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NONDISCRIMINATION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. McCoy

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Antidiscrimination Act.

Highlighted Provisions:

This bill:

- ▶ defines "military service";
- ▶ includes military service as a prohibited basis for discrimination in employment in a manner consistent with the Utah Antidiscrimination Act;
- ▶ addresses preferences permitted by law because of military service; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 34A-5-102**, as last amended by Laws of Utah 2008, Chapter 382
- 34A-5-104**, as last amended by Laws of Utah 1999, Chapter 161
- 34A-5-105**, as last amended by Laws of Utah 2003, Chapter 65
- 34A-5-106**, as last amended by Laws of Utah 2003, Chapter 65
- 34A-5-107**, as last amended by Laws of Utah 2008, Chapter 382



28 67-19-6.3, as last amended by Laws of Utah 2006, Chapter 139



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

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

32 **34A-5-102. Definitions.**

33 As used in this chapter:

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

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

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

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

41 (3) "Court" means:

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

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

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

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

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

53 ~~[(6)]~~ (7) "Division" means the Division of Antidiscrimination and Labor.

54 ~~[(7)]~~ (8) "Employee" means ~~[any]~~ a person applying with or employed by an employer.

55 ~~[(8)]~~ (9) (a) "Employer" means:

56 (i) the state;

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

58 (iii) a board, commission, department, institution, school district, trust, or agent of;

59 (A) the state; or [its]
 60 (B) a political [~~subdivisions~~] subdivision; or
 61 (iv) a person employing 15 or more employees within the state for each working day in
 62 each of 20 calendar weeks or more in the current or preceding calendar year.

63 (b) "Employer" does not include:
 64 (i) a religious organization or association;
 65 (ii) a religious corporation sole; or
 66 (iii) [~~any~~] a corporation or association constituting a wholly owned subsidiary or
 67 agency of [~~any~~];

68 (A) a religious organization or association; or

69 (B) a religious corporation sole.

70 [~~(9)~~] (10) "Employment agency" means any person:

71 (a) undertaking to procure employees or opportunities to work for any other person; or

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

73 (10)(a).

74 [~~(10)~~] (11) "Joint apprenticeship committee" means [~~any~~] an association of the
 75 following that provides, coordinates, or controls an apprentice training program:

76 (a) representatives of a labor organization; and

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

79 [~~(11)~~] (12) "Labor organization" means [~~any~~] an organization that exists for the
 80 purpose in whole or in part of:

81 (a) collective bargaining;

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

83 (i) grievances[~~;~~]; or

84 (ii) terms or conditions of employment; or

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

86 [~~(12)~~] (13) "National origin" means the place of birth, domicile, or residence of an
 87 individual or of an individual's ancestors.

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

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

90 for at least 180 consecutive days;

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

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

94 (ii) separated or retired under honorable conditions;

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

98 (e) is committed to:

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

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

102 ~~[(13)]~~ (15) "On-the-job-training program" means ~~[any]~~ a program designed to instruct a
103 person who, while learning the particular job for which the person is receiving instruction:

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

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

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

107 (ii) when the program is completed.

108 ~~[(14)]~~ (16) "Person" means ~~[one or more individuals, partnerships, associations,~~
109 ~~corporations, legal representatives, trusts or trustees, receivers, the state and all political~~
110 ~~subdivisions and agencies of the state.];~~

111 (a) an individual;

112 (b) a partnership;

113 (c) an association;

114 (d) a corporation;

115 (e) a legal representative;

116 (f) a trust or trustee;

117 (g) a receiver;

118 (h) the state;

119 (i) a political subdivision; and

120 (j) an agency of the state.

121 ~~[(15)]~~ (17) "Presiding officer" ~~[means the same as that term]~~ is as defined in Section
122 63G-4-103.

123 ~~[(16)]~~ (18) "Prohibited employment practice" means a practice specified as
124 discriminatory, and therefore unlawful, in Section 34A-5-106.

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

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

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

130 ~~[(17)]~~ (20) "Retaliate" means the taking of adverse action:

131 (a) by:

132 (i) an employer[;];

133 (ii) an employment agency[;];

134 (iii) a labor organization[;];

135 (iv) an apprenticeship program[;];

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

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

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

139 (20)(a); and

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

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

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

144 (ii) files charges, testifies, assists, or participates in any way in [any] a proceeding,
145 investigation, or hearing under this chapter.

146 ~~[(18)]~~ (21) "Vocational school" means ~~[any]~~ a school or institution conducting a course
147 of instruction, training, or retraining to prepare [individuals] an individual to:

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

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

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

152 **34A-5-104. Powers.**

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

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

157 (2) The division may:

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

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

162 (i) discrimination in:

163 (A) employment;

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

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

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

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

168 (A) a person;

169 (B) an employer;

170 (C) an employment agency;

171 (D) a labor organization;

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

174 (F) a joint apprenticeship committee; [~~and~~] or

175 (G) a vocational school;

176 (c) investigate and study the existence, character, causes, and extent of discrimination
177 in employment, an apprenticeship [~~programs,~~] program, an on-the-job training [~~programs, and~~]
178 program, or a vocational [~~schools~~] school in this state by one or more of the following:

179 (i) employers;

180 (ii) employment agencies;

181 (iii) labor organizations;

182 (iv) joint apprenticeship committees; and

- 183 (v) vocational schools;
- 184 (d) formulate one or more plans for the elimination of discrimination by educational or
185 other means;
- 186 (e) hold [~~hearings~~] a hearing upon a complaint made against:
- 187 (i) a person;
- 188 (ii) an employer;
- 189 (iii) an employment agency;
- 190 (iv) a labor organization;
- 191 (v) [~~the employees or members~~] an employee or member of an employment agency or
192 labor organization;
- 193 (vi) a joint apprenticeship committee; or
- 194 (vii) a vocational school;
- 195 (f) issue one or more publications [~~and~~] or reports of investigations and research that:
- 196 (i) promote good will among the various racial, religious, and ethnic groups of the
197 state; and
- 198 (ii) minimize or eliminate discrimination in employment because of race, color, sex,
199 religion, national origin, age, [~~or~~] disability, or military service;
- 200 (g) prepare and transmit to the governor, at least once each year, [~~reports~~] a report
201 describing:
- 202 (i) [~~its~~] the division's proceedings, investigations, and hearings;
- 203 (ii) the outcome of [~~those hearings~~] a hearing described in Subsection (2)(g)(i);
- 204 (iii) decisions the division [~~has rendered~~] renders; and
- 205 (iv) the other work performed by the division;
- 206 (h) recommend one or more policies to the governor, and submit [~~recommendation~~]
207 one or more recommendations to employers, employment agencies, and labor organizations to
208 implement those policies;
- 209 (i) recommend any legislation concerning discrimination because of race, sex, color,
210 national origin, religion, age, [~~or~~] disability, or military service to the governor that [~~it~~] the
211 division considers necessary; and
- 212 (j) within the limits of [~~any~~] appropriations made for [~~its~~] the division's operation,
213 cooperate with other agencies or organizations, both public and private, in the planning and

214 conducting of educational programs designed to eliminate discriminatory practices prohibited
215 under this chapter.

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

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

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

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

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

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

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

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

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

233 **34A-5-105. Antidiscrimination and Labor Advisory Council -- Membership --**
234 **Appointment -- Term -- Powers and duties -- Chair.**

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

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

238 (i) three employer representatives;

239 (ii) three employee representatives;

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

242 (iv) two representatives of persons who:

243 (A) sell or rent dwellings; and

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

245 (v) three representatives of the general public; and
 246 (b) the commissioner or the commissioner's designee as a nonvoting member of the
 247 council.

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

- 250 (a) race;
- 251 (b) color;
- 252 (c) national origin;
- 253 (d) ~~[gender]~~ sex;
- 254 (e) religion;
- 255 (f) age;
- 256 (g) persons with disabilities;
- 257 (h) familial status as defined in Section 57-21-2; ~~[and]~~
- 258 (i) source of income as defined in Section 57-21-2~~[-]~~; and
- 259 (j) military service.

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

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

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

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

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

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

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

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

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

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

286 (i) offer advice on issues requested by:

287 (A) the commission;

288 (B) the division; or

289 (C) the Legislature; and

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

291 (A) employment discrimination;

292 (B) housing discrimination; and

293 (C) the administration by the commission of:

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

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

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

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

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

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

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

305 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**
306 **practices.**

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

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

- 313 (A) race;
- 314 (B) color;
- 315 (C) sex;
- 316 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 317 (E) age, if the individual is 40 years of age or older;
- 318 (F) religion;
- 319 (G) national origin; [~~or~~]
- 320 (H) disability[~~;~~]; or
- 321 (I) military service.

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

- 324 (A) education;
- 325 (B) training;
- 326 (C) ability, with or without reasonable accommodation;
- 327 (D) moral character;
- 328 (E) integrity;
- 329 (F) disposition to work;
- 330 (G) adherence to reasonable rules and regulations; and
- 331 (H) other job related qualifications required by an employer.

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

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

336 [~~(F)~~] (A) nothing in this chapter prevents [~~increases~~] an increase in pay as a result of
 337 longevity with the employer, if the salary [~~increases are~~] increase is uniformly applied and

338 available to all employees on a substantially proportional basis; and

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

343 (b) An employment agency may not:

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

347 (A) race;

348 (B) color;

349 (C) sex;

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

351 (E) religion;

352 (F) national origin;

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

354 (H) disability; or

355 (I) military service; or

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

359 (A) race;

360 (B) color;

361 (C) sex;

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

363 (E) religion;

364 (F) national origin;

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

366 (H) disability~~[-];~~ or

367 (I) military service.

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

369 (A) exclude [~~any~~] an individual otherwise qualified from full membership rights in the
 370 labor organization[~~;~~];

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

372 (C) otherwise discriminate against or harass [~~any~~] a member of the labor
 373 [~~organization's members~~] organization in full employment of work opportunity, or
 374 representation[~~;~~~~because of~~].

375 (ii) An action described in Subsection (1)(c)(i) is prohibited if it is taken because of:

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

377 (B) color;

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

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

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

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

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

383 [(~~vii~~)] (H) disability[~~;~~]; or

384 (I) military service.

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

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

392 (A) race;

393 (B) color;

394 (C) religion;

395 (D) sex;

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

397 (F) national origin;

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

399 (H) disability; or

400 (I) military service; or

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

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

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

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

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

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

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

419 (I) race;

420 (II) color;

421 (III) sex;

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

423 (V) religion;

424 (VI) national origin;

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

426 (VIII) disability; or

427 (IX) military service;

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

430 (I) race;

431 (II) color;
432 (III) sex;
433 (IV) pregnancy, childbirth, or pregnancy-related conditions;
434 (V) religion;
435 (VI) national origin;
436 (VII) age, if the individual is 40 years of age or older;
437 (VIII) disability; or
438 (IX) military service;
439 ~~(C) discriminate against [such a person in the terms, conditions, or privileges of~~
440 ~~programs] a qualified person in a term, condition, or privilege described in Subsection~~
441 ~~(1)(f)(i)(A), because of:~~
442 (I) race;
443 (II) color;
444 (III) sex;
445 (IV) pregnancy, childbirth, or pregnancy-related conditions;
446 (V) religion;
447 (VI) national origin;
448 (VII) age, if the individual is 40 years of age or older; ~~[or]~~
449 (VIII) disability; or
450 (IX) military service;
451 ~~[(C)]~~ (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be
452 printed or published, ~~[any]~~ a notice or advertisement relating to employment by the employer,
453 or membership in or ~~[any]~~ a classification or referral for employment by a labor organization,
454 or relating to ~~[any]~~ a classification or referral for employment by an employment agency,
455 indicating ~~[any]~~ a preference, limitation, specification, or discrimination based on:
456 (I) race;
457 (II) color;
458 (III) sex;
459 (IV) pregnancy, childbirth, or pregnancy-related conditions;
460 (V) religion;
461 (VI) national origin;

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

463 (VIII) disability[-]; or

464 (IX) military service.

465 (ii) Notwithstanding Subsection (1)(f)(i)[(C)](D), if the following is a bona fide
466 occupational qualification for employment, a notice or advertisement described in Subsection
467 (1)(f)(i)[(C)](D) may indicate a preference, limitation, specification, or discrimination based
468 on:

469 (A) race;

470 (B) color;

471 (C) religion;

472 (D) sex;

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

474 (F) age;

475 (G) national origin; [or]

476 (H) disability[-]; or

477 (I) military service.

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

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

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

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

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

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

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

492 (B) for an employment agency to classify or refer for employment [~~any~~] an

493 individual[;];

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

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

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

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

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

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

512 (A) the employer's:

513 (I) spouse;

514 (II) child; or

515 (III) son-in-law or daughter-in-law;

516 (B) [~~any~~] a person for whom the employer is or would be liable to furnish financial
517 support if [~~those persons~~] the person were unemployed;

518 (C) [~~any~~] a person to whom the employer during the preceding six months [~~has~~
519 ~~furnished~~] furnishes more than one-half of total financial support regardless of whether or not
520 the employer was or is legally obligated to furnish support; or

521 (D) [~~any~~] a person whose education or training [~~was~~] is substantially financed by the
522 employer for a period of two years or more.

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

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

526 (i) religion, sex, pregnancy, childbirth, a pregnancy-related condition, national origin,
527 disability, or military service is a bona fide occupational qualification reasonably necessary to
528 the normal operation of that particular business or enterprise; or

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

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

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

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

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

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

545 (B) in comparison with the total number or percentage of persons of that race, color,
546 religion, sex, age, national origin, disability, or military service in any community or county or
547 in the available work force in a community or county.

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

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

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

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

553 (D) admitted to or employed in, [any] an apprenticeship or other training program[; in
554 comparison with the total number or percentage of persons of that race, color, religion, sex,

555 ~~age, national origin, or disability in any community or county or in the available work force in~~
 556 ~~any community or county].~~

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

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

565 (a) under Subsection (6);

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

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

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

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

571 (ii) for the two-year period immediately before retirement, is employed in a bona fide
 572 executive or a high policymaking position~~;~~ if:

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

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

576 (A) pension~~;~~ plan;

577 (B) profit-sharing~~;~~ plan;

578 (C) savings~~;~~ or plan;

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

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

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

583 (7) It is not a discriminatory or prohibited practice to give a preference to an individual
 584 because of military service if that preference is given in accordance with a federal, state, or
 585 local law other than this chapter.

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

587 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
588 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

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

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

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

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

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

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

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

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

616 (d) An aggrieved party may withdraw the request for agency action [~~prior to~~] before the

617 issuance of a final order.

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

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

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

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

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

638 (b) (i) Upon receipt of the investigator's report described in Subsection (5)(a), the
639 director or the director's designee may issue a determination and order based on the
640 investigator's report.

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

642 (A) direct the respondent to cease any discriminatory or prohibited employment
643 practice; and

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

646 (c) A party may file a written request to the Division of Adjudication for an evidentiary
647 hearing to review de novo the director's or the director's designee's determination and order

648 within 30 days of the date the determination and order is issued.

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

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

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

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

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

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

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

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

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

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

671 (a) cease any discriminatory or prohibited employment practice; and

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

673 (i) reinstatement;

674 (ii) back pay and benefits;

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

676 (iv) costs.

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

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

- 682 (i) Section 63G-4-301; and
683 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

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

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

- 688 (a) Section 63G-4-403; and
689 (b) Chapter 1, Part 3, Adjudicative Proceedings.

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

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

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

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

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

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

705 (15) The procedures contained in this section are the exclusive remedy under state law
706 for employment discrimination based upon:

- 707 (a) race;
708 (b) color;
709 (c) sex;

- 710 (d) retaliation;
- 711 (e) pregnancy, childbirth, or pregnancy-related conditions;
- 712 (f) age;
- 713 (g) religion;
- 714 (h) national origin; ~~[or]~~
- 715 (i) disability~~[-];~~ or
- 716 (j) military service.

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

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

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

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

727 **67-19-6.3. Equal employment opportunity plan.**

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

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

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

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

Legislative Review Note
as of 2-9-09 11:44 AM

Office of Legislative Research and General Counsel

S.B. 194 - Nondiscrimination Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
