upon ~~[complaints]~~ a complaint alleging:
172 (i) discrimination in:
173 (A) employment;
174 (B) an apprenticeship ~~[programs]~~ program;
175 (C) an on-the-job training ~~[programs; and]~~ program; or
176 (D) a vocational ~~[schools]~~ school; or
177 (ii) the existence of a discriminatory or prohibited employment practice by:
178 (A) a person;
179 (B) an employer;
180 (C) an employment agency;
181 (D) a labor organization;
182 (E) ~~[the employees or members]~~ an employee or member of an employment agency or

- 183 labor organization;
- 184 (F) a joint apprenticeship committee; and
- 185 (G) a vocational school;
- 186 (c) investigate and study the existence, character, causes, and extent of discrimination
- 187 in employment, an apprenticeship [~~programs;~~] program, an on-the-job training [~~programs, and~~]
- 188 program, or a vocational [~~schools~~] school in this state by one or more of the following:
- 189 (i) employers;
- 190 (ii) employment agencies;
- 191 (iii) labor organizations;
- 192 (iv) joint apprenticeship committees; and
- 193 (v) vocational schools;
- 194 (d) formulate one or more plans for the elimination of discrimination by educational or
- 195 other means;
- 196 (e) hold [~~hearings~~] a hearing upon a complaint made against:
- 197 (i) a person;
- 198 (ii) an employer;
- 199 (iii) an employment agency;
- 200 (iv) a labor organization;
- 201 (v) [~~the employees or members~~] an employee or member of an employment agency or
- 202 labor organization;
- 203 (vi) a joint apprenticeship committee; or
- 204 (vii) a vocational school;
- 205 (f) issue one or more publications [~~and~~] or reports of investigations and research that:
- 206 (i) promote good will among the various racial, religious, and ethnic groups of the
- 207 state; and
- 208 (ii) minimize or eliminate discrimination in employment [~~because~~] on the basis of race,
- 209 color, sex, religion, national origin, age, [~~or~~] disability, or military service;
- 210 (g) prepare and transmit to the governor, at least once each year, [~~reports~~] a report
- 211 describing:
- 212 (i) [~~its~~] the division's proceedings, investigations, and hearings;
- 213 (ii) the outcome of [~~those hearings~~] a hearing described in Subsection (2)(g)(i);

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

215 (iv) the other work performed by the division;

216 (h) recommend one or more policies to the governor, and submit [~~recommendation~~]
217 one or more recommendations to employers, employment agencies, and labor organizations to
218 implement those policies;

219 (i) recommend [~~any~~] legislation concerning discrimination [~~because~~] on the basis of
220 race, sex, color, national origin, religion, age, [~~or~~] disability, or military service to the governor
221 that [~~it~~] the division considers necessary; and

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

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

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

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

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

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

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

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

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

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

243 **34A-5-105. Antidiscrimination and Labor Advisory Council -- Membership --**
244 **Appointment -- Term -- Powers and duties -- Chair.**

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

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

248 (i) three employer representatives;

249 (ii) three employee representatives;

250 (iii) two representatives of persons who seek to rent or purchase dwellings as defined
251 in Section 57-21-2;

252 (iv) two representatives of persons who:

253 (A) sell or rent dwellings; and

254 (B) are subject to Title 57, Chapter 21, Utah Fair Housing Act; and

255 (v) three representatives of the general public; and

256 (b) the commissioner or the commissioner's designee as a nonvoting member of the
257 council.

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

260 (a) race;

261 (b) color;

262 (c) national origin;

263 (d) ~~[gender]~~ sex;

264 (e) religion;

265 (f) age;

266 (g) persons with disabilities;

267 (h) familial status as defined in Section 57-21-2; ~~[and]~~

268 (i) source of income as defined in Section 57-21-2~~[-]~~; and

269 (j) military service.

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

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

274 (b) Notwithstanding the requirements of Subsection (4)(a), the commissioner shall, at
275 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of

276 council members are staggered so that approximately half of the council is appointed every two
277 years.

278 (5) (a) When a vacancy occurs in the membership for any reason, the commissioner
279 shall appoint a replacement [~~shall be appointed~~] for the unexpired term.

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

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

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

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

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

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

296 (i) offer advice on issues requested by:

297 (A) the commission;

298 (B) the division; or

299 (C) the Legislature; and

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

301 (A) employment discrimination;

302 (B) housing discrimination; and

303 (C) the administration by the commission of:

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

306 (II) [~~Title 34A, Chapter 5, Utah Antidiscrimination Act~~] this chapter; and

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

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

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

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

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

315 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**
316 **practices.**

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

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

- 323 (A) race;
- 324 (B) color;
- 325 (C) sex;
- 326 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 327 (E) age, if the individual is 40 years of age or older;
- 328 (F) religion;
- 329 (G) national origin; ~~[or]~~
- 330 (H) disability~~[-];~~ or
- 331 (I) military service.

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

- 334 (A) education;
- 335 (B) training;
- 336 (C) ability, with or without reasonable accommodation;
- 337 (D) moral character;

- 338 (E) integrity;
- 339 (F) disposition to work;
- 340 (G) adherence to reasonable rules and regulations; and
- 341 (H) other job related qualifications required by an employer.

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

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

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

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

353 (b) An employment agency may not:

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

- 357 (A) race;
- 358 (B) color;
- 359 (C) sex;
- 360 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 361 (E) religion;
- 362 (F) national origin;
- 363 (G) age, if the individual is 40 years of age or older; [~~or~~]
- 364 (H) disability; or
- 365 (I) military service; or

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

- 369 (A) race;
- 370 (B) color;
- 371 (C) sex;
- 372 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 373 (E) religion;
- 374 (F) national origin;
- 375 (G) age, if the individual is 40 years of age or older; ~~[or]~~
- 376 (H) disability~~[-];~~ or
- 377 (I) military service.

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[-]; or
- 395 (I) military service.

396 (d) Unless based upon a bona fide occupational qualification, or required by and given
 397 to an agency of government for a security ~~[reasons]~~ reason, an employer, employment agency,
 398 or labor organization may not print, ~~[or]~~ circulate, or cause to be printed or circulated, ~~[any]~~ a
 399 statement, advertisement, or publication, use ~~[any]~~ a form of application for employment or

400 membership, or make ~~[any]~~ an inquiry in connection with prospective employment or
401 membership that expresses, either directly or indirectly:

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

403 (A) race;

404 (B) color;

405 (C) religion;

406 (D) sex;

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

408 (F) national origin;

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

410 (H) disability; or

411 (I) military service; or

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

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

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

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

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

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

427 (A) deny to, or withhold from, ~~[any]~~ a qualified person, the right to be admitted to, or
428 participate in ~~[any]~~ the apprenticeship training program, on-the-job-training program, or other
429 occupational instruction, training or retraining program ~~[because]~~ on the basis of:

430 (I) race;

431 (II) color;

432 (III) sex;

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

434 (V) religion;

435 (VI) national origin;

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

437 (VIII) disability; or

438 (IX) military service;

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

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

441 (I) race;

442 (II) color;

443 (III) sex;

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

445 (V) religion;

446 (VI) national origin;

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

448 (VIII) disability; or

449 (IX) military service;

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

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

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

453 (I) race;

454 (II) color;

455 (III) sex;

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

457 (V) religion;

458 (VI) national origin;

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

460 (VIII) disability; or

461 (IX) military service;

462 ~~[(C)]~~ (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be
463 printed or published, ~~[any]~~ a notice or advertisement relating to employment by the employer,
464 or membership in or ~~[any]~~ a classification or referral for employment by a labor organization,
465 or relating to ~~[any]~~ a classification or referral for employment by an employment agency,
466 indicating ~~[any]~~ a preference, limitation, specification, or discrimination ~~[based]~~ on the basis
467 of:

- 468 (I) race;
- 469 (II) color;
- 470 (III) sex;
- 471 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 472 (V) religion;
- 473 (VI) national origin;
- 474 (VII) age, if the individual is 40 years of age or older; ~~[or]~~
- 475 (VIII) disability~~[-];~~ or
- 476 (IX) military service.

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

- 481 (A) race;
- 482 (B) color;
- 483 (C) religion;
- 484 (D) sex;
- 485 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 486 (F) age;
- 487 (G) national origin; ~~[or]~~
- 488 (H) disability~~[-];~~ or
- 489 (I) military service.

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

- 492 (a) the termination of employment of an individual who, with or without reasonable

493 accommodation, is physically, mentally, or emotionally unable to perform the duties required
 494 by that individual's employment;

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

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

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

500 (i) to do the following on the basis of religion, sex, pregnancy, childbirth,
 501 pregnancy-related conditions, age, national origin, disability, or military service if the
 502 conditions of Subsection (3)(b) are met:

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

504 (B) for an employment agency to classify or refer for employment [~~any~~] an
 505 individual[~~;~~];

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

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

516 (ii) for a [~~school, college, university, or other~~] religious educational institution to hire
 517 and employ [~~employees~~] an employee of a particular religion [~~if~~];

518 [(A) ~~the school, college, university, or other educational institution is, in whole or in~~
 519 ~~substantial part, owned, supported, controlled, or managed by a particular religious corporation,~~
 520 ~~association, or society; or]~~

521 [(B) ~~the curriculum of the school, college, university, or other educational institution is~~
 522 ~~directed toward the propagation of a particular religion;]~~

523 (iii) for an employer to give preference in employment to:

524 (A) the employer's:
525 (I) spouse;
526 (II) child; or
527 (III) son-in-law or daughter-in-law;
528 (B) ~~[any]~~ a person for whom the employer is or would be liable to furnish financial
529 support if ~~[those persons]~~ the person were unemployed;
530 (C) ~~[any]~~ a person to whom the employer during the preceding six months ~~[has~~
531 ~~furnished]~~ furnishes more than one-half of total financial support regardless of whether or not
532 the employer was or is legally obligated to furnish support; or
533 (D) ~~[any]~~ a person whose education or training ~~[was]~~ is substantially financed by the
534 employer for a period of two years or more.
535 ~~[(b) Nothing in this chapter applies to any]~~
536 (b) An action described in Subsection (3)(a)(i) is not a discriminatory or prohibited
537 employment practice if:
538 (i) religion, sex, pregnancy, childbirth, a pregnancy-related condition, national origin,
539 disability, or military service is a bona fide occupational qualification reasonably necessary to
540 the normal operation of that particular business or enterprise; or
541 (ii) (A) the individual is 40 years of age or older; and
542 (B) age is a bona fide occupational qualification reasonably necessary to the normal
543 operation of that particular business or enterprise.
544 (c) This chapter does not apply to a business or enterprise on or near an Indian
545 reservation with respect to [any] a publicly announced employment practice of the business or
546 enterprise under which preferential treatment is given to [any] an individual because that
547 individual is a native American Indian living on or near an Indian reservation.
548 ~~[(c) Nothing in this chapter shall]~~
549 (d) (i) This chapter may not be interpreted to require [any] an employer, employment
550 agency, labor organization, vocational school, joint labor-management committee, or
551 apprenticeship program subject to this chapter to grant preferential treatment [to any individual
552 or to any group because] on the basis of the race, color, religion, sex, age, national origin, [or]
553 disability, or military service of [the] an individual or group on account of an imbalance
554 [which] that may exist;

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

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

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

561 (A) employed by [~~any~~] an employer[;];

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

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

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

569 (4) It is not a discriminatory or prohibited practice with respect to age to observe the
570 terms of a bona fide seniority system or [~~any~~] a bona fide employment benefit plan such as a
571 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this
572 chapter, except that [~~no such~~] an employee benefit plan [~~shall~~] may not excuse the failure to
573 hire an individual.

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

577 (a) under Subsection (6);

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

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

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

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

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

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

586 ~~[(a) that]~~ (i) the employee is entitled to an immediate nonforfeitable annual retirement
587 benefit from the employee's employer's;

588 (A) pension[;] plan;

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

590 (C) savings[;or] plan;

591 (D) deferred compensation plan[;]; or [any]

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

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

595 (7) It is not a discriminatory or prohibited practice to give a preference to an individual
596 on the basis of military service if that preference is given in accordance with a federal, state, or
597 local law other than this chapter.

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

599 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
600 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

645 (5) (a) If the initial attempts at settlement are unsuccessful and the investigator
646 uncovers sufficient evidence during the investigation to support [~~the allegations~~] an allegation
647 of a discriminatory or prohibited employment practice set out in the request for agency action,

648 the investigator shall formally report [~~these findings~~] this finding to the director or the
649 director's designee.

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

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

654 (A) shall:

655 [~~(A)~~] (I) direct the respondent to cease any discriminatory or prohibited employment
656 practice; and

657 [~~(B)~~] (II) provide relief to the aggrieved party as the director or the director's designee
658 determines is appropriate[-]; and

659 (B) may in addition to the relief granted to an aggrieved person under Subsection
660 (5)(b)(ii)(A), assess a civil penalty in an amount not exceed:

661 (I) \$10,000 if the respondent has not previously been determined in a final order of the
662 commission to have committed a discriminatory or prohibited employment practice;

663 (II) \$25,000 if the respondent is determined in one other final order of the commission
664 to have committed a discriminatory or prohibited employment practice within five years before
665 the day on which the complaint is filed; or

666 (III) \$50,000 if the respondent is determined in two or more other final orders of the
667 commission to have committed a discriminatory or prohibited employment practice within
668 seven years before the day on which the complaint is filed.

669 (c) The time periods in Subsections (5)(b)(ii)(A)(II) and (III) may be disregarded if the
670 act constituting the discriminatory or prohibited employment practice is committed by the same
671 individual who is previously determined in a final order of the commission to have committed
672 a discriminatory or prohibited employment practice.

673 [~~(e)~~] (d) A party may file a written request to the Division of Adjudication for an
674 evidentiary hearing to review de novo the director's or the director's designee's determination
675 and order within 30 days of the date the determination and order is issued.

676 [~~(f)~~] (e) If the director or the director's designee [~~receives no timely~~] does not receive a
677 request for a hearing within the time period described in Subsection (5)(d), the determination
678 and order issued by the director or the director's designee in accordance with Subsection (5)(b)

679 becomes the final order of the commission.

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

683 (7) (a) [~~Prior to~~] Before the commencement of an evidentiary hearing[~~-(i)~~], the party
684 filing the request for agency action may reasonably and fairly amend [~~any~~] an allegation[~~;-and~~].

685 [~~(ii) the~~] (b) The respondent may amend its answer[-]:

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

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

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

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

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

695 (9) (a) If upon all the evidence at the hearing, the presiding officer finds that a
696 respondent has engaged in a discriminatory or prohibited employment practice, the presiding
697 officer;

698 (i) shall issue an order requiring the respondent to:

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

700 [~~(b)~~] (B) provide relief to the complaining party, including:

701 [~~(i)~~] (I) reinstatement;

702 [~~(ii)~~] (II) back pay and benefits;

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

704 [~~(iv)~~] (IV) costs[-]; and

705 (ii) may in addition to the relief granted to a complaining party under Subsection

706 (9)(a)(i)(B), assess a civil penalty in an amount not to exceed:

707 (A) \$10,000 if the respondent has not previously been determined in a final order of the
708 commission to have committed a discriminatory or prohibited employment practice;

709 (B) \$25,000 if the respondent is determined in one other final order of the commission

710 to have committed a discriminatory or prohibited employment practice within five years before
711 the day on which the complaint is filed; or

712 (C) \$50,000 if the respondent is determined in two or more final orders of the
713 commission to have committed a discriminatory or prohibited employment practice within
714 seven years before the day on which the complaint is filed.

715 (b) The time periods in Subsections (9)(a)(ii)(B) and (C) may be disregarded if the act
716 constituting the discriminatory or prohibited employment practice is committed by the same
717 individual who is previously determined in a final order of the commission to have committed
718 a discriminatory or prohibited employment practice.

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

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

- 724 (i) Section 63-46b-12; and
- 725 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

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

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

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

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

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

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

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

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

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

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

749 (a) race;

750 (b) color;

751 (c) sex;

752 (d) retaliation;

753 (e) pregnancy, childbirth, or pregnancy-related conditions;

754 (f) age;

755 (g) religion;

756 (h) national origin; [~~or~~]

757 (i) disability[~~;~~]; or

758 (j) military service.

759 (16) (a) The commencement of an action under federal law for relief [~~based upon any~~
760 ~~on the basis of an~~ act prohibited by this chapter bars the commencement or continuation of
761 [~~any~~] an adjudicative proceeding before the commission in connection with the same [~~claims~~
762 ~~claim~~ under this chapter.

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

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

768 Section 6. Section **57-21-2** is amended to read:

769 **57-21-2. Definitions.**

770 As used in this chapter:

771 (1) "Aggrieved person" includes [~~any~~] a person who:

772 (a) claims to have been injured by a discriminatory housing practice; or
773 (b) believes that ~~he~~ the person will be injured by a discriminatory housing practice
774 that is about to occur.

775 (2) "Commission" means the Labor Commission.

776 (3) "Complainant" means an aggrieved person, including the director, who ~~has~~
777 ~~commenced~~ commences a complaint with the division.

778 (4) "Conciliation" means the attempted resolution of ~~issues~~ an issue raised by a
779 complaint of a discriminatory housing ~~practices~~ practice by the investigation of the complaint
780 through an informal ~~negotiations~~ negotiation involving the complainant, the respondent, and
781 the division.

782 (5) "Conciliation agreement" means a written agreement setting forth the resolution of
783 ~~the issues~~ an issue in conciliation.

784 (6) "Conciliation conference" means the attempted resolution of ~~issues~~ an issue raised
785 by a complaint or by the investigation of a complaint through an informal ~~negotiations~~
786 negotiation involving the complainant, the respondent, and the division. ~~[The conciliation~~
787 ~~conference is not subject to Title 63, Chapter 46b, Administrative Procedures Act.]~~

788 (7) "Covered multifamily ~~dwellings~~ dwelling" means:

789 (a) ~~buildings~~ a building consisting of four or more dwelling units if the ~~buildings~~
790 ~~have~~ building has one or more elevators; and

791 (b) ground floor units in ~~other buildings~~ another building consisting of four or more
792 dwelling units.

793 (8) "Director" means the director of the division or a designee.

794 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
795 or more of a person's major life activities, including:

796 (i) a person having a record of such an impairment; or

797 (ii) being regarded as having such an impairment.

798 (b) "Disability" does not include current illegal use of, or addiction to, ~~any~~ a federally
799 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
800 802.

801 (10) "Discriminate" includes segregate or separate.

802 (11) "Discriminatory housing practice" means an act that is unlawful under this

803 chapter.

804 (12) "Division" means the Division of Antidiscrimination and Labor established under
805 the commission.

806 (13) (a) "Dwelling" means ~~[any]~~ a building or structure, or a portion of a building or
807 structure[;] that is:

808 (i) occupied as~~[; or]~~ a residence of one or more families; or

809 (ii) designed or intended for occupancy as[;] a residence of one or more families.

810 (b) "Dwelling" ~~[also]~~ includes vacant land that is offered for sale or lease for the
811 construction or location of a dwelling as described in Subsection (13)(a).

812 (14) (a) "Familial status" means one or more individuals who have not attained the age
813 of 18 years being domiciled with:

814 (i) a parent or another person having legal custody of the ~~[individual or]~~ one or more
815 individuals; or

816 (ii) the designee of the parent or other person having custody, with the written
817 permission of the parent or other person.

818 (b) ~~[The protections afforded against discrimination on the basis of familial status shall~~
819 ~~apply to any]~~ "Familial status" applies to a person who:

820 (i) is pregnant;

821 (ii) is in the process of securing legal custody of ~~[any]~~ an individual who has not
822 attained the age of 18 years; or

823 (iii) is a single individual.

824 (15) "Military service" means an individual who:

825 (a) serves or served on active duty in the armed forces of the state or the United States
826 for at least 180 consecutive days;

827 (b) is a member of a reserve component;

828 (c) (i) was a member of a reserve component of the armed forces of the state or the
829 United States; and

830 (ii) is separated or retired under honorable conditions;

831 (d) incurs an actual service-related injury or disability in the line of duty in the armed
832 forces of the state or the United States whether or not that person completes 180 days of active
833 duty; or

834 (e) is committed to:
835 (i) serve on active duty in the armed forces for at least 180 consecutive days; or
836 (ii) be a member of a reserve component of the armed forces of the state or the United
837 States.

838 ~~[(+5)]~~ (16) "National origin" means the place of birth of an individual or of any lineal
839 ancestors.

840 ~~[(+6)]~~ (17) "Person" includes [one or more individuals, corporations, limited liability
841 companies, partnerships, associations, labor organizations, legal representatives, mutual
842 companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in
843 cases under the United States Bankruptcy Code, receivers, and fiduciaries.];

844 (a) an individual;

845 (b) a corporation;

846 (c) a limited liability company;

847 (d) a partnership;

848 (e) an association;

849 (f) a labor organization;

850 (g) a legal representative;

851 (h) a mutual company;

852 (i) a joint-stock company;

853 (j) a trust;

854 (k) an unincorporated organization;

855 (l) a trustee;

856 (m) a trustee in a case under the United States Bankruptcy Code;

857 (n) a receiver; and

858 (o) a fiduciary.

859 ~~[(+7)]~~ (18) "Presiding officer" has the same meaning as provided in Section 63-46b-2.

860 ~~[(+8)]~~ (19) "Real estate broker" or "salesperson" means the following as defined in
861 Section 61-2-2;

862 (a) a principal real estate broker[;];

863 (b) an associate real estate broker[;]; or

864 (c) a real estate sales agent [as those terms are defined in Section 61-2-2].

865 [(19)] (20) "Respondent" means a person against whom a complaint of housing
866 discrimination ~~has been~~ is initiated.

867 [(20)] (21) "Sex" means gender and includes:

868 (a) pregnancy~~;~~;

869 (b) childbirth~~;~~; and ~~disabilities~~

870 (c) a disability related to pregnancy or childbirth.

871 [(21)] (22) "Source of income" means the verifiable condition of being:

872 (a) a recipient of federal, state, or local assistance, including medical assistance~~;~~; or
873 ~~[of being]~~

874 (b) a tenant receiving a federal, state, or local ~~subsidies~~ subsidy, including rental
875 assistance or a rent ~~supplements~~ supplement.

876 Section 7. Section **57-21-3** is amended to read:

877 **57-21-3. Exemptions -- Sale by private individuals -- Nonprofit organizations --**
878 **Noncommercial transactions.**

879 (1) This chapter does not apply to ~~any~~ a single-family dwelling unit sold or rented by
880 its owner if:

881 (a) the owner is not a partnership, association, corporation, or other business entity;

882 (b) the owner does not own ~~any~~ an interest in four or more single-family dwelling
883 units held for sale or lease at the same time;

884 (c) during a 24-month period, the owner does not sell two or more single-family
885 dwelling units in which the owner was not residing or was not the most recent resident at the
886 time of sale;

887 (d) the owner does not retain or use the facilities or services of ~~any~~ a real estate
888 broker or salesperson; and

889 (e) the owner does not use ~~any~~ a discriminatory housing practice under Subsection
890 57-21-5(2) in the sale or rental of the dwelling.

891 (2) This chapter does not apply to a temporary or permanent residence facility operated
892 by a nonprofit or charitable organization, including ~~any~~ a dormitory operated by a public or
893 private educational institution, if the discrimination is:

894 (a) by sex or familial status for reasons of personal modesty or privacy; or

895 (b) in the furtherance of a religious institution's free exercise of religious rights under

896 the First Amendment of the United States Constitution.

897 (3) This chapter, except for Subsection 57-21-5(2), does not apply to the rental of a
898 room in the dwelling by an owner-occupant of a single-family dwelling to another person if:

899 (a) the dwelling is designed for occupancy by four or fewer families~~;~~; and

900 (b) the owner-occupant resides in one of the units.

901 (4) ~~[This]~~ (a) Except as provided in Subsection (4)(b), this chapter does not prohibit a
902 religious organization, association, or society, or ~~[any]~~ a nonprofit institution or organization
903 operated, supervised, or controlled by or in conjunction with a religious organization,
904 association, or society, from:

905 (i) limiting the sale, rental, or occupancy of ~~[dwellings]~~ a dwelling it owns or operates
906 for primarily noncommercial purposes to ~~[persons]~~ a person of the same religion~~;~~; or ~~[from]~~

907 (ii) giving preference to ~~[such persons, unless]~~ a person of the same religion.

908 (b) This Subsection (4) does not apply if membership in the religion is restricted by
909 race, color, sex, or national origin.

910 (5) ~~[This]~~ (a) Subject to Subsection (5)(b), this chapter does not prohibit a private club
911 not open to the public, including ~~[fraternities and sororities]~~ a fraternity or sorority associated
912 with ~~[institutions]~~ an institution of higher education, from:

913 (i) limiting the rental or occupancy of ~~[lodgings to members]~~ lodging to a member; or
914 ~~[from]~~

915 (ii) giving preference to its members~~;~~ but only if it.

916 (b) This Subsection (5) applies only if the private club owns or operates the ~~[lodgings]~~
917 lodging as an incident to its primary purpose and not for a commercial purpose.

918 (6) This chapter does not prohibit distinctions ~~[based]~~ on the basis of inability to fulfill
919 the terms and conditions, including financial obligations, of:

920 (a) a lease~~;~~;

921 (b) a rental agreement~~;~~;

922 (c) a contract of purchase or sale~~;~~;

923 (d) a mortgage~~;~~;

924 (e) a trust deed~~;~~; or ~~[other]~~

925 (f) another financing agreement.

926 (7) This chapter does not prohibit ~~[any]~~ a nonprofit educational institution from:

927 (a) requiring ~~[its]~~ a single ~~[students]~~ student of the nonprofit education institution to
 928 live in housing approved, operated, or owned by the nonprofit educational institution;

929 (b) segregating housing that the nonprofit educational institution approves, operates, or
 930 owns on the basis of sex ~~[or]~~, familial status, or both;

931 (i) for reasons of personal modesty or privacy~~[-]~~; or

932 (ii) in the furtherance of a religious institution's free exercise of religious rights under
 933 the First Amendment of the United States Constitution; or

934 (c) otherwise assisting others in making sex-segregated housing available to ~~[students]~~
 935 a student as may be permitted by regulations implementing the federal Fair Housing
 936 Amendments Act of 1988 and Title IX of the Education Amendments of 1972.

937 (8) This chapter does not prohibit ~~[any]~~ a reasonable local, state, or federal
 938 ~~[restrictions]~~ restriction regarding the maximum number of occupants permitted to occupy a
 939 dwelling.

940 (9) The provisions ~~[pertaining]~~ in this chapter that pertain to familial status do not
 941 apply to the existence, development, sale, rental, advertisement, or financing of ~~[any]~~ an
 942 apartment complex, condominium, or other housing development designated as housing for
 943 older persons, as defined by Title VIII of the Civil Rights Act of 1968, as amended.

944 (10) This chapter does not prohibit the giving of a preference on the basis of military
 945 service if that preference is given in accordance with a federal, state, or local law other than
 946 this chapter.

947 Section 8. Section **57-21-5** is amended to read:

948 **57-21-5. Discriminatory practices enumerated -- Protected persons, classes**
 949 **enumerated.**

950 (1) It is a discriminatory housing practice to do any of the following ~~[because]~~ on the
 951 basis of a person's race, color, religion, sex, national origin, familial status, source of income,
 952 ~~[or]~~ disability, or military service:

953 (a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the
 954 sale or rental, or otherwise deny or make unavailable ~~[any]~~ a dwelling from ~~[any]~~ a person;

955 (b) discriminate against ~~[any]~~ a person in ~~[the terms, conditions, or privileges]~~ a term,
 956 condition, or privilege of the sale or rental of ~~[any]~~ a dwelling or in providing facilities or
 957 services in connection with the dwelling; or

958 (c) represent to ~~[any]~~ a person that ~~[any]~~ a dwelling is not available for inspection, sale,
959 or rental when in fact the dwelling is available.

960 (2) It is a discriminatory housing practice to:

961 (a) make a representation orally or in writing or make, print, circulate, publish, post, or
962 cause to be made, printed, circulated, published, or posted ~~[any]~~ a notice, statement, or
963 advertisement, or to use ~~[any]~~ an application form for the sale or rental of a dwelling, that
964 directly or indirectly expresses ~~[any]~~ a preference, limitation, or discrimination ~~[based]~~ on the
965 basis of race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~
966 disability, or military service; or

967 (b) expresses ~~[any]~~ an intent to make ~~[any such]~~ a preference, limitation, or
968 discrimination described in Subsection (2)(a).

969 (3) It is a discriminatory housing practice to induce or attempt to induce, for profit,
970 ~~[any]~~ a person to buy, sell, or rent ~~[any]~~ a dwelling by making ~~[representations]~~ a
971 representation about the entry or prospective entry into the neighborhood of ~~[persons]~~ a person
972 of a particular race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~
973 disability, or military service.

974 (4) A discriminatory housing practice includes:

975 (a) a refusal to permit, at the expense of the disabled person, a reasonable
976 ~~[modifications]~~ modification of an existing premises occupied or to be occupied by the person
977 if the ~~[modifications are]~~ modification is necessary to afford that person full enjoyment of the
978 premises, except that in the case of a rental, the landlord, where it is reasonable to do so, may
979 condition permission for a modification on the renter agreeing to restore the interior of the
980 premises, when reasonable, to the condition that existed before the modification, reasonable
981 wear and tear excepted;

982 (b) a refusal to make a reasonable ~~[accommodations in rules, policies, practices, or~~
983 ~~services when the accommodations]~~ accommodation in a rule, policy, practice, or service if the
984 accommodation may be necessary to afford the person equal opportunity to use and enjoy a
985 dwelling; and

986 (c) in connection with the design and construction of a covered multifamily ~~[dwellings]~~
987 dwelling for first occupancy after March 13, 1991, a failure to design and construct ~~[those~~
988 ~~dwellings]~~ the covered multifamily dwelling in a manner that:

989 (i) the ~~[dwellings have]~~ covered multifamily dwelling has at least one building entrance
 990 on an accessible route, unless it is impracticable to have one because of the terrain or unusual
 991 characteristics of the site; and

992 (ii) with respect to ~~[dwellings]~~ a covered multifamily dwelling with a building entrance
 993 on an accessible route:

994 (A) the public use and common use portions of the ~~[dwelling are]~~ covered multifamily
 995 dwelling is readily accessible to and usable by a disabled ~~[persons]~~ person;

996 (B) all the doors designed to allow passage into and within the ~~[dwellings]~~ covered
 997 multifamily dwelling are sufficiently wide to allow passage by a disabled ~~[persons]~~ person in
 998 ~~[wheelchairs]~~ a wheelchair; and

999 (C) all premises within ~~[these dwellings]~~ the covered multifamily dwelling contain the
 1000 following features of adaptive design:

1001 (I) an accessible route into and through the dwelling;

1002 (II) light switches, electrical outlets, thermostats, and other environmental controls in
 1003 accessible locations;

1004 (III) reinforcements in the bathroom walls to allow later installation of grab bars; and

1005 (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver
 1006 about and use the space.

1007 (5) This section ~~[also]~~ applies to discriminatory housing practices ~~[because]~~ on the
 1008 basis of race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~
 1009 disability ~~[based upon]~~, or military service on the basis of a person's association with another
 1010 person.

1011 Section 9. Section **57-21-6** is amended to read:

1012 **57-21-6. Discriminatory housing practices regarding residential real**
 1013 **estate-related transactions -- Discriminatory housing practices regarding the provisions**
 1014 **of brokerage services.**

1015 (1) (a) It is a discriminatory housing practice for ~~[any]~~ a person whose business
 1016 includes engaging in a residential real estate-related ~~[transactions]~~ transaction to discriminate
 1017 against ~~[any]~~ a person on the basis of race, color, religion, sex, disability, familial status, source
 1018 of income, national origin, or military service:

1019 (i) in making available ~~[such]~~ a residential real estate-related transaction~~[-];~~ or ~~[in the~~

1020 terms or conditions of the transaction, because of race, color, religion, sex, disability, familial
1021 status, source of income, or national origin. Residential real estate-related transactions
1022 include:]

1023 (ii) in a term or condition of the residential real estate-related transaction.

1024 (b) A residential real estate-related transaction includes:

1025 ~~[(a)]~~ (i) making or purchasing [loans] a loan or providing other financial assistance:

1026 ~~[(i)]~~ (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling;

1027 or

1028 ~~[(ii)]~~ (B) secured by residential real estate; or

1029 ~~[(b)]~~ (ii) selling, brokering, or appraising residential real property.

1030 (2) It is a discriminatory housing practice to ~~[deny any]:~~

1031 (a) deny on the basis of race, color, religion, sex, disability, familial status, source of
1032 income, national origin, or military service a person access to, or membership or participation
1033 in[, any]:

1034 (i) multiple-listing service[;];

1035 (ii) real estate brokers' organization[;]; or [other]

1036 (iii) another service, organization, or facility relating to the business of selling or
1037 renting [dwellings] a dwelling; or [to]

1038 (b) discriminate against [any] a person in [the terms or conditions] a term or condition
1039 of access, membership, or participation in the organization, service, or facility [because of]
1040 described in Subsection (2)(a) on the basis of race, color, religion, sex, disability, familial
1041 status, source of income, [or] national origin, or military service.

1042 (3) This section ~~[also]~~ applies to discriminatory housing practices ~~[because]~~ on the
1043 basis of race, color, religion, sex, national origin, familial status, source of income, [or]
1044 disability [based upon], or military service on the basis of a person's association with another
1045 person.

1046 Section 10. Section 57-21-7 is amended to read:

1047 **57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions --**

1048 **Obstruction of division investigation -- Reprisals.**

1049 (1) It is a discriminatory housing practice to do any of the following:

1050 (a) coerce, intimidate, threaten, or interfere with ~~[any]~~ a person:

- 1051 (i) in the exercise or enjoyment of ~~[any]~~ a right granted or protected under this chapter;
- 1052 (ii) because that person ~~[exercised any]~~ exercises a right granted or protected under this
- 1053 chapter; or
- 1054 (iii) because that person ~~[aided or encouraged any other]~~ aids or encourages another
- 1055 person in the exercise or enjoyment of ~~[any]~~ a right granted or protected under this chapter;
- 1056 (b) aid, abet, incite, compel, or coerce a person to engage in ~~[any of the practices]~~ a
- 1057 practice prohibited by this chapter;
- 1058 (c) attempt to aid, abet, incite, compel, or coerce a person to engage in ~~[any of the~~
- 1059 ~~practices]~~ a practice prohibited by this chapter;
- 1060 (d) obstruct or prevent ~~[any]~~ a person from complying with this chapter, or ~~[any]~~ an
- 1061 order issued under this chapter;
- 1062 (e) resist, prevent, impede, or interfere with the director or ~~[any]~~ a division ~~[employees~~
- 1063 ~~or representatives]~~ employee or representative in the performance of a duty under this chapter;
- 1064 or
- 1065 (f) engage in ~~[any]~~ a reprisal against ~~[any]~~ a person because that person:
- 1066 (i) ~~[opposed]~~ opposes a practice prohibited under this chapter; or
- 1067 (ii) ~~[filed]~~ files a complaint, ~~[testified, assisted, or participated]~~ testifies, assists, or
- 1068 participates in any manner in ~~[any]~~ an investigation, proceeding, or hearing under this chapter.
- 1069 (2) This section ~~[also]~~ applies to discriminatory housing practices ~~[because]~~ on the
- 1070 basis of race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~
- 1071 disability ~~[based upon]~~, or military service on the basis of a person's association with another
- 1072 person.
- 1073 Section 11. Section **57-21-9** is amended to read:
- 1074 **57-21-9. Procedure for an aggrieved person to file a complaint -- Conciliation --**
- 1075 **Investigation -- Determination.**
- 1076 (1) ~~[Any]~~ An aggrieved person may file a written verified complaint with the division
- 1077 within 180 days after an alleged discriminatory housing practice occurs.
- 1078 (2) (a) The commission shall adopt rules consistent with the provisions of 24 C.F.R.
- 1079 Sec. 115.3 (1990), relating to procedures under related federal law, to govern:
- 1080 (i) the form of the complaint;
- 1081 (ii) the form of ~~[any]~~ an answer to the complaint;

- 1082 (iii) procedures for filing or amending a complaint or answer; and
1083 (iv) the form of notice to parties accused of [~~the acts or omissions~~] the act or omission
1084 giving rise to the complaint.
- 1085 (b) The commission may, by rule, prescribe any other procedure pertaining to the
1086 division's processing of the complaint.
- 1087 (3) During the period beginning with the filing of the complaint and ending with the
1088 director's determination, the division shall, to the extent feasible, engage in conciliation with
1089 respect to the complaint.
- 1090 (4) The division shall commence [~~proceedings~~] a proceeding to investigate and
1091 conciliate a complaint alleging a discriminatory housing practice within 30 days after the filing
1092 of the complaint. After the commencement of an investigation, [~~any~~] a party may request that
1093 the commission review the [~~proceedings to insure~~] proceeding to ensure compliance with the
1094 requirements of this chapter.
- 1095 (5) The division shall complete the investigation within 100 days after the filing of the
1096 complaint, unless it is impracticable to do so. If the division is unable to complete the
1097 investigation within 100 days after the filing of the complaint, the division shall notify the
1098 complainant and respondent in writing of the one or more reasons for the delay.
- 1099 (6) (a) If, as a result of the division's investigation, the director determines that there is
1100 no reasonable cause to support [~~the allegations~~] an allegation in the complaint, the director
1101 shall issue a written determination dismissing the complaint.
- 1102 (b) If the director dismisses the complaint pursuant to Subsection (6)(a), the
1103 complainant may request that the director reconsider the dismissal pursuant to Section
1104 63-46b-13.
- 1105 (c) Notwithstanding [~~the provisions of~~] Title 63, Chapter 46b, Administrative
1106 Procedures Act, the director's determination to dismiss a complaint or, in the case of a request
1107 for reconsideration, the director's order denying reconsideration is not subject to further agency
1108 action or direct judicial review. [~~However, the~~]
- 1109 (d) Notwithstanding Subsection (6)(c), a complainant may commence a private action
1110 pursuant to Section 57-21-12.
- 1111 (7) If, as a result of the division's investigation of a complaint, the director determines
1112 that there is reasonable cause to support [~~the allegations~~] an allegation in the complaint, all of

1113 the following apply:

1114 (a) (i) The division shall informally endeavor to eliminate or correct the discriminatory
1115 housing practice through a conciliation conference between the parties, presided over by the
1116 division.

1117 (ii) Nothing said or done in the course of the conciliation conference may be made
1118 public or admitted as evidence in a subsequent proceeding under this chapter without the
1119 written consent of the parties concerned.

1120 (iii) The conciliation conference is not subject to Title 63, Chapter 46b, Administrative
1121 Procedures Act.

1122 (b) If the conciliation conference results in voluntary compliance with this chapter, a
1123 conciliation agreement setting forth the resolution of the one or more issues shall be executed
1124 by the parties and approved by the division. The parties may enforce the conciliation
1125 agreement in an action filed in a court of competent jurisdiction.

1126 (c) If the division is unable to obtain a conciliation agreement, the director shall issue a
1127 written determination stating the director's findings and ordering any appropriate relief under
1128 Section 57-21-11.

1129 Section 12. Section **67-19-6.3** is amended to read:

1130 **67-19-6.3. Equal employment opportunity plan.**

1131 (1) In conjunction with the director's duties under Section 67-19-6, and
1132 notwithstanding the general prohibition in Subsection 34A-5-106(3)[~~(c)~~](d), the executive
1133 director shall prepare an equal employment opportunity plan for state employment consistent
1134 with the guidelines provided in federal equal employment opportunity laws and in related
1135 federal regulations.

1136 (2) The equal employment opportunity plan required by this section applies only to
1137 state career service employees described in Section 67-19-15.

1138 (3) The Legislature shall review the equal employment opportunity plan required by
1139 this section before it may be implemented.

1140 (4) Nothing in this section requires the establishment of hiring quotas or preferential
1141 treatment of any identifiable group.

Legislative Review Note
as of 1-23-08 2:58 PM

Office of Legislative Research and General Counsel

S.B. 166 - Nondiscrimination Amendments

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will require an additional appropriation of \$106,000 from the General Fund for additional staff at the Labor Commission. It is also anticipated that the Labor Commission will generate approximately \$50,000 of General Fund revenue from penalties assessed.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$106,000	\$106,000	\$0	\$50,000	\$50,000
Total	\$0	\$106,000	\$106,000	\$0	\$50,000	\$50,000

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and businesses may be affected from increased claims due to changes in statute.
