

Representative Christine A. Johnson proposes the following substitute bill:

ANTIDISCRIMINATION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine A. Johnson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to discrimination in housing and employment including amending the Utah Antidiscrimination Act and the Utah Fair Housing Act.

Highlighted Provisions:

This bill:

- ▶ defines "sexual orientation" and "gender expression or identity";
- ▶ prohibits discrimination in housing and employment related to sexual orientation and gender expression or identity;
- ▶ prohibits restrictive covenants being recorded related to sexual orientation and gender expression or identity;
- ▶ makes consistent bona fide job qualifications;
- ▶ prohibits quotas and preferences in employment on the basis of sexual orientation or gender expression or identity; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

- 28 **9-4-903**, as last amended by Laws of Utah 2001, Chapter 319
- 29 **11-25-12**, as enacted by Laws of Utah 1977, Chapter 276
- 30 **17-28-2.6**, as last amended by Laws of Utah 2001, Chapter 73
- 31 **17-33-3**, as last amended by Laws of Utah 2001, Chapter 73
- 32 **17B-1-803**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 33 **32A-1-111**, as last amended by Laws of Utah 2003, Chapter 314
- 34 **34A-5-102**, as last amended by Laws of Utah 2008, Chapter 382
- 35 **34A-5-104**, as last amended by Laws of Utah 1999, Chapter 161
- 36 **34A-5-105**, as last amended by Laws of Utah 2003, Chapter 65
- 37 **34A-5-106**, as last amended by Laws of Utah 2003, Chapter 65
- 38 **34A-5-107**, as last amended by Laws of Utah 2008, Chapter 382
- 39 **57-3-107**, as last amended by Laws of Utah 1999, Chapter 163
- 40 **57-21-2**, as last amended by Laws of Utah 2008, Chapter 382
- 41 **57-21-3**, as last amended by Laws of Utah 1993, Chapter 114
- 42 **57-21-5**, as last amended by Laws of Utah 1993, Chapter 114
- 43 **57-21-6**, as last amended by Laws of Utah 1993, Chapter 114
- 44 **57-21-7**, as last amended by Laws of Utah 1993, Chapter 114
- 45 **67-5-12**, as last amended by Laws of Utah 2007, Chapter 166
- 46 **67-19-3.1**, as last amended by Laws of Utah 2006, Chapter 139
- 47 **67-19-6.3**, as last amended by Laws of Utah 2006, Chapter 139
- 48 **67-19-18**, as last amended by Laws of Utah 2006, Chapter 139



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

51 Section 1. Section **9-4-903** is amended to read:

52 **9-4-903. Definitions.**

53 As used in this part the following words and terms have the following meanings, unless
54 a different meaning clearly appears from the context:

- 55 (1) "Bonds," "notes," and "other obligations" mean any bonds, notes, debentures,
56 interim certificates, or other evidences of financial indebtedness of the corporation authorized

57 to be issued under the provisions of this part.

58 (2) "Construction loan" means a short-term advance of monies for the purpose of
59 constructing residential housing for low and moderate income persons.

60 (3) "Corporation" means the Utah Housing Corporation created by Section 9-4-904,
61 which, prior to July 1, 2001, was named the Utah Housing Finance Agency.

62 (4) "Employee of the corporation" means ~~[any]~~ an individual who is employed by the
63 corporation, but who is not a trustee of the corporation.

64 (5) "Financial assistance" includes:

65 (a) a loan, whether interest or noninterest bearing, secured or unsecured;

66 (b) a loan that converts to a grant upon the occurrence of specified conditions;

67 (c) a development loan;

68 (d) a grant;

69 (e) an award;

70 (f) a subsidy;

71 (g) a guarantee;

72 (h) a warranty;

73 (i) a lease;

74 (j) a payment on behalf of a borrower of an amount usually paid by a borrower,
75 including a down payment;

76 (k) any other form of financial assistance that helps provide affordable housing for low
77 and moderate income persons; or

78 (l) any combination of ~~[the foregoing]~~ Subsections (5)(a) through (k).

79 (6) "Housing development" means a residential housing project, ~~[which]~~ that includes
80 residential housing for low and moderate income persons.

81 (7) "Housing sponsor" includes a person who constructs, develops, rehabilitates,
82 purchases, or owns a housing development that is or will be subject to legally enforceable
83 restrictive covenants that require the housing development to provide, at least in part,
84 residential housing to low and moderate income persons, including:

85 (a) a local public body[;];

86 (b) a nonprofit, limited profit, or for profit corporation[;];

87 (c) a limited partnership[;];

88 (d) a limited liability company[;];

89 (e) a joint venture[;];

90 (f) a subsidiary of the corporation, or any subsidiary of the subsidiary[;];

91 (g) a cooperative[;];

92 (h) a mutual housing organization[;]; or

93 (i) any other type of entity or arrangement that helps provide affordable housing for
94 low and moderate income persons.

95 (8) "Interest rate contract" means interest rate exchange contracts, interest rate floor
96 contracts, interest rate ceiling contracts, and other similar contracts authorized in a resolution
97 or policy adopted or approved by the trustees.

98 (9) "Local public body" means the state, [~~any~~] a municipality, county, district, or other
99 subdivision or instrumentality of the state, including a redevelopment [~~agencies and~~] agency or
100 housing [~~authorities~~] authority created under Part 6, Housing Authorities.

101 (10) (a) [~~"Low~~] Subject to Subsection (10)(b), "low and moderate income persons"
102 means persons, [~~irrespective of race, religion, creed, national origin, or sex,~~] as determined by
103 the corporation to require such assistance as is made available by this part on account of
104 insufficient personal or family income taking into consideration factors, including:

105 [~~(a)~~] (i) the amount of income that persons and families have available for housing
106 needs;

107 [~~(b)~~] (ii) the size of family;

108 [~~(c)~~] (iii) whether or not a person is a single head of household;

109 [~~(d)~~] (iv) the cost and condition of residential housing available; and

110 [~~(e)~~] (v) the ability of persons and families to compete successfully in the normal
111 private housing market and to pay the amounts at which private enterprise is providing decent,
112 safe, and sanitary housing.

113 (b) The determination under Subsection (10)(a) is to be made irrespective of:

114 (i) race;

115 (ii) religion;

116 (iii) creed;

117 (iv) national origin;

118 (v) sex;

119 (vi) sexual orientation, as defined in Section 34A-5-102; or

120 (vii) gender expression or identity, as defined in Section 34A-5-102.

121 (11) "Mortgage lender" means [~~any~~] a bank, trust company, savings and loan
122 association, credit union, mortgage banker, or other financial institution authorized to transact
123 business in the state, any local public body, or any other entity, profit or nonprofit, that makes
124 mortgage loans.

125 (12) "Mortgage loan" means a loan secured by a mortgage, which loan may bear
126 interest at either a fixed or variable rate or which may be noninterest bearing, the proceeds of
127 which are used for the purpose of financing the construction, development, rehabilitation, or
128 purchase of residential housing for low and moderate income persons, including low and
129 moderate income persons who are first-time homebuyers, single heads of household, elderly,
130 homeless, or disabled.

131 (13) "Mortgage" means a mortgage, deed of trust, or other instrument securing a
132 mortgage loan and constituting a lien on real property (the property being held in fee simple or
133 on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of
134 not less than the term for repayment of the mortgage loan secured by the mortgage) improved
135 or to be improved by residential housing, creating a lien which may be first priority or
136 subordinate.

137 (14) "Rehabilitation" includes the reconstruction, rehabilitation, improvement, and
138 repair of residential housing.

139 (15) "Residential housing" means a specific work or improvement within this state
140 undertaken primarily to provide dwelling accommodations, including land, buildings, and
141 improvements to land and buildings, whether in one to four family units or multifamily units,
142 and other incidental or appurtenant nonhousing facilities, or as otherwise specified by the
143 agency.

144 (16) "State" means the state of Utah.

145 (17) "State housing credit ceiling" means the amount specified in Subsection
146 42(h)(3)(C) [~~of the~~], Internal Revenue Code for each calendar year.

147 Section 2. Section **11-25-12** is amended to read:

148 **11-25-12. Equal opportunity requirements.**

149 (1) The agency shall require that [~~any~~] a residence [~~which~~] that is rehabilitated with

150 financing obtained under this part shall, until that financing is repaid, be open, upon sale or
151 rental of any portion [~~thereof~~] of the residence, to all regardless of:

- 152 (a) race[;];
- 153 (b) creed[;];
- 154 (c) color[;];
- 155 (d) sex[;];
- 156 (e) marital status[~~;~~or];
- 157 (f) national origin;
- 158 (g) sexual orientation, as defined in Section 34A-5-102; or
- 159 (h) gender expression or identity, as defined in Section 34A-5-102.

160 (2) The agency shall [~~also~~] require that [~~contractors and subcontractors~~] a contractor or
161 subcontractor engaged in residential rehabilitation financed under this part shall provide equal
162 opportunity for employment, without discrimination as to:

- 163 (a) race[;];
- 164 (b) color[;];
- 165 (c) creed[;];
- 166 (d) sex[;];
- 167 (e) marital status[~~;~~or];
- 168 (f) national origin[~~;~~~~All contracts and subcontracts~~];
- 169 (g) sexual orientation, as defined in Section 34A-5-102; or
- 170 (h) gender expression or identity, as defined in Section 34A-5-102.

171 (3) A contract or subcontract for residential rehabilitation financed under this part shall
172 be let without discrimination as to:

- 173 (a) race[;];
- 174 (b) color[;];
- 175 (c) creed[;];
- 176 (d) sex[;];
- 177 (e) marital status[~~;~~or];
- 178 (f) national origin;
- 179 (g) sexual orientation, as defined in Section 34A-5-102; or
- 180 (h) gender expression or identity, as defined in Section 34A-5-102.

181 Section 3. Section 17-28-2.6 is amended to read:

182 **17-28-2.6. Merit principles.**

183 The County Fire Civil Service System shall be established and administered in a
184 manner that will provide for the effective implementation of the following merit principles:

185 (1) recruiting, selecting, and advancing employees on the basis of their relative ability,
186 knowledge, and skills, including open consideration of qualified applicants for initial
187 appointment;

188 (2) provision of equitable and adequate job classification and compensation systems,
189 including pay and benefits programs;

190 (3) training of employees as needed to assure high-quality performance;

191 (4) retention of employees on the basis of the adequacy of their performance and
192 separation of employees whose inadequate performance cannot be corrected;

193 (5) fair treatment of applicants and employees in all aspects of personal administration;

194 (a) without regard to:

195 (i) race[;];

196 (ii) color[;];

197 (iii) religion[;];

198 (iv) sex[;];

199 (v) national origin[;];

200 (vi) political affiliation[;];

201 (vii) age[; or];

202 (viii) disability[;];

203 (ix) sexual orientation, as defined in Section 34A-5-102; or

204 (x) gender expression or identity, as defined in Section 34A-5-102; and

205 (b) with proper regard for their privacy and constitutional rights as citizens;

206 (6) provision of information to employees regarding their political rights and
207 prohibited practices under the Hatch Act; and

208 (7) provision of a formal procedure for processing the appeals and grievances of
209 employees without discrimination, coercion, restraint, or reprisal.

210 Section 4. Section 17-33-3 is amended to read:

211 **17-33-3. Merit principles.**

212 It is the policy of this state that ~~each~~ a county may establish a personnel system
213 administered in a manner that will provide for the effective implementation of the following
214 merit principles:

215 (1) recruiting, selecting, and advancing employees on the basis of their relative ability,
216 knowledge, and skills, including open consideration of qualified applicants for initial
217 appointment;

218 (2) provision of equitable and adequate compensation;

219 (3) training of employees as needed to assure high-quality performance;

220 (4) retention of employees on the basis of the adequacy of their performance, and
221 separation of employees whose inadequate performance cannot be corrected;

222 (5) fair treatment of applicants and employees in all aspects of personnel
223 administration;

224 (a) without regard to;

225 (i) race[;];

226 (ii) color[;];

227 (iii) religion[;];

228 (iv) sex[;];

229 (v) national origin[;];

230 (vi) political affiliation[;];

231 (vii) age[; or];

232 (viii) disability[;];

233 (ix) sexual orientation, as defined in Section 34A-5-102; or

234 (x) gender expression or identity, as defined in Section 34A-5-102; and

235 (b) with proper regard for their privacy and constitutional rights as citizens;

236 (6) provision of information to employees regarding their political rights and
237 prohibited practices under the Hatch Act; and

238 (7) provision of a formal procedure for processing the appeals and grievances of
239 employees without discrimination, coercion, restraint, or reprisal.

240 Section 5. Section **17B-1-803** is amended to read:

241 **17B-1-803. Merit principles.**

242 A local district may establish a personnel system administered in a manner that will

243 provide for the effective implementation of merit principles that provide for:

244 (1) recruiting, selecting, and advancing employees on the basis of their relative ability,
245 knowledge, and skills, including open consideration of qualified applicants for initial
246 appointment;

247 (2) providing equitable and adequate compensation;

248 (3) training employees as needed to assure high-quality performance;

249 (4) retaining employees on the basis of the adequacy of their performance, and
250 separation of employees whose inadequate performance cannot be corrected;

251 (5) fair treatment of applicants and employees in all aspects of personnel
252 administration;

253 (a) without regard to:

254 (i) race[;];

255 (ii) color[;];

256 (iii) religion[;];

257 (iv) sex[;];

258 (v) national origin[;];

259 (vi) political affiliation[;];

260 (vii) age[; or];

261 (viii) disability[;];

262 (ix) sexual orientation, as defined in Section 34A-5-102; or

263 (x) gender expression or identity, as defined in Section 34A-5-102; and

264 (b) with proper regard for their privacy and constitutional rights as citizens;

265 (6) providing information to employees regarding their political rights and prohibited
266 practices under the Hatch Political Activities Act, 5 U.S.C. Sec. 1501 through 1508 et seq.; and

267 (7) providing a formal procedure for processing the appeals and grievances of
268 employees without discrimination, coercion, restraint, or reprisal.

269 Section 6. Section **32A-1-111** is amended to read:

270 **32A-1-111. Department employees -- Requirements.**

271 (1) (a) The commission may prescribe by policy, directive, or rule the qualifications of
272 persons employed by the department, subject to this title.

273 (b) A person may not obtain employment with the department if that person has been

274 convicted of:

275 (i) a felony under any federal or state law;

276 (ii) any violation of any federal or state law or local ordinance concerning the sale,
277 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

278 (iii) any crime involving moral turpitude; or

279 (iv) on two or more occasions within the five years before the day on which the
280 employee is hired by the department, driving under the influence of alcohol, any drug, or the
281 combined influence of alcohol and any drug.

282 (2) The director may terminate an employee or take other disciplinary action consistent
283 with Title 67, Chapter 19, Utah State Personnel Management Act if after the day on which the
284 employee is hired by the department, the employee of the department:

285 (a) is found to have been convicted of any offense described in Subsection (1)(b)
286 before being hired by the department; or

287 (b) on or after the day on which the employee is hired:

288 (i) is convicted of an offense described in Subsection (1)(b)(i), (ii), or (iii); or

289 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the
290 combined influence of alcohol and any drug; and

291 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
292 influence of alcohol and any drug within five years before the day on which the person is
293 convicted of the offense described in Subsection (2)(b)(ii)(A).

294 (3) The director may immediately suspend an employee of the department for the
295 period during which the criminal matter is being adjudicated if the employee:

296 (a) is arrested on a charge for an offense described in Subsection (1)(b)(i), (ii), or (iii);

297 or

298 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
299 any drug, or the combined influence of alcohol and any drug; and

300 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
301 influence of alcohol and any drug within five years before the day on which the person is
302 arrested on a charge described in Subsection (3)(b)(i).

303 (4) (a) A person who seeks employment with the department shall file with the
304 department an application under oath or affirmation in a form prescribed by the commission.

305 (b) The commission may not require information designating [~~the~~] an applicant's:

306 (i) color[~~;~~];

307 (ii) race[~~;~~~~or~~];

308 (iii) creed [~~of an applicant~~];

309 (iv) sexual orientation, as defined in Section 34A-5-102; or

310 (v) gender expression or identity, as defined in Section 34A-5-102.

311 (c) Upon receiving an application the department shall determine whether the applicant
312 is:

313 (i) of good moral character; and

314 (ii) qualified for the position sought.

315 (d) The selection of applicants for employment or advancement with the department
316 shall be in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

317 (5) The following are not considered an employee of the department:

318 (a) a package agent;

319 (b) a licensee;

320 (c) an employee of a package agent; or

321 (d) an employee of a licensee.

322 (6) A minor may not be employed by the department to:

323 (a) work in:

324 (i) [~~any~~] a state liquor store; or

325 (ii) departmental warehouse; or

326 (b) engage in [~~any~~] an activity involving the handling of an alcoholic [~~beverages~~]
327 beverage.

328 Section 7. Section **34A-5-102** is amended to read:

329 **34A-5-102. Definitions.**

330 As used in this chapter:

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

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

- 336 (a) that is necessary to the operation of the employee's employer's business; or
- 337 (b) is the essence of the employee's employer's business.
- 338 (3) "Court" means:
- 339 (a) the district court in the judicial district of the state in which the asserted unfair
- 340 employment practice [~~occurred~~] occurs; or
- 341 (b) if [~~this~~] the district court described in Subsection (3)(a) is not in session at [~~that~~] the
- 342 time the asserted unfair employment practice occurs, a judge of the court described in
- 343 Subsection (3)(a).
- 344 (4) "Director" means the director of the division.
- 345 (5) "Disability" means a physical or mental disability as defined and covered by the
- 346 Americans with Disabilities Act of 1990, 42 U.S.C. 12102.
- 347 (6) "Discriminate in matters of compensation" means the payment of differing wages
- 348 or salaries to employees having substantially equivalent experience, responsibilities, and skill
- 349 for a particular job.
- 350 [~~(6)~~] (7) "Division" means the Division of Antidiscrimination and Labor.
- 351 [~~(7)~~] (8) "Employee" means [~~any~~] a person applying with or employed by an employer.
- 352 [~~(8)~~] (9) (a) "Employer" means:
- 353 (i) the state;
- 354 (ii) [~~any~~] a political subdivision;
- 355 (iii) a board, commission, department, institution, school district, trust, or agent of:
- 356 (A) the state; or [its political subdivisions]
- 357 (B) a political subdivision; or
- 358 (iv) a person employing 15 or more employees within the state for each working day
- 359 in each of 20 calendar weeks or more in the current or preceding calendar year.
- 360 (b) "Employer" does not include:
- 361 (i) a religious organization or association;
- 362 (ii) a religious corporation sole; or
- 363 (iii) [~~any~~] a corporation or association constituting a wholly owned subsidiary or
- 364 agency of [~~any~~];
- 365 (A) a religious organization or association; or
- 366 (B) a religious corporation sole.

367 ~~[(9)]~~ (10) "Employment agency" means ~~[any]~~ a person:

368 (a) undertaking to procure ~~[employees or opportunities]~~ an employee or opportunity to
369 work for ~~[any other]~~ another person; or

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

371 (10)(a).

372 (11) "Gender expression or identity" means having or being perceived as having a
373 gender identity, self-image, appearance, behavior, or expression, whether or not that gender
374 identity, self-image, appearance, behavior, or expression is different from that traditionally
375 associated with the sex assigned to that person at birth.

376 ~~[(10)]~~ (12) "Joint apprenticeship committee" means ~~[any]~~ an association of the
377 following that provides, coordinates, or controls an apprentice training program:

378 (a) representatives of a labor organization; and

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

381 ~~[(11)]~~ (13) "Labor organization" means ~~[any]~~ an organization that exists for the
382 purpose in whole or in part of:

383 (a) collective bargaining;

384 (b) dealing with ~~[employers]~~ an employer concerning grievances, terms, or conditions
385 of employment; or

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

387 ~~[(12)]~~ (14) "National origin" means the place of birth, domicile, or residence of an
388 individual or of an individual's ancestors.

389 ~~[(13)]~~ (15) "On-the-job-training program" means ~~[any]~~ a program designed to instruct a
390 person who, while learning the particular job for which the person is receiving instruction:

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

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

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

394 (ii) when the program is completed.

395 ~~[(14)]~~ (16) "Person" means ~~[one or more individuals, partnerships, associations,~~
396 ~~corporations, legal representatives, trusts or trustees, receivers, the state and all political~~
397 ~~subdivisions and agencies of the state.];~~

398 (a) an individual;

399 (b) a partnership;

400 (c) an association;

401 (d) a corporation;

402 (e) a legal representative;

403 (f) a trust or trustee;

404 (g) a receiver;

405 (h) the state; and

406 (i) a political subdivision or agency of the state.

407 [~~(15)~~] (17) "Presiding officer" [~~means the same as that term~~] is as defined in Section
408 63G-4-103.

409 [~~(16)~~] (18) "Prohibited employment practice" means a practice specified as
410 discriminatory, and therefore unlawful, in Section 34A-5-106.

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

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

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

416 [~~(17)~~] (20) "Retaliate" means the taking of adverse action;

417 (a) by:

418 (i) an employer[;];

419 (ii) an employment agency[;];

420 (iii) a labor organization[;];

421 (iv) an apprenticeship program[;];

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

423 (vi) a vocational school;

424 (b) against [~~one of its employees, applicants, or members~~] an employee, applicant, or
425 member of a person described in Subsection (20)(a); and

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

427 [~~(a)~~] (i) [~~has opposed any~~] opposes an employment practice prohibited under this
428 chapter; or

429 ~~[(b)]~~ (ii) ~~[filed charges, testified, assisted, or participated]~~ files a charge, testifies,
 430 assists, or participates in any way in ~~[any]~~ a proceeding, investigation, or hearing under this
 431 chapter.

432 (21) "Sexual orientation" means:

433 (a) a person's:

434 (i) heterosexuality;

435 (ii) homosexuality; or

436 (iii) bisexuality; or

437 (b) that the person is perceived by others to be:

438 (i) heterosexual;

439 (ii) homosexual; or

440 (iii) bisexual.

441 ~~[(18)]~~ (22) "Vocational school" means [any] a school or institution conducting a course
 442 of instruction, training, or retraining to prepare [individuals] an individual to:

443 (a) follow an occupation or trade[;]; or [to]

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

446 Section 8. Section **34A-5-104** is amended to read:

447 **34A-5-104. Powers.**

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

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

452 (2) The division may:

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

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

457 (i) discrimination in:

458 (A) employment;

459 (B) an apprenticeship [programs] program;

- 460 (C) an on-the-job training [~~programs~~] program; and
- 461 (D) a vocational [~~schools~~] school; or
- 462 (ii) the existence of a discriminatory or prohibited employment practice by:
- 463 (A) a person;
- 464 (B) an employer;
- 465 (C) an employment agency;
- 466 (D) a labor organization;
- 467 (E) [~~the employees or members~~] an employee or member of an employment agency or
- 468 labor organization;
- 469 (F) a joint apprenticeship committee; and
- 470 (G) a vocational school;
- 471 (c) investigate and study the existence, character, causes, and extent of discrimination
- 472 in employment, an apprenticeship [~~programs~~] program, an on-the-job training [~~programs~~]
- 473 program, [~~and~~] or a vocational [~~schools~~] school in this state by:
- 474 (i) employers;
- 475 (ii) employment agencies;
- 476 (iii) labor organizations;
- 477 (iv) joint apprenticeship committees; and
- 478 (v) vocational schools;
- 479 (d) formulate one or more plans for the elimination of discrimination by educational or
- 480 other means;
- 481 (e) hold [~~hearings~~] a hearing upon complaint made against:
- 482 (i) a person;
- 483 (ii) an employer;
- 484 (iii) an employment agency;
- 485 (iv) a labor organization;
- 486 (v) [~~the employees or members~~] an employee or member of an employment agency or
- 487 labor organization;
- 488 (vi) a joint apprenticeship committee; or
- 489 (vii) a vocational school;
- 490 (f) issue one or more publications [~~and~~] or reports of investigations and research that:

- 491 (i) promote good will among the various racial, religious, and ethnic groups of the
492 state; and
- 493 (ii) minimize or eliminate discrimination in employment because of race, color, sex,
494 religion, national origin, age, ~~[or]~~ disability, sexual orientation, or gender expression or
495 identity;
- 496 (g) prepare and transmit to the governor, at least once each year, ~~[reports]~~ a report
497 describing:
- 498 (i) ~~[its]~~ the division's proceedings, investigations, and hearings;
- 499 (ii) the outcome of ~~[those]~~ the hearings described in Subsection (2)(g)(i);
- 500 (iii) decisions the division ~~[has rendered]~~ renders; and
- 501 (iv) the other work performed by the division;
- 502 (h) recommend one or more policies to the governor, and submit ~~[recommendation]~~
503 one or more recommendations to employers, employment agencies, and labor organizations to
504 implement those policies;
- 505 (i) recommend ~~[any]~~ legislation concerning discrimination because of race, sex, color,
506 national origin, religion, age, ~~[or]~~ disability, sexual orientation, or gender expression or identity
507 to the governor that ~~[it]~~ the division considers necessary; and
- 508 (j) within the limits of ~~[any]~~ appropriations made for ~~[its]~~ the division's operation,
509 cooperate with other agencies or organizations, both public and private, in the planning and
510 conducting of educational programs designed to eliminate discriminatory practices prohibited
511 under this chapter.
- 512 (3) The division shall investigate an alleged discriminatory ~~[practices]~~ practice
513 involving ~~[officers or employees]~~ an officer or employee of state government if requested to do
514 so by the Career Service Review Board.
- 515 (4) (a) In ~~[any]~~ a hearing held under this chapter, the division may:
- 516 (i) subpoena ~~[witnesses]~~ a witness and compel ~~[their]~~ the witness' attendance at the
517 hearing;
- 518 (ii) administer ~~[oaths]~~ an oath and take the testimony of ~~[any]~~ a person under oath; and
- 519 (iii) compel ~~[any]~~ a person to produce for examination ~~[any books, papers,]~~ a book,
520 paper, or other information relating to ~~[the matters]~~ a matter raised by the complaint.
- 521 (b) The division director or a hearing examiner appointed by the division director may

522 conduct [~~hearings~~] a hearing.

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

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

528 Section 9. Section **34A-5-105** is amended to read:

529 **34A-5-105. Antidiscrimination and Labor Advisory Council.**

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

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

533 (i) three employer representatives;

534 (ii) three employee representatives;

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

537 (iv) two representatives of persons who:

538 (A) sell or rent dwellings; and

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

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

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

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

545 (a) race;

546 (b) color;

547 (c) national origin;

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

549 (e) religion;

550 (f) age;

551 (g) persons with disabilities;

552 (h) sexual orientation;

553 (i) gender expression or identity;

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

555 [~~(i)~~] (k) source of income as defined in Section 57-21-2.

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

557 (4) (a) Except as required by Subsection (4)(b), as terms of current council members
558 expire, the commissioner shall appoint each new member or reappointed member to a four-year
559 term.

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

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

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

568 (6) (a) (i) [~~Members who are~~] A member who is not a government [~~employees shall~~
569 receive no employee may not receive compensation or benefits for [~~their~~] the member's
570 services, but may receive per diem and expenses incurred in the performance of the member's
571 official duties at the rates established by the Division of Finance under Sections 63A-3-106 and
572 63A-3-107.

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

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

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

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

583 (i) offer advice on issues requested by:

- 584 (A) the commission;
- 585 (B) the division; or
- 586 (C) the Legislature; and
- 587 (ii) make recommendations to the commission and division regarding issues related to:
- 588 (A) employment discrimination;
- 589 (B) housing discrimination; and
- 590 (C) the administration by the commission of:

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

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

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

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

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

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

601 Section 10. Section **34A-5-106** is amended to read:

602 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**
603 **practices.**

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

606 (a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate
607 any person, or to retaliate against, harass, or discriminate in ~~[matters]~~ a matter of compensation
608 or in ~~[terms, privileges, and conditions]~~ a term, privilege, or condition of employment against
609 ~~[any]~~ a person otherwise qualified, because of:

- 610 (A) race;
- 611 (B) color;
- 612 (C) sex;
- 613 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 614 (E) age, if the individual is 40 years of age or older;

- 615 (F) religion;
- 616 (G) national origin; [~~or~~]
- 617 (H) disability;
- 618 (I) sexual orientation; or
- 619 (J) gender expression or identity.

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

- 622 (A) education;
- 623 (B) training;
- 624 (C) ability, with or without reasonable accommodation;
- 625 (D) moral character;
- 626 (E) integrity;
- 627 (F) disposition to work;
- 628 (G) adherence to reasonable rules and regulations; and
- 629 (H) other job related qualifications required by an employer.

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

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

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

637 [~~(H)~~] (B) nothing in this section prohibits an employer and employee from agreeing to
 638 a rate of pay or work schedule designed to protect the employee from loss of a Social Security
 639 payment or [~~benefits~~] benefit if the employee is eligible for [~~those payments~~] the payment or
 640 benefit.

641 (b) An employment agency may not:

642 (i) refuse to list and properly classify for employment, or refuse to refer an individual
 643 for employment, in a known available job for which the individual is otherwise qualified,
 644 because of:

- 645 (A) race;

- 646 (B) color;
- 647 (C) sex;
- 648 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 649 (E) religion;
- 650 (F) national origin;
- 651 (G) age, if the individual is 40 years of age or older; [~~or~~]
- 652 (H) disability; [~~or~~]
- 653 (I) sexual orientation; or
- 654 (J) gender expression or identity; or
- 655 (ii) comply with a request from an employer for referral of [~~applicants~~] an applicant for
- 656 employment if the request indicates either directly or indirectly that the employer discriminates
- 657 in employment on account of:
- 658 (A) race;
- 659 (B) color;
- 660 (C) sex;
- 661 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 662 (E) religion;
- 663 (F) national origin;
- 664 (G) age, if the individual is 40 years of age or older; [~~or~~]
- 665 (H) disability[~~;~~];
- 666 (I) sexual orientation; or
- 667 (J) gender expression or identity.
- 668 (c) (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):
- 669 (A) exclude [~~any~~] an individual otherwise qualified from full membership rights in the
- 670 labor organization[~~;~~];
- 671 (B) expel [~~the~~] an individual otherwise qualified from membership in the labor
- 672 organization[~~;~~]; or
- 673 (C) otherwise discriminate against or harass [~~any of the labor organization's members~~]
- 674 a member of the labor organization in full employment of work opportunity, or
- 675 representation[~~;~~].
- 676 (ii) A labor organization may not take an action described in Subsection (1)(c)(i) if it is

677 taken because of:

678 [~~(i)~~] (A) race;

679 (B) color;

680 [~~(ii)~~] (C) sex;

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

682 [~~(iv)~~] (E) religion;

683 [~~(v)~~] (F) national origin;

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

685 [~~(vii)~~] (H) disability;

686 (I) sexual orientation; or

687 (J) gender expression or identity.

688 (d) Unless based upon a bona fide occupational qualification, or required by and given
689 to an agency of government for a security ~~[reasons]~~ reason, an employer, employment agency,
690 or labor organization may not print, or circulate, or cause to be printed or circulated, ~~[any]~~ a
691 statement, advertisement, or publication, use any form of application for employment or
692 membership, or make ~~[any]~~ an inquiry in connection with prospective employment or
693 membership that expresses, either directly or indirectly:

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

695 (A) race;

696 (B) color;

697 (C) religion;

698 (D) sex;

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

700 (F) national origin;

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

702 (H) disability;

703 (I) sexual orientation; or

704 (J) gender expression or identity; or

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

707 (e) A person, whether or not an employer, an employment agency, a labor organization,

708 or ~~[the employees or members]~~ an employee or member of an employer, employment agency,
709 or labor organization, may not:

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

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

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

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

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

723 (I) race;

724 (II) color;

725 (III) sex;

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

727 (V) religion;

728 (VI) national origin;

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

730 (VIII) disability;

731 (IX) sexual orientation; or

732 (X) gender expression or identity;

733 (B) discriminate against or harass ~~[any]~~ a qualified person in that person's pursuit of
734 ~~[programs]~~ a program described in Subsection (1)(f)(i)(A) ~~[, or to]~~ because of:

735 (I) race;

736 (II) color;

737 (III) sex;

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

739 (V) religion;
740 (VI) national origin;
741 (VII) age, if the individual is 40 years of age or older;
742 (VIII) disability;
743 (IX) sexual orientation; or
744 (X) gender expression or identity;
745 (C) discriminate against [such a person in the terms, conditions, or privileges of
746 programs] a qualified person in a term, condition, or privilege described in Subsection
747 (1)(f)(i)(A), because of:

- 748 (I) race;
- 749 (II) color;
- 750 (III) sex;
- 751 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 752 (V) religion;
- 753 (VI) national origin;
- 754 (VII) age, if the individual is 40 years of age or older; [or]
- 755 (VIII) disability;
- 756 (IX) sexual orientation; or
- 757 (X) gender expression or identity; or

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

- 764 (I) race;
- 765 (II) color;
- 766 (III) sex;
- 767 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 768 (V) religion;
- 769 (VI) national origin;

770 (VII) age, if the individual is 40 years of age or older; [~~or~~]
771 (VIII) disability;
772 (IX) sexual orientation; or
773 (X) gender expression or identity.
774 (ii) Notwithstanding Subsection (1)(f)(i)[~~(C)~~](D), if the following is a bona fide
775 occupational qualification for employment, a notice or advertisement described in Subsection
776 (1)(f)(i)[~~(C)~~](D) may indicate a preference, limitation, specification, or discrimination [~~based~~
777 on the basis of:
778 (A) race;
779 (B) color;
780 (C) religion;
781 (D) sex;
782 (E) pregnancy, childbirth, or pregnancy-related conditions;
783 (F) age;
784 (G) national origin; [~~or~~]
785 (H) disability;
786 (I) sexual orientation; or
787 (J) gender expression or identity.
788 (2) [~~Nothing contained in~~] Subsections (1)(a) through (1)(f) [~~shall~~] may not be
789 construed to prevent:
790 (a) the termination of employment of an individual who, with or without reasonable
791 accommodation, is physically, mentally, or emotionally unable to perform the duties required
792 by that individual's employment;
793 (b) the variance of an insurance [~~premiums~~] premium or coverage on account of age; or
794 (c) a restriction on the activities of [~~individuals~~] a person licensed [~~by the liquor~~
795 authority] in accordance with Title 32A, Alcoholic Beverage Control Act, with respect to
796 [~~persons~~] an individual under 21 years of age.
797 (3) (a) It is not a discriminatory or prohibited employment practice:
798 (i) to do the following on the basis of race, color, religion, sex, pregnancy, childbirth,
799 pregnancy-related conditions, age, national origin, disability, sexual orientation, or gender
800 expression or identity if the conditions of Subsection (3)(b) are met:

- 801 [(i)] (A) for an employer to hire and employ [~~employees,~~] an employee;
- 802 (B) for an employment agency to classify or refer for employment [~~any~~] an
- 803 individual[~~;~~];
- 804 (C) for a labor organization to classify its membership or to classify or refer for
- 805 employment [~~any~~] an individual; or
- 806 (D) for an employer, labor organization, or joint labor-management committee
- 807 controlling apprenticeship or other training or retraining [~~programs~~] program to admit or
- 808 employ [~~any~~] an individual in [~~any such~~] the program[~~, on the basis of religion, sex, pregnancy,~~
- 809 ~~childbirth, or pregnancy-related conditions, age, national origin, or disability in those certain~~
- 810 ~~instances where religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the~~
- 811 ~~individual is 40 years of age or older, national origin, or disability is a bona fide occupational~~
- 812 ~~qualification reasonably necessary to the normal operation of that particular business or~~
- 813 ~~enterprise~~];
- 814 (ii) for a [~~school, college, university, or other~~] religious educational institution to hire
- 815 and employ [~~employees~~] an employee of a particular religion [~~if~~]; or
- 816 [(~~A~~) ~~the school, college, university, or other educational institution is, in whole or in~~
- 817 ~~substantial part, owned, supported, controlled, or managed by a particular religious corporation,~~
- 818 ~~association, or society, or]~~
- 819 [(~~B~~) ~~the curriculum of the school, college, university, or other educational institution is~~
- 820 ~~directed toward the propagation of a particular religion;~~]
- 821 (iii) for an employer to give preference in employment to:
- 822 (A) the employer's:
- 823 (I) spouse;
- 824 (II) child; or
- 825 (III) son-in-law or daughter-in-law;
- 826 (B) [~~any~~] a person for whom the employer is or would be liable to furnish financial
- 827 support if [~~those persons~~] the person were unemployed;
- 828 (C) [~~any~~] a person to whom the employer during the preceding six months [~~has~~
- 829 ~~furnished~~] furnishes more than one-half of total financial support regardless of whether or not
- 830 the employer was or is legally obligated to furnish support; or
- 831 (D) [~~any~~] a person whose education or training [~~was~~] is substantially financed by the

832 employer for a period of two years or more.

833 ~~[(b) Nothing in this chapter applies to any]~~

834 (b) An action described in Subsection (3)(a)(i) is not a discriminatory or prohibited
835 employment practice if:

836 (i) race, color, religion, sex, pregnancy, childbirth, a pregnancy-related condition,
837 national origin, a disability, sexual orientation, or gender expression or identity is a bona fide
838 occupational qualification reasonably necessary to the normal operation of that particular
839 business or enterprise; or

840 (ii) (A) the individual is 40 years of age or older; and

841 (B) age is a bona fide occupational qualification reasonably necessary to the normal
842 operation of that particular business or enterprise.

843 (c) This chapter does not apply to a business or enterprise on or near an Indian
844 reservation with respect to [any] a publicly announced employment practice of the business or
845 enterprise under which preferential treatment is given to [any] an individual because that
846 individual is a native American Indian living on or near an Indian reservation.

847 ~~[(c) Nothing in this chapter shall]~~ (d) (i) This chapter may not be interpreted to require
848 [any] an employer, employment agency, labor organization, vocational school, joint
849 labor-management committee, or apprenticeship program subject to this chapter to grant
850 preferential treatment [to any individual or to any group] because of the race, color, religion,
851 sex, age, national origin, or disability of [the] an individual or group on account of an
852 imbalance [which] that may exist:

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

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

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

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

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

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

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

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

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

872 (ii) give a preference to an individual on the basis of sexual orientation or gender
 873 expression or identity.

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

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

882 (a) under Subsection (6);

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

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

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

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

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

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

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

893 (A) pension[~~;~~] plan;

- 894 (B) profit-sharing[;] plan;
- 895 (C) savings[;or] plan;
- 896 (D) deferred compensation plan[;]; or [~~any combination of those~~]
- 897 (E) plans described in this Subsection (6)(b)(i) in combination; and
- 898 [~~(b)~~] (ii) the benefit described in Subsection (6)[~~(a)~~](b)(i) equals, in the aggregate, at
- 899 least \$44,000.

900 Section 11. Section **34A-5-107** is amended to read:

901 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
902 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

970 (7) (a) [~~Prior to~~] Before the commencement of an evidentiary hearing[~~:(i)~~], the party
971 filing the request for agency action may reasonably and fairly amend [~~any~~] an allegation[~~; and~~
972 ~~(ii) the~~]

973 (b) A respondent may amend [~~its~~] the respondent's answer[~~:(b) An amendment~~
974 ~~permitted under this Subsection (7) may be made~~]:

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

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

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

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

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

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

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

988 (i) reinstatement;

989 (ii) back pay and benefits;

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

991 (iv) costs.

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

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

997 (i) Section 63G-4-301; and

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

999 (b) If there is no timely request for review, the order issued by the presiding officer
1000 becomes the final order of the commission.

1001 (12) An order of the commission under Subsection (11)(a) is subject to judicial review
1002 as provided in:

1003 (a) Section 63G-4-403; and

1004 (b) Chapter 1, Part 3, Adjudicative Proceedings.

1005 (13) The commission ~~[shall have authority to]~~ may make rules concerning procedures
1006 under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1007 Act.

1008 (14) The commission and its staff may not divulge or make public ~~[any]~~ information
1009 gained from ~~[any]~~ an investigation, settlement negotiation, or proceeding before the
1010 commission except as provided in Subsections (14)(a) through (d).

1011 (a) Information used by the director or the director's designee in making ~~[any]~~ a
1012 determination may be provided to all interested parties for the purpose of preparation for and
1013 participation in proceedings before the commission.

1014 (b) General statistical information may be disclosed ~~[provided the identities of the~~
1015 ~~individuals or parties are]~~ if the identity of an individual or party is not disclosed.

1016 (c) Information may be disclosed for inspection by the attorney general or ~~[other]~~
1017 another legal ~~[representatives]~~ representative of the state or the commission.

1018 (d) Information may be disclosed for information and reporting requirements of the
1019 federal government.

1020 (15) The procedures contained in this section are the exclusive remedy under state law
1021 for employment discrimination [~~based upon~~] on the basis of:

1022 (a) race;

1023 (b) color;

1024 (c) sex;

1025 (d) retaliation;

1026 (e) pregnancy, childbirth, or pregnancy-related conditions;

1027 (f) age;

1028 (g) religion;

1029 (h) national origin; [~~or~~]

1030 (i) disability;

1031 (j) sexual orientation; or

1032 (k) gender expression or identity.

1033 (16) (a) The commencement of an action under federal law for relief [~~based upon any~~]
1034 on the basis of an act prohibited by this chapter bars the commencement or continuation of
1035 [~~any~~] an adjudicative proceeding before the commission in connection with the same [~~claims~~]
1036 claim under this chapter.

1037 (b) The transfer of a request for agency action to the Equal Employment Opportunity
1038 Commission in accordance with Subsection (1)(d) is considered the commencement of an
1039 action under federal law for purposes of Subsection (16)(a).

1040 (c) Nothing in this Subsection (16) is intended to alter, amend, modify, or impair the
1041 exclusive remedy provision set forth in Subsection (15).

1042 Section 12. Section **57-3-107** is amended to read:

1043 **57-3-107. Unenforceable covenants -- Definition -- Inclusion in recorded**
1044 **document.**

1045 (1) As used in this chapter, "unenforceable covenant" means a restriction on alienation
1046 of real property, whether recited in a document to be recorded under this chapter, or recited in a
1047 document of record under this chapter, which is based on:

1048 (a) race;

- 1049 (b) gender[;];
- 1050 (c) national origin[;];
- 1051 (d) marital status[;];
- 1052 (e) sexual orientation, as defined in Section 34A-5-102;
- 1053 (f) gender expression or identity, as defined in Section 34A-5-102; or
- 1054 (g) a similar classification determined to be unenforceable under state or federal law.

1055 (2) A document [~~which~~] that recites an unenforceable covenant may be recorded as
1056 provided in this chapter.

1057 (3) [~~Any~~] An unenforceable covenant recited in a document to be recorded under this
1058 chapter or recited in a document of record is considered void, but does not invalidate the
1059 remainder of the document.

1060 Section 13. Section **57-21-2** is amended to read:

1061 **57-21-2. Definitions.**

1062 As used in this chapter:

1063 (1) "Aggrieved person" includes [~~any~~] a person who:

1064 (a) claims to have been injured by a discriminatory housing practice; or

1065 (b) believes that the person will be injured by a discriminatory housing practice that is
1066 about to occur.

1067 (2) "Commission" means the Labor Commission.

1068 (3) "Complainant" means an aggrieved person, including the director, who [~~has~~
1069 ~~commenced~~] commences a complaint with the division.

1070 (4) "Conciliation" means the attempted resolution of [~~issues~~] an issue raised by a
1071 complaint of a discriminatory housing [~~practices~~] practice by the investigation of the complaint
1072 through informal negotiations involving the complainant, the respondent, and the division.

1073 (5) "Conciliation agreement" means a written agreement setting forth the resolution of
1074 [~~the issues~~] an issue in conciliation.

1075 (6) (a) "Conciliation conference" means the attempted resolution of [~~issues~~] an issue
1076 raised by a complaint or by the investigation of a complaint through informal negotiations
1077 involving the complainant, the respondent, and the division. [~~The~~]

1078 (b) A conciliation conference is not subject to Title 63G, Chapter 4, Administrative
1079 Procedures Act.

- 1080 (7) "Covered multifamily [~~dwellings~~] dwelling" means:
- 1081 (a) [~~buildings~~] a building consisting of four or more dwelling units if the [~~buildings~~
- 1082 ~~have~~] building has one or more elevators; and
- 1083 (b) [~~ground floor units in other buildings~~] a ground floor unit in another building
- 1084 consisting of four or more dwelling units.
- 1085 (8) "Director" means the director of the division or a designee.
- 1086 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
- 1087 or more of a person's major life activities, including:
- 1088 (i) a person having a record of such an impairment; or
- 1089 (ii) a person being regarded as having such an impairment.
- 1090 (b) "Disability" does not include current illegal use of, or addiction to, [~~any~~] a federally
- 1091 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
- 1092 802.
- 1093 (10) "Discriminate" includes segregate or separate.
- 1094 (11) "Discriminatory housing practice" means an act that is unlawful under this
- 1095 chapter.
- 1096 (12) "Division" means the Division of Antidiscrimination and Labor established under
- 1097 the commission.
- 1098 (13) (a) "Dwelling" means [~~any~~] a building or structure, or a portion of a building or
- 1099 structure[;] that is:
- 1100 (i) occupied as[;] a residence of one or more families; or
- 1101 (ii) designed or intended for occupancy as, a residence of one or more families.
- 1102 (b) "Dwelling" [~~also~~] includes vacant land that is offered for sale or lease for the
- 1103 construction or location of a dwelling as described in Subsection (13)(a).
- 1104 (14) (a) "Familial status" means one or more individuals who have not attained the age
- 1105 of 18 years being domiciled with:
- 1106 (i) a parent or another person having legal custody of the [~~individual or~~] one or more
- 1107 individuals; or
- 1108 (ii) the designee of the parent or other person having custody, with the written
- 1109 permission of the parent or other person.
- 1110 (b) [~~The protections afforded against discrimination on the basis of familial status shall~~

1111 ~~apply to any~~ "Familial status" applies to a person who:

1112 (i) is pregnant;

1113 (ii) is in the process of securing legal custody of ~~[any]~~ an individual who has not
1114 attained the age of 18 years; or

1115 (iii) is a single individual.

1116 (15) "Gender expression or identity" is as defined in Section 34A-5-102.

1117 ~~[(15)]~~ (16) "National origin" means the place of birth of an individual or of [any] a
1118 lineal [ancestors] ancestor.

1119 ~~[(16)]~~ (17) "Person" includes [one or more individuals, corporations, limited liability
1120 companies, partnerships, associations, labor organizations, legal representatives, mutual
1121 companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in
1122 cases under the United States Bankruptcy Code, receivers, and fiduciaries.];

1123 (a) an individual;

1124 (b) a corporation;

1125 (c) a limited liability company;

1126 (d) a partnership;

1127 (e) an association;

1128 (f) a labor organization;

1129 (g) a legal representative;

1130 (h) a mutual company;

1131 (i) a joint-stock company;

1132 (j) a trust;

1133 (k) an unincorporated organization;

1134 (l) a trustee;

1135 (m) a trustee in a case under the United States Bankruptcy Code;

1136 (n) a receiver; or

1137 (o) a fiduciary.

1138 ~~[(17)]~~ (18) "Presiding officer" has the same meaning as provided in Section
1139 63G-4-103.

1140 ~~[(18)]~~ (19) "Real estate broker" or "salesperson" means the following as defined in
1141 Section 61-2-2;

1142 (a) a principal real estate broker[;];
1143 (b) an associate real estate broker[;]; or
1144 (c) a real estate sales agent [as those terms are defined in Section 61-2-2].
1145 ~~(19)~~ (20) "Respondent" means a person against whom a complaint of housing
1146 discrimination ~~has been~~ is initiated.
1147 ~~(20)~~ (21)(a) "Sex" means gender ~~and~~.
1148 (b) "Sex" includes:
1149 (i) pregnancy[;];
1150 (ii) childbirth[;]; and ~~disabilities~~
1151 (iii) a disability related to pregnancy or childbirth.
1152 (22) "Sexual orientation" is as defined in Section 34A-5-102.
1153 ~~(21)~~ (23) "Source of income" means the verifiable condition of being:
1154 (a) a recipient of federal, state, or local assistance, including medical assistance[;]; or
1155 ~~of being~~
1156 (b) a tenant receiving a federal, state, or local ~~subsidies~~ subsidy, including rental
1157 assistance or a rent ~~supplements~~ supplement.
1158 Section 14. Section **57-21-3** is amended to read:
1159 **57-21-3. Exemptions -- Sale by private individuals -- Nonprofit organizations --**
1160 **Noncommercial transactions.**
1161 (1) This chapter does not apply to ~~any~~ a single-family dwelling unit sold or rented by
1162 its owner if:
1163 (a) the owner is not a partnership, association, corporation, or other business entity;
1164 (b) the owner does not own ~~any~~ an interest in four or more single-family dwelling
1165 units held for sale or lease at the same time;
1166 (c) during a 24-month period, the owner does not sell two or more single-family
1167 dwelling units in which the owner was not residing or was not the most recent resident at the
1168 time of sale;
1169 (d) the owner does not retain or use the facilities or services of ~~any~~ a real estate
1170 broker or salesperson; and
1171 (e) the owner does not use ~~any~~ a discriminatory housing practice under Subsection
1172 57-21-5 (2) in the sale or rental of the dwelling.

1173 (2) This chapter does not apply to a temporary or permanent residence facility operated
 1174 by a nonprofit or charitable organization, including ~~[any]~~ a dormitory operated by a public or
 1175 private educational institution, if the discrimination is by sex or familial status for reasons of
 1176 personal modesty or privacy or in the furtherance of a religious institution's free exercise of
 1177 religious rights under the First Amendment of the United States Constitution.

1178 (3) This chapter, except for Subsection 57-21-5(2), does not apply to the rental of a
 1179 room in the dwelling by an owner-occupant of a single-family dwelling to another person if:

1180 (a) the dwelling is designed for occupancy by four or fewer families; and

1181 (b) the owner-occupant resides in one of the units.

1182 (4) (a) ~~[This]~~ Except as provided in Subsection (4)(b), this chapter does not prohibit a
 1183 religious organization, association, or society, or ~~[any]~~ a nonprofit institution or organization
 1184 operated, supervised, or controlled by or in conjunction with a religious organization,
 1185 association, or society, from:

1186 (i) limiting the sale, rental, or occupancy of ~~[dwellings]~~ a dwelling it owns or operates
 1187 for primarily noncommercial purposes to ~~[persons]~~ a person of the same religion; or ~~[from]~~

1188 (ii) giving preference to ~~[such persons, unless]~~ a person of the same religion.

1189 (b) This Subsection (4) does not apply if the membership in the religion is restricted
 1190 by:

1191 (i) race;

1192 (ii) color;

1193 (iii) sex, ~~or~~;

1194 (iv) national origin;

1195 (v) sexual orientation; or

1196 (vi) gender expression or identity.

1197 (5) (a) ~~[This]~~ Subject to Subsection (5)(b), this chapter does not prohibit a private club
 1198 not open to the public, including ~~[fraternities and sororities]~~ a fraternity or sorority associated
 1199 with ~~[institutions]~~ an institution of higher education, from:

1200 (i) limiting the rental or occupancy of ~~[lodgings to members]~~ a lodging to a member; or
 1201 [from]

1202 (ii) giving preference to its members, ~~but~~.

1203 (b) This Subsection (5) applies only if ~~[it]~~ the private club owns or operates the

1204 lodgings as an incident to its primary purpose and not for a commercial purpose.

1205 (6) This chapter does not prohibit distinctions [~~based~~] on the basis of the inability to
1206 fulfill the terms and conditions, including financial obligations, of:

1207 (a) a lease[;];

1208 (b) a rental agreement[;];

1209 (c) a contract of purchase or sale[;];

1210 (d) a mortgage[;];

1211 (e) a trust deed[;]; or

1212 (f) other financing agreement.

1213 (7) This chapter does not prohibit [~~any~~] a nonprofit educational institution from:

1214 (a) requiring [~~its~~] a single [~~students~~] student of the nonprofit educational institution to
1215 live in housing approved, operated, or owned by the nonprofit educational institution;

1216 (b) segregating housing that the nonprofit educational institution approves, operates, or
1217 owns on the basis of sex [~~or~~], familial status, or both for reasons of personal modesty or
1218 privacy, or in the furtherance of a religious institution's free exercise of religious rights under
1219 the First Amendment of the United States Constitution; or

1220 (c) otherwise assisting others in making sex-segregated housing available to [~~students~~]
1221 a student as may be permitted by regulations implementing the federal Fair Housing
1222 Amendments Act of 1988 and Title IX of the Education Amendments of 1972.

1223 (8) This chapter does not prohibit [~~any~~] a reasonable local, state, or federal
1224 [~~restrictions~~] restriction regarding the maximum number of occupants permitted to occupy a
1225 dwelling.

1226 (9) The provisions [~~pertaining~~] in this chapter that pertain to familial status do not
1227 apply to the existence, development, sale, rental, advertisement, or financing of any apartment
1228 complex, condominium, or other housing development designated as housing for older persons,
1229 as defined by Title VIII of the Civil Rights Act of 1968, as amended.

1230 Section 15. Section **57-21-5** is amended to read:

1231 **57-21-5. Discriminatory practices enumerated -- Protected persons, classes**
1232 **enumerated.**

1233 (1) (a) It is a discriminatory housing practice to do [~~any of the following~~] an act
1234 described in Subsection (1)(b) because of a person's:

1235 (i) race[;];
1236 (ii) color[;];
1237 (iii) religion[;];
1238 (iv) sex[;];
1239 (v) national origin[;];
1240 (vi) familial status[;];
1241 (vii) source of income[, or];
1242 (viii) disability[;];
1243 (ix) sexual orientation; or
1244 (x) gender expression or identity.
1245 (b) A discriminatory housing practice under Subsection (1)(a) includes to:
1246 ~~[(a)]~~ (i) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate
1247 for the sale or rental, or otherwise deny or make unavailable [any] a dwelling from [any] a
1248 person;
1249 ~~[(b)]~~ (ii) discriminate against [any] a person in [the terms, conditions, or privileges] a
1250 term, condition, or privilege of the sale or rental of [any] a dwelling or in providing facilities or
1251 services in connection with the dwelling; or
1252 ~~[(c)]~~ (iii) represent to [any] a person that [any] a dwelling is not available for
1253 inspection, sale, or rental when in fact the dwelling is available.
1254 (2) (a) It is a discriminatory housing practice to [make] directly or indirectly express a
1255 preference, limitation, or discrimination on the basis of the following in a manner described in
1256 Subsection (2)(b):
1257 (i) race;
1258 (ii) color;
1259 (iii) religion;
1260 (iv) sex;
1261 (v) national origin;
1262 (vi) familial status;
1263 (vii) source of income;
1264 (viii) disability;
1265 (ix) sexual orientation; or

- 1266 (x) gender expression or identity.
- 1267 (b) Subsection (2)(a) applies to a person who:
- 1268 (i) makes a representation orally or in writing [or make, print, circulate, publish, post,
- 1269 or cause] for the sale or rental of a dwelling;
- 1270 (ii) makes, prints, circulates, publishes, posts, or causes to be made, printed, circulated,
- 1271 published, or posted [any] a notice, statement, or advertisement[-or to use any] for the sale or
- 1272 rental of a dwelling;
- 1273 (iii) uses an application form for the sale or rental of a dwelling[-that directly or
- 1274 indirectly expresses any preference, limitation, or discrimination based on race, color, religion,
- 1275 sex, national origin, familial status, source of income, or disability]; or
- 1276 (iv) expresses [any] an intent to make [any such] a preference, limitation, or
- 1277 discrimination described in Subsection (2)(a).
- 1278 (3) It is a discriminatory housing practice to induce or attempt to induce, for profit,
- 1279 [any] a person to buy, sell, or rent [any] a dwelling by making [representations] a
- 1280 representation about the entry or prospective entry into the neighborhood of [persons] a person
- 1281 of a particular:
- 1282 (a) race[-];
- 1283 (b) color[-];
- 1284 (c) religion[-];
- 1285 (d) sex[-];
- 1286 (e) national origin[-];
- 1287 (f) familial status[-];
- 1288 (g) source of income[-or];
- 1289 (h) disability;
- 1290 (i) sexual orientation; or
- 1291 (j) gender expression or identity.
- 1292 (4) A discriminatory housing practice includes:
- 1293 (a) a refusal to permit, at the expense of the disabled person, a reasonable
- 1294 [modifications of] modification of an existing premises occupied or to be occupied by the
- 1295 person if the [modifications are] modification is necessary to afford that person full enjoyment
- 1296 of the premises, except that in the case of a rental, the landlord, where it is reasonable to do so,

1297 may condition permission for a modification on the renter agreeing to restore the interior of the
1298 premises, when reasonable, to the condition that existed before the modification, reasonable
1299 wear and tear excepted;

1300 (b) a refusal to make reasonable [~~accommodations in rules, policies, practices, or~~
1301 ~~services when the accommodations]~~ accommodation in a rule, policy, practice, or service when
1302 the accommodation may be necessary to afford the person equal opportunity to use and enjoy a
1303 dwelling; and

1304 (c) in connection with the design and construction of a covered multifamily [~~dwellings]~~
1305 dwelling for first occupancy after March 13, 1991, a failure to design and construct [~~those~~
1306 ~~dwellings]~~ the covered multifamily dwelling in a manner that:

1307 (i) the [~~dwellings have]~~ covered multifamily dwelling has at least one building entrance
1308 on an accessible route, unless it is impracticable to have one because of the terrain or unusual
1309 characteristics of the site; and

1310 (ii) with respect to dwellings with a building entrance on an accessible route:

1311 (A) the public use and common use portions of the covered multifamily dwelling are
1312 readily accessible to and usable by disabled persons;

1313 (B) all the doors designed to allow passage into and within the [~~dwellings]~~ covered
1314 multifamily dwelling are sufficiently wide to allow passage by disabled persons in wheelchairs;
1315 and

1316 (C) all premises within [~~these dwellings]~~ the covered multifamily dwelling contain the
1317 following features of adaptive design:

1318 (I) an accessible route into and through the covered multifamily dwelling;

1319 (II) light switches, electrical outlets, thermostats, and other environmental controls in
1320 accessible locations;

1321 (III) reinforcements in the bathroom walls to allow later installation of grab bars; and

1322 (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver
1323 about and use the space.

1324 (5) This section [~~also~~] applies to discriminatory housing practices because of [~~race,~~
1325 ~~color, religion, sex, national origin, familial status, source of income, or disability based upon]~~
1326 the following on the basis of a person's association with another person[-]:

1327 (a) race;

- 1328 (b) color;
- 1329 (c) religion;
- 1330 (d) sex;
- 1331 (e) national origin;
- 1332 (f) familial status;
- 1333 (g) source of income;
- 1334 (h) disability;
- 1335 (i) sexual orientation; or
- 1336 (j) gender expression or identity.

1337 Section 16. Section **57-21-6** is amended to read:

1338 **57-21-6. Discriminatory housing practices regarding residential real**
 1339 **estate-related transactions -- Discriminatory housing practices regarding the provisions**
 1340 **of brokerage services.**

1341 (1) (a) It is a discriminatory housing practice for [~~any~~] a person whose business
 1342 includes engaging in a residential real estate-related [~~transactions~~] transaction to discriminate
 1343 against [~~any~~] a person in making available [~~such~~] a residential real estate-related transaction, or
 1344 in [~~the terms or conditions~~] a term or condition of the transaction, because of:

- 1345 (i) race[;];
- 1346 (ii) color[;];
- 1347 (iii) religion[;];
- 1348 (iv) sex[;];
- 1349 (v) disability[;];
- 1350 (vi) familial status[;];
- 1351 (vii) source of income[~~, or~~];
- 1352 (viii) national origin;
- 1353 (ix) sexual orientation; or
- 1354 (x) gender expression or identity. [~~Residential~~]

1355 (b) A residential real estate-related [~~transactions include~~] transaction includes:

- 1356 [~~(a)~~] (i) making or purchasing [~~loans~~] a loan or providing other financial assistance:
- 1357 [~~(i)~~] (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling;

1358 or

1359 ~~[(i)]~~ (B) secured by residential real estate; or
1360 ~~[(b)]~~ (ii) selling, brokering, or appraising residential real property.
1361 (2) (a) It is a discriminatory housing practice to engage in an act described in
1362 Subsection (2)(b) because of:
1363 (i) race;
1364 (ii) color;
1365 (iii) religion;
1366 (iv) sex;
1367 (v) disability;
1368 (vi) familial status;
1369 (vii) source of income;
1370 (viii) national origin;
1371 (ix) sexual orientation; or
1372 (x) gender expression or identity.
1373 (b) Subsection (2)(a) makes it a discriminatory housing practice to:
1374 (i) deny [~~any~~] a person access to, [~~or~~] membership in, or participation in [~~any~~] a
1375 multiple-listing service, real estate brokers' organization, or other service, organization, or
1376 facility relating to the business of selling or renting [~~dwellings~~] a dwelling; or [~~to~~]
1377 (ii) discriminate against [~~any~~] a person in [~~the terms or conditions~~] a term or condition
1378 of access, membership, or participation in the organization, service, or facility [~~because of race,~~
1379 ~~color, religion, sex, disability, familial status, source of income, or national origin~~] described in
1380 Subsection (2)(b)(i).
1381 (3) This section [~~also~~] applies to discriminatory housing practices because of [~~race,~~
1382 ~~color, religion, sex, national origin, familial status, source of income, or disability based upon~~]
1383 the following on the basis of a person's association with another person:
1384 (a) race;
1385 (b) color;
1386 (c) religion;
1387 (d) sex;
1388 (e) national origin;
1389 (f) familial status;

1390 (g) source of income;

1391 (h) disability;

1392 (i) sexual orientation; or

1393 (j) gender expression or identity.

1394 Section 17. Section **57-21-7** is amended to read:

1395 **57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions --**

1396 **Obstruction of division investigation -- Reprisals.**

1397 (1) It is a discriminatory housing practice to do any of the following:

1398 (a) coerce, intimidate, threaten, or interfere with ~~[any]~~ a person:

1399 (i) in the exercise or enjoyment of ~~[any]~~ a right granted or protected under this chapter;

1400 (ii) because that person ~~[exercised any]~~ exercises a right granted or protected under this
1401 chapter; or

1402 (iii) because that person ~~[aided or encouraged any other]~~ aids or encourages another
1403 person in the exercise or enjoyment of ~~[any]~~ a right granted or protected under this chapter;

1404 (b) aid, abet, incite, compel, or coerce a person to engage in ~~[any of the practices]~~ a
1405 practice prohibited by this chapter;

1406 (c) attempt to aid, abet, incite, compel, or coerce a person to engage in ~~[any of the~~
1407 ~~practices]~~ a practice prohibited by this chapter;

1408 (d) obstruct or prevent ~~[any]~~ a person from complying with this chapter, or any order
1409 issued under this chapter;

1410 (e) resist, prevent, impede, or interfere with the director or ~~[any division employees or~~
1411 ~~representatives]~~ a division employee or representative in the performance of duty under this
1412 chapter; or

1413 (f) engage in ~~[any]~~ a reprisal against ~~[any]~~ a person because that person:

1414 (i) ~~[opposed]~~ opposes a practice prohibited under this chapter; or

1415 (ii) ~~[filed]~~ files a complaint, ~~[testified, assisted, or participated]~~ testifies, assists, or
1416 participates in any manner in ~~[any]~~ an investigation, proceeding, or hearing under this chapter.

1417 (2) This section also applies to discriminatory housing practices because of ~~[race,~~
1418 ~~color, religion, sex, national origin, familial status, source of income, or disability based upon]~~
1419 the following on the basis of a person's association with another person[-]:

1420 (a) race;

- 1421 (b) color;
- 1422 (c) religion;
- 1423 (d) sex;
- 1424 (e) national origin;
- 1425 (f) familial status;
- 1426 (g) source of income;
- 1427 (h) disability;
- 1428 (i) sexual orientation; or
- 1429 (j) gender expression or identity.

1430 Section 18. Section **67-5-12** is amended to read:

1431 **67-5-12. Dismissal of career status employees -- Causes -- Procedure -- Retention**
1432 **roster -- Reappointment register.**

1433 (1) (a) [~~Employees~~] An employee in a career status may be dismissed only:

- 1434 (i) to advance the good of public service;
- 1435 (ii) where funds have expired or work no longer exists; or
- 1436 (iii) for any of the following causes or reasons:
 - 1437 (A) noncompliance with provisions in the Office of Attorney General policy manual, or
 - 1438 division policies, and, for attorneys, noncompliance with the Rules of Professional Conduct;
 - 1439 (B) work performance that is inefficient or incompetent;
 - 1440 (C) failure to maintain skills and adequate performance levels;
 - 1441 (D) insubordination or disloyalty to the orders of a superior;
 - 1442 (E) misfeasance, malfeasance, or nonfeasance;
 - 1443 (F) failure to advance the good of the public service, including conduct on or off duty
 - 1444 which demeans or harms the effectiveness or ability of the office to fulfill its mission or legal
 - 1445 obligations;
 - 1446 (G) conduct on or off duty which creates a conflict of interest with the employee's
 - 1447 public responsibilities or impact that employee's ability to perform his or her job assignments;
 - 1448 (H) any incident involving intimidation, physical harm, threats of physical harm
 - 1449 against coworkers, management, or the public;
 - 1450 (I) failure to meet the requirements of the position;
 - 1451 (J) dishonesty; or

1452 (K) misconduct.

1453 (b) [Employees] An employee in career status may not be dismissed for reasons of:

1454 (i) race[;];

1455 (ii) national origin[;];

1456 (iii) religion[;];

1457 (iv) political affiliation;

1458 (v) sexual orientation, as defined in Section 34A-5-102; or

1459 (vi) gender expression or identity, as defined in Section 34A-5-102.

1460 (2) Except in aggravated cases of misconduct, an employee in a career status may not
1461 be suspended, demoted, or dismissed without the following procedures:

1462 (a) The attorney general or a designated representative shall notify the employee of the
1463 reasons for suspension, demotion, or dismissal.

1464 (b) The employee shall have an opportunity to reply and have the reply considered by
1465 the attorney general or a designated representative.

1466 (c) The employee shall have an opportunity to be heard by the attorney general or a
1467 designated representative.

1468 (d) Following a hearing, an employee may be suspended, demoted, or dismissed if the
1469 attorney general or a designated representative finds adequate reason.

1470 (e) If the attorney general or a designated representative finds that retention of an
1471 employee would endanger the peace and safety of others or pose a grave threat to the public
1472 interest, the employee may be summarily suspended pending administrative hearings and a
1473 review by the Career Service Review Board.

1474 (3) (a) An employee in a career status who is aggrieved by a decision of the attorney
1475 general or a designated representative to suspend, demote, or dismiss the employee may appeal
1476 the decision to the Career Service Review Board or its hearing officers by following the
1477 procedures in Title 67, Chapter 19a, Grievance and Appeal Procedures.

1478 (b) Matters other than dismissal or demotion may be appealed to and reviewed by the
1479 attorney general or a designated representative whose decision is final with no right of appeal
1480 to the Career Service Review Board or its hearing officers.

1481 (4) Disciplinary actions shall be supported by credible evidence, but the normal rules
1482 of evidence in courts of law do not apply in hearings before the attorney general or a designated

1483 representative or the Career Service Review Board or its hearing officers.

1484 (5) (a) Reductions in force required by reinstatement of an employee under Section
1485 67-5-11, inadequate funds, change of workload, or lack of work shall be governed by a
1486 retention roster to be maintained by the Office of the Attorney General and the requirements of
1487 this Subsection (5).

1488 (b) Except attorney general executive or administrative appointees, employees not in a
1489 career status shall be separated before any employee in a career status.

1490 (c) Retention points for each employee in a career status shall be based on the
1491 employee's seniority in service within each employee category in the Office of the Attorney
1492 General, including any military service fulfilled subsequent to the employee's original
1493 appointment.

1494 (d) Employees in career status shall be separated in the order of their retention points,
1495 the employee with the lowest points to be discharged first.

1496 (e) Those employees who are serving in other positions under Section 67-5-11 shall:

1497 (i) have retention points determined as if they were working for the office; and

1498 (ii) be separated in the order of the retention points as if they were working in the
1499 Office of the Attorney General.

1500 (f) An employee in a career status who is separated by reason of a reduction in force
1501 shall be:

1502 (i) placed on a reappointment register kept by the Office of the Attorney General for
1503 one year; and

1504 (ii) offered reappointment to a position in the same category in the Office of the
1505 Attorney General before any employee not having a career status is appointed.

1506 Section 19. Section **67-19-3.1** is amended to read:

1507 **67-19-3.1. Principles guiding interpretation of chapter and adoption of rules.**

1508 (1) The department shall establish a career service system designed in a manner that
1509 will provide for the effective implementation of the following merit principles:

1510 (a) recruiting, selecting, and advancing employees on the basis of their relative ability,
1511 knowledge, and skills, including open consideration of qualified applicants for initial
1512 appointment;

1513 (b) providing for equitable and competitive compensation;

- 1514 (c) training employees as needed to assure high-quality performance;
- 1515 (d) retaining employees on the basis of the adequacy of their performance and
- 1516 separating employees whose inadequate performance cannot be corrected;
- 1517 (e) fair treatment of applicants and employees in all aspects of human resource
- 1518 administration;
- 1519 (i) without regard to:
- 1520 (A) race[;];
- 1521 (B) color[;];
- 1522 (C) religion[;];
- 1523 (D) sex[;];
- 1524 (E) national origin[;];
- 1525 (F) political affiliation[;];
- 1526 (G) age[, or];
- 1527 (H) disability[;];
- 1528 (I) sexual orientation, as defined in Section 34A-5-102; or
- 1529 (J) gender expression or identity, as defined in Section 34A-5-102; and
- 1530 (ii) with proper regard for their privacy and constitutional rights as citizens;
- 1531 (f) providing information to employees regarding their political rights and the
- 1532 prohibited practices under the Hatch Act; and
- 1533 (g) providing a formal procedure for processing the appeals and grievances of
- 1534 employees without discrimination, coercion, restraint, or reprisal.
- 1535 (2) The principles in Subsection (1) shall govern interpretation and implementation of
- 1536 this chapter.
- 1537 Section 20. Section **67-19-6.3** is amended to read:
- 1538 **67-19-6.3. Equal employment opportunity plan.**
- 1539 (1) In conjunction with the director's duties under Section 67-19-6, and
- 1540 notwithstanding the general prohibition in Subsection 34A-5-106(3)[(e)](d), the executive
- 1541 director shall prepare an equal employment opportunity plan for state employment consistent
- 1542 with the guidelines provided in federal equal employment opportunity laws and in related
- 1543 federal regulations.
- 1544 (2) The equal employment opportunity plan required by this section applies only to

1545 state career service employees described in Section 67-19-15.

1546 (3) The Legislature shall review the equal employment opportunity plan required by
1547 this section before [it] the equal employment opportunity plan may be implemented.

1548 (4) Nothing in this section requires the establishment of hiring quotas or preferential
1549 treatment of [~~any~~] an identifiable group.

1550 Section 21. Section **67-19-18** is amended to read:

1551 **67-19-18. Dismissals and demotions -- Grounds -- Disciplinary action --**
1552 **Procedure -- Reductions in force.**

1553 (1) [~~Career~~] A career service [~~employees~~] employee may be dismissed or demoted:

1554 (a) to advance the good of the public service; or

1555 (b) for just causes such as inefficiency, incompetency, failure to maintain skills or
1556 adequate performance levels, insubordination, disloyalty to the orders of a superior,
1557 misfeasance, malfeasance, or nonfeasance in office.

1558 (2) [~~Employees~~] An employee may not be dismissed because of:

1559 (a) race[;];

1560 (b) sex[;];

1561 (c) age[;];

1562 (d) disability[;];

1563 (e) national origin[;];

1564 (f) religion[;];

1565 (g) political affiliation[~~, or~~];

1566 (h) sexual orientation, as defined in Section 34A-5-102;

1567 (i) gender expression or identity, as defined in Section 34A-5-102; or

1568 (j) other nonmerit factor including the exercise of rights under this chapter.

1569 (3) The executive director shall establish rules governing the procedural and
1570 documentary requirements of disciplinary dismissals and demotions.

1571 (4) If an agency head finds that a career service employee is charged with aggravated
1572 misconduct or that retention of a career service employee would endanger the peace and safety
1573 of others or pose a grave threat to the public interest, the employee may be suspended pending
1574 the administrative appeal to the department head as provided in Subsection (5).

1575 (5) (a) A career service employee may not be demoted or dismissed unless the

1576 department head or designated representative has complied with this Subsection (5).

1577 (b) The department head or designated representative notifies the employee in writing
1578 of the reasons for the dismissal or demotion.

1579 (c) The employee has no less than five working days to reply and have the reply
1580 considered by the department head.

1581 (d) The employee has an opportunity to be heard by the department head or designated
1582 representative.

1583 (e) Following the hearing, the employee may be dismissed or demoted if the
1584 department head finds adequate cause or reason.

1585 (6) (a) Reductions in force required by inadequate funds, change of workload, or lack
1586 of work are governed by retention rosters established by the executive director.

1587 (b) Under those circumstances:

1588 (i) The agency head shall designate the category of work to be eliminated, subject to
1589 review by the executive director.

1590 (ii) Temporary and probationary employees shall be separated before any career service
1591 employee.

1592 (iii) (A) Career service employees shall be separated in the order of their retention
1593 points, the employee with the lowest points to be discharged first.

1594 (B) Retention points for each career service employee shall be computed according to
1595 rules established by the executive director, allowing appropriate consideration for proficiency
1596 and for seniority in state government, including any active duty military service fulfilled
1597 subsequent to original state appointment.

1598 (iv) A career service employee who is separated in a reduction in force shall be:

1599 (A) placed on the reappointment roster provided for in Subsection 67-19-17(2); and

1600 (B) reappointed without examination to any vacancy for which the employee is
1601 qualified which occurs within one year of the date of the separation.

1602 (c) (i) An employee separated due to a reduction in force may appeal to the department
1603 head for an administrative review.

1604 (ii) The notice of appeal must be submitted within 20 working days after the
1605 employee's receipt of written notification of separation.

1606 (iii) The employee may appeal the decision of the department head according to the

1607 grievance and appeals procedure of this ~~act~~ chapter.

H.B. 267 1st Sub. (Buff) - Antidiscrimination Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill may require an appropriation of \$4,000 per year from the General Fund to cover attorney time associated with lawsuits for discrimination prohibited in the bill. The Attorney General's office states that it can cover such costs within existing resources.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$4,000	\$4,000	\$0	\$0	\$0
Total	\$0	\$4,000	\$4,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

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