

**ANTIDISCRIMINATION AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christine A. Johnson**

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

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Antidiscrimination Act and Utah Fair Housing Act to address discrimination, including discrimination on the basis of sexual orientation or gender identity.

**Highlighted Provisions:**

This bill:

- ▶ modifies definition provisions related to employment and housing discrimination, including defining "gender identity" and "sexual orientation";
- ▶ includes gender identity and sexual orientation as a consideration in appointments to the Antidiscrimination and Labor Advisory Council;
- ▶ includes sexual orientation and gender identity as a prohibited basis for discrimination in employment;
- ▶ prohibits quotas or preferences on the basis of sexual orientation or gender identity;
- ▶ provides for a conciliation process with regard to complaints of discrimination in employment;
- ▶ modifies exemptions to the Utah Fair Housing Act;
- ▶ includes sexual orientation and gender identity as a prohibited basis for discriminatory housing practices;
- ▶ provides for severability; and
- ▶ makes technical and conforming amendments.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

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 **57-21-2**, as last amended by Laws of Utah 2008, Chapter 382

40 **57-21-3**, as last amended by Laws of Utah 1993, Chapter 114

41 **57-21-5**, as last amended by Laws of Utah 1993, Chapter 114

42 **57-21-6**, as last amended by Laws of Utah 1993, Chapter 114

43 **57-21-7**, as last amended by Laws of Utah 1993, Chapter 114

44 **57-21-9**, as last amended by Laws of Utah 2008, Chapter 382

45 **57-21-10**, as last amended by Laws of Utah 2008, Chapter 382

46 **67-19-6.3**, as last amended by Laws of Utah 2006, Chapter 139

47 ENACTS:

48 **34A-5-109**, Utah Code Annotated 1953

49 **57-21-15**, Utah Code Annotated 1953



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

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

53 **34A-5-102. Definitions.**

54 As used in this chapter:

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

58 (2) "Bona fide occupational qualification" means a characteristic applying to an

59 employee:

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

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

62 (3) "Conciliation" means the attempted resolution of an issue raised in a complaint of a  
63 prohibited employment practice by the investigation of the complaint through informal  
64 negotiations involving the complainant, the respondent, and the division.

65 (4) "Conciliation agreement" means a written agreement setting forth the resolution of  
66 an issue in conciliation.

67 (5) "Conciliation conference" means the attempted resolution of an issue raised in a  
68 complaint by the investigation of a complaint through informal negotiations involving the  
69 complainant, the respondent, and the division.

70 [~~3~~] (6) "Court" means:

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

73 (b) if [~~this~~] the district court is not in session at that time, a judge of the court described  
74 in Subsection [~~3~~] (6)(a).

75 [~~4~~] (7) "Director" means the director of the division.

76 [~~5~~] (8) "Disability" means a physical or mental disability as defined and covered by  
77 the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

78 (9) "Discriminate in matters of compensation" means the payment of differing wages  
79 or salaries to employees having substantially equal experience, responsibilities, and skill for the  
80 particular job.

81 [~~6~~] (10) "Division" means the Division of Antidiscrimination and Labor.

82 [~~7~~] (11) "Employee" means [~~any~~] a person applying with or employed by an  
83 employer.

84 [~~8~~] (12) (a) "Employer" means:

85 (i) the state;

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

87 (iii) a board, commission, department, institution, school district, trust, or agent of the  
88 state or [~~its~~] a political [~~subdivisions; or~~] subdivision of the state;

89 (iv) a person employing 15 or more employees within the state for each working day

90 in each of 20 calendar weeks or more in the current or preceding calendar year[-]; or

91 (v) an agent of a person listed in Subsections (12)(a)(i) through (iv).

92 (b) "Employer" does not include:

93 (i) a religious organization or association; or

94 ~~[(ii) a religious corporation sole; or]~~

95 ~~[(iii) any corporation or association constituting a wholly owned subsidiary or agency~~  
96 ~~of any religious organization or association or religious corporation sole.]~~

97 (ii) as it relates to a prohibited employment practice on the basis of sexual orientation  
98 or gender identity, an expressive association if employing an individual would significantly  
99 burden the expressive association's rights of expressive association under decisions of the  
100 United States Supreme Court.

101 ~~[(9)]~~ (13) "Employment agency" means ~~[any]~~ a person or an agent of a person:

102 (a) undertaking to procure ~~[employees or opportunities]~~ an employee or an opportunity  
103 to work for [any other] another person within the state; or

104 (b) holding itself out to be equipped to take an action described in Subsection ~~[(9)]~~  
105 (13)(a).

106 (14) "Gender identity" means a person's actual or perceived gender identity,  
107 appearance, mannerisms, or other characteristics of an individual with or without regard to the  
108 person's sex at birth.

109 ~~[(10)]~~ (15) "Joint apprenticeship committee" means ~~[any]~~ an association of  
110 representatives of a labor organization and an employer providing, coordinating, or controlling  
111 an apprentice training program.

112 ~~[(11)]~~ (16) "Labor organization" means ~~[any]~~ an organization that exists for the  
113 purpose in whole or in part of:

114 ~~[(a) collective bargaining;]~~

115 ~~[(b)]~~ (a) collective dealing with ~~[employers]~~ an employer concerning grievances, terms,  
116 or conditions of employment; or

117 ~~[(c)]~~ (b) other mutual aid or protection in connection with employment.

118 ~~[(12)]~~ (17) "National origin" means the place of birth, domicile, or residence of an  
119 individual or of an individual's ancestors.

120 ~~[(13)]~~ (18) "On-the-job-training program" means ~~[any]~~ a program designed to instruct a

121 person who, while learning the particular job for which the person is receiving instruction:

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

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

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

125 (ii) when the program is completed.

126 (19) "Otherwise qualified for employment" means a person possesses the following  
127 required by an employer for a particular job, job classification, or position:

128 (a) education;

129 (b) training;

130 (c) ability;

131 (d) moral character;

132 (e) integrity;

133 (f) disposition to work;

134 (g) adherence to reasonable rules and regulations; and

135 (h) other job related qualifications required by an employer.

136 [~~(14)~~] (20) "Person" means:

137 (a) one or more;

138 (i) individuals[;];

139 (ii) partnerships[;];

140 (iii) associations[;];

141 (iv) corporations[;];

142 (v) legal representatives[;];

143 (vi) trusts or trustees[;]; or

144 (vii) receivers[;];

145 (b) the state; and [~~all political subdivisions and agencies]~~

146 (c) a political subdivision or agency of the state.

147 [~~(15)~~] (21) "Presiding officer" means the same as that term is defined in Section  
148 63G-4-103.

149 [~~(16)~~] (22) "Prohibited employment practice" means a practice specified as  
150 discriminatory, and therefore unlawful, in Section 34A-5-106.

151 (23) "Religious organization or association" means:

152 (a) a religious corporation;  
153 (b) a religious association;  
154 (c) a religious educational institution;  
155 (d) a religious society;  
156 (e) a religious trust; or  
157 (f) an entity or association that is a subsidiary or agency that is wholly owned or  
158 controlled by:  
159 (i) a religious corporation;  
160 (ii) a religious association;  
161 (iii) a religious society;  
162 (iv) a religious trust; or  
163 (v) a corporation sole.  
164 ~~[(17)]~~ (24) "Retaliate" means the taking of adverse action;  
165 (a) by:  
166 (i) an employer[;];  
167 (ii) an employment agency[;];  
168 (iii) a labor organization[;];  
169 (iv) an apprenticeship program[;];  
170 (v) an on-the-job training program[;]; or  
171 (vi) a vocational school [against one of its employees, applicants, or members because  
172 the employee, applicant, or member];  
173 ~~[(a) has opposed any]~~  
174 (b) against an employee, applicant, or member of a person described in Subsection  
175 (24)(a); and  
176 (c) because the employee, applicant, or member:  
177 (i) opposes an employment practice prohibited under this chapter; or  
178 ~~[(b) filed charges, testified, assisted, or participated]~~  
179 (ii) files charges, testifies, assists, or participates in any way in [any] a proceeding,  
180 investigation, or hearing under this chapter.  
181 (25) "Sexual orientation" means a person's actual or perceived orientation as  
182 heterosexual, homosexual, or bisexual.

183 [(18)] (26) "Vocational school" means [~~any~~] a school or institution conducting a course  
184 of instruction, training, or retraining to prepare [~~individuals~~] an individual to:

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

186 (b) pursue a manual, technical, industrial, business, commercial, office, personal  
187 services, or other nonprofessional occupations.

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

189 **34A-5-104. Powers.**

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

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

194 (2) The division may:

195 (a) appoint and prescribe the duties of [~~investigators and other employees and agents~~  
196 that it] an investigator, other employee, or agent of the commission that the commission

197 considers necessary for the enforcement of this chapter;

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

199 (i) discrimination in:

200 (A) employment;

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

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

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

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

205 (A) a person;

206 (B) an employer;

207 (C) an employment agency;

208 (D) a labor organization;

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

211 (F) a joint apprenticeship committee; and

212 (G) a vocational school;

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

214 [in]:

215 (i) in one or more of the following in this state:

216 (A) employment[;];

217 (B) apprenticeship programs[;];

218 (C) on-the-job training programs[;]; and

219 (D) vocational schools [~~in this state~~]; and

220 (ii) by:

221 [(i)] (A) employers;

222 [(ii)] (B) employment agencies;

223 [(iii)] (C) labor organizations;

224 [(iv)] (D) joint apprenticeship committees; and

225 [(v)] (E) vocational schools;

226 (d) formulate one or more plans for the elimination of discrimination by educational or  
227 other means;

228 (e) hold [~~hearings upon~~] a hearing on a complaint made against:

229 (i) a person;

230 (ii) an employer;

231 (iii) an employment agency;

232 (iv) a labor organization;

233 (v) [~~the employees or members~~] an employee or member of an employment agency or  
234 labor organization;

235 (vi) a joint apprenticeship committee; or

236 (vii) a vocational school;

237 (f) issue one or more publications and reports of investigations and research that:

238 (i) promote good will among the various racial, religious, and ethnic groups of the  
239 state; and

240 (ii) minimize or eliminate discrimination in employment because of race, color, sex,  
241 religion, national origin, age, [~~or~~] disability, sexual orientation, or gender identity;

242 (g) prepare and transmit to the governor, at least once each year, reports describing:

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

244 (ii) the outcome of those hearings;

- 245 (iii) decisions the division [~~has rendered~~] renders; and
- 246 (iv) the other work performed by the division;
- 247 (h) recommend policies to the governor, and submit recommendation to employers,
- 248 employment agencies, and labor organizations to implement those policies;
- 249 (i) recommend [~~any~~] legislation to the governor that the division considers necessary
- 250 concerning discrimination because of:
- 251 (A) race[;];
- 252 (B) sex[;];
- 253 (C) color[;];
- 254 (D) national origin[;];
- 255 (E) religion[;];
- 256 (F) age[~~-or~~];
- 257 (G) disability [~~to the governor that it considers necessary; and~~];
- 258 (H) sexual orientation; or
- 259 (I) gender identity; and
- 260 (j) within the limits of [~~any~~] appropriations made for its operation, cooperate with other
- 261 agencies or organizations, both public and private, in the planning and conducting of
- 262 educational programs designed to eliminate discriminatory practices prohibited under this
- 263 chapter.
- 264 (3) The division shall investigate an alleged discriminatory [~~practices~~] practice
- 265 involving [~~officers or employees~~] an officer or employee of state government if requested to do
- 266 so by the Career Service Review Board.
- 267 (4) (a) In [~~any~~] a hearing held under this chapter, the division may:
- 268 (i) subpoena witnesses and compel their attendance at the hearing;
- 269 (ii) administer oaths and take the testimony of [~~any~~] a person under oath; and
- 270 (iii) compel [~~any~~] a person to produce for examination [~~any books, papers~~] a book,
- 271 paper, or other information relating to the matters raised by the complaint.
- 272 (b) The division director or a hearing examiner appointed by the division director may
- 273 conduct [~~hearings~~] a hearing.
- 274 (c) If a witness fails or refuses to obey a subpoena issued by the division, the division
- 275 may petition the district court to enforce the subpoena.

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

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

280 **34A-5-105. Antidiscrimination and Labor Advisory Council -- Membership --**  
281 **Appointment -- Term -- Powers and duties -- Chair.**

282 (1) There is created an Antidiscrimination and Labor Advisory Council consisting of:

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

284 (i) three employer representatives;

285 (ii) three employee representatives;

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

288 (iv) two representatives of persons who:

289 (A) sell or rent dwellings; and

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

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

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

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

296 (a) race;

297 (b) color;

298 (c) national origin;

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

300 (e) religion;

301 (f) age;

302 (g) persons with disabilities;

303 (h) sexual orientation;

304 (i) gender identity;

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

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

307 (3) The division shall provide any necessary staff support for the council.

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

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

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

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

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

323 (ii) Members may decline to receive per diem and expenses for their service.

324 (b) (i) State government officer and employee members who do not receive salary, per  
325 diem, or expenses from their agency for their service may receive per diem and expenses  
326 incurred in the performance of their official duties from the council at the rates established by  
327 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

328 (ii) State government officer and employee members may decline to receive per diem  
329 and expenses for their service.

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

331 (i) offer advice on issues requested by:

332 (A) the commission;

333 (B) the division; or

334 (C) the Legislature; and

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

336 (A) employment discrimination;

337 (B) housing discrimination; and

338 (C) the administration by the commission of:

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

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

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

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

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

347 (b) The chair [~~is charged with the responsibility of calling the~~] shall call necessary  
348 meetings.

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

350 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**  
351 **practices.**

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

354 (a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate  
355 [~~any~~] a person, or to retaliate against, harass, or discriminate in matters of compensation or in  
356 terms, privileges, and conditions of employment against [~~any~~] a person otherwise qualified,  
357 because of:

358 (A) race;

359 (B) color;

360 (C) sex;

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

362 (E) age, if the individual is 40 years of age or older;

363 (F) religion;

364 (G) national origin; [~~or~~]

365 (H) disability[~~:-~~];

366 (I) sexual orientation; or

367 (J) gender identity.

368 [~~(ii) A person may not be considered "otherwise qualified," unless that person~~]

369 possesses the following required by an employer for any particular job, job classification, or  
370 position:]

371 [~~(A)~~ education;]

372 [~~(B)~~ training;]

373 [~~(C)~~ ability, with or without reasonable accommodation;]

374 [~~(D)~~ moral character;]

375 [~~(E)~~ integrity;]

376 [~~(F)~~ disposition to work;]

377 [~~(G)~~ adherence to reasonable rules and regulations, and]

378 [~~(H)~~ other job related qualifications required by an employer.]

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

382 [~~(B)~~] (ii) Notwithstanding Subsection (1)(a)[~~(iii)(A)~~](i):

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

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

389 (b) An employment agency may not:

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

393 (A) race;

394 (B) color;

395 (C) sex;

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

397 (E) religion;

398 (F) national origin;

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

400 (H) disability; ~~[or]~~  
 401 (I) sexual orientation; or  
 402 (J) gender identity; or  
 403 (ii) comply with a request from an employer for referral of ~~[applicants]~~ an applicant for  
 404 employment if the request indicates either directly or indirectly that the employer discriminates  
 405 in employment on account of:

- 406 (A) race;
- 407 (B) color;
- 408 (C) sex;
- 409 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 410 (E) religion;
- 411 (F) national origin;
- 412 (G) age, if the individual is 40 years of age or older; ~~[or]~~
- 413 (H) disability~~[-];~~
- 414 (I) sexual orientation; or
- 415 (J) gender identity.

416 (c) (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):  
 417 (A) exclude ~~[any]~~ an individual otherwise qualified from full membership rights in the  
 418 labor organization[-];  
 419 (B) expel the individual from membership in the labor organization[-]; or  
 420 (C) otherwise discriminate against or harass ~~[any]~~ a member of the labor  
 421 ~~[organization's members]~~ organization in full employment of work opportunity, or  
 422 representation[-, because of:].

423 (ii) A labor organization may not take an action listed in this Subsection (1)(c) because  
 424 of:

- 425 ~~[(i)]~~ (A) race;
- 426 ~~[(ii)]~~ (B) color;
- 427 ~~[(iii)]~~ (C) sex;
- 428 ~~[(iv)]~~ (D) pregnancy, childbirth, or pregnancy-related conditions;
- 429 ~~[(v)]~~ (E) religion;
- 430 ~~[(vi)]~~ (F) national origin;

431 [~~(vi)~~] (G) age, if the individual is 40 years of age or older; [~~or~~]  
 432 [~~(vii)~~] (H) disability[-];  
 433 (I) sexual orientation; or  
 434 (J) gender identity.

435 (d) (i) Unless based upon a bona fide occupational qualification, or required by and  
 436 given to an agency of government for a security [~~reasons~~] reason, an employer, employment  
 437 agency, or labor organization may not do the following if the statement, advertisement,  
 438 publication, form, or inquiry violates Subsection (1)(d)(ii):

439 (A) print, [~~or~~] circulate, or cause to be printed or circulated, [~~any~~] a statement,  
 440 advertisement, or publication[-];

441 (B) use [~~any~~] a form of application for employment or membership[-]; or  
 442 (C) make [~~any~~] an inquiry in connection with prospective employment or membership.

443 (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or  
 444 inquiry that expresses, either directly or indirectly:

445 [~~(i)~~ ~~any~~] (A) a limitation, specification, or discrimination as to:  
 446 [~~(A)~~] (I) race;  
 447 [~~(B)~~] (II) color;  
 448 [~~(C)~~] (III) religion;  
 449 [~~(D)~~] (IV) sex;  
 450 [~~(E)~~] (V) pregnancy, childbirth, or pregnancy-related conditions;  
 451 [~~(F)~~] (VI) national origin;  
 452 [~~(G)~~] (VII) age, if the individual is 40 years of age or older; [~~or~~]  
 453 [~~(H)~~] (VIII) disability;  
 454 (IX) sexual orientation; or  
 455 (X) gender identity; or

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

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

461 (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a

462 discriminatory or prohibited employment practice;

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

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

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

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

474 (I) race;

475 (II) color;

476 (III) sex;

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

478 (V) religion;

479 (VI) national origin;

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

481 (VIII) disability;

482 (IX) sexual orientation; or

483 (X) gender identity;

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

486 (I) race;

487 (II) color;

488 (III) sex;

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

490 (V) religion;

491 (VI) national origin;

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

493            (VIII) disability;  
494            (IX) sexual orientation; or  
495            (X) gender identity;  
496            (C) discriminate against ~~[such]~~ a qualified person in the terms, conditions, or privileges  
497 of ~~[programs]~~ a program described in Subsection (1)(f)(i)(A), because of:  
498            (I) race;  
499            (II) color;  
500            (III) sex;  
501            (IV) pregnancy, childbirth, or pregnancy-related conditions;  
502            (V) religion;  
503            (VI) national origin;  
504            (VII) age, if the individual is 40 years of age or older; ~~[or]~~  
505            (VIII) disability; ~~[or]~~  
506            (IX) sexual orientation; or  
507            (X) gender identity; or  
508            ~~[(C)]~~ (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be  
509 printed or published, ~~[any]~~ a notice or advertisement relating to employment by the employer,  
510 or membership in or ~~[any]~~ a classification or referral for employment by a labor organization,  
511 or relating to ~~[any]~~ a classification or referral for employment by an employment agency,  
512 indicating ~~[any]~~ a preference, limitation, specification, or discrimination based on:  
513            (I) race;  
514            (II) color;  
515            (III) sex;  
516            (IV) pregnancy, childbirth, or pregnancy-related conditions;  
517            (V) religion;  
518            (VI) national origin;  
519            (VII) age, if the individual is 40 years of age or older; ~~[or]~~  
520            (VIII) disability~~[-];~~  
521            (IX) sexual orientation; or  
522            (X) gender identity.  
523            (ii) Notwithstanding Subsection (1)(f)(i)~~[(C)]~~(D), if the following is a bona fide

524 occupational qualification for employment, a notice or advertisement described in Subsection  
525 (1)(f)(i)~~[(C)]~~(D) may indicate a preference, limitation, specification, or discrimination based  
526 on:

- 527 (A) race;
- 528 (B) color;
- 529 (C) religion;
- 530 (D) sex;
- 531 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 532 (F) age;
- 533 (G) national origin; ~~[or]~~
- 534 (H) disability~~[-]~~;
- 535 (I) sexual orientation; or
- 536 (J) gender identity.

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

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

542 (b) the variance of insurance premiums or coverage on account of age; or

543 (c) a restriction on the activities of ~~[individuals licensed by the liquor authority with~~  
544 ~~respect to persons]~~ a person licensed in accordance with Title 32A, Alcoholic Beverage  
545 Control Act, with respect to an individual who is under 21 years of age.

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

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

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

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

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

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

563 (ii) for a school, college, university, or other educational institution to hire and employ  
564 [~~employees~~] an employee of a particular religion if:

565 (A) the school, college, university, or other educational institution is, in whole or in  
566 substantial part, owned, supported, controlled, or managed by a particular religious corporation,  
567 association, or society; or

568 (B) the curriculum of the school, college, university, or other educational institution is  
569 directed toward the propagation of a particular religion; or

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

571 (A) the employer's:

572 (I) spouse;

573 (II) child; or

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

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

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

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

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

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

585 (i) religion, sex, pregnancy, childbirth, a pregnancy-related condition, national origin, a

586 disability, sexual orientation, or gender identity is a bona fide occupational qualification  
587 reasonably necessary to the normal operation of that particular business or enterprise; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

630 (a) under Subsection (6);

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

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

633 (6) Nothing in this section prohibits compulsory retirement of an employee who has  
 634 attained at least 65 years of age, and who, for the two-year period immediately before  
 635 retirement, is employed in a bona fide executive or a high policymaking position, if:

636 (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit  
 637 from the employee's employer's pension, profit-sharing, savings, or deferred compensation  
 638 plan, or any combination of those plans; and

639 (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.

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

641 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**  
 642 **Adjudicative proceedings -- Conciliation -- Reconsideration -- Determination.**

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

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

647 (c) A request for agency action made under this section shall be filed within 180 days

648 after the alleged discriminatory or prohibited employment practice [~~occurred~~] occurs.

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

- 652 (i) between the division and the Equal Employment Opportunity Commission; and
- 653 (ii) in effect on the day on which the request for agency action is transferred.

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

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

662 (b) (i) The division shall informally endeavor to eliminate or correct a prohibited  
663 employment practice through a conciliation conference between the parties, presided over by  
664 the division.

665 (ii) A conciliation conference is not subject to Title 63G, Chapter 4, Administrative  
666 Procedures Act.

667 (iii) A statement or action in the course of a conciliation conference may not be made  
668 public or admitted as evidence in a subsequent proceeding under this chapter without the  
669 written consent of the parties concerned.

670 (iv) If a conciliation conference results in voluntary compliance with this chapter, a  
671 conciliation agreement setting forth the resolution of the issue shall be executed by the parties  
672 and approved by the division.

673 (v) The parties may enforce a conciliation agreement in an action filed in a court of  
674 competent jurisdiction.

675 [~~(b)~~] (c) If no [~~settlement~~] conciliation is reached, the investigator shall make a prompt  
676 impartial investigation of all allegations made in the request for agency action.

677 [~~(c)~~] (d) The division and its staff, agents, and employees:

- 678 (i) shall conduct every investigation in fairness to all parties and agencies involved;

679 and

680 (ii) may not attempt [~~a settlement~~] conciliation between the parties if it is clear that no  
681 discriminatory or prohibited employment practice has occurred.

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

684 (4) (a) If the initial attempts at [~~settlement~~] conciliation are unsuccessful, and the  
685 investigator uncovers insufficient evidence during the investigation to support the allegations  
686 of a discriminatory or prohibited employment practice set out in the request for agency action,  
687 the investigator shall formally report these findings to the director or the director's designee.

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

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

694 (d) If the director or the director's designee receives no timely request for a hearing, the  
695 determination and order issued by the director or the director's designee becomes the final order  
696 of the commission.

697 (5) (a) If the initial attempts at [~~settlement~~] conciliation are unsuccessful and the  
698 investigator uncovers sufficient evidence during the investigation to support the allegations of a  
699 discriminatory or prohibited employment practice set out in the request for agency action, the  
700 investigator shall formally report these findings to the director or the director's designee.

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

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

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

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

709 (c) A party may file a written request to the Division of Adjudication for an evidentiary

710 hearing to review de novo the director's or the director's designee's determination and order  
711 within 30 days of the date the determination and order is issued.

712 (d) If the director or the director's designee receives no timely request for a hearing, the  
713 determination and order issued by the director or the director's designee in accordance with  
714 Subsection (5)(b) becomes the final order of the commission.

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

718 (7) (a) [~~Prior to~~] Before the commencement of an evidentiary hearing:

719 (i) the party filing the request for agency action may reasonably and fairly amend any  
720 allegation; and

721 (ii) the respondent may amend its answer.

722 (b) An amendment permitted under this Subsection (7) may be made:

723 (i) during or after a hearing; and

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

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

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

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

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

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

736 (i) reinstatement;

737 (ii) back pay and benefits;

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

739 (iv) costs.

740 (10) Conciliation between the parties is to be urged and facilitated at all stages of the

741 adjudicative process.

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

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

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

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

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

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

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

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

762 (b) General statistical information may be disclosed provided the identities of the  
763 individuals or parties are not disclosed.

764 (c) Information may be disclosed for inspection by the attorney general or other legal  
765 representatives of the state or the commission.

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

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

- 770 (a) race;
- 771 (b) color;

- 772 (c) sex;
- 773 (d) retaliation;
- 774 (e) pregnancy, childbirth, or pregnancy-related conditions;
- 775 (f) age;
- 776 (g) religion;
- 777 (h) national origin; [or]
- 778 (i) disability[-];
- 779 (j) sexual orientation; or
- 780 (k) gender identity.

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

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

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

790 Section 6. Section **34A-5-109** is enacted to read:

791 **34A-5-109. Severability.**

792 (1) If a provision of this chapter, or the application of a provision to any person or  
 793 circumstance is held invalid, the remainder of this chapter shall be given effect without the  
 794 invalid provision or application.

795 (2) The provisions of this chapter are severable.

796 Section 7. Section **57-21-2** is amended to read:

797 **57-21-2. Definitions.**

798 As used in this chapter:

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

- 800 (a) claims to have been injured by a discriminatory housing practice; or
- 801 (b) believes that the person will be injured by a discriminatory housing practice that is
- 802 about to occur.

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

804 (3) "Complainant" means an aggrieved person, including the director, who has  
805 commenced a complaint with the division.

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

809 (5) "Conciliation agreement" means a written agreement setting forth the resolution of  
810 the issues in conciliation.

811 (6) "Conciliation conference" means the attempted resolution of ~~[issues]~~ an issue raised  
812 ~~[by]~~ in a complaint ~~[or]~~ by the investigation of a complaint through informal negotiations  
813 involving the complainant, the respondent, and the division. ~~[The conciliation conference is~~  
814 ~~not subject to Title 63G, Chapter 4, Administrative Procedures Act.]~~

815 (7) "Covered multifamily ~~[dwellings]"~~ dwelling" means:

816 (a) buildings consisting of four or more dwelling units if the buildings have one or  
817 more elevators; and

818 (b) ground floor units in other buildings consisting of four or more dwelling units.

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

820 (9) (a) "Disability" means a physical or mental impairment that substantially limits one  
821 or more of a person's major life activities, including a person having a record of such an  
822 impairment or being regarded as having such an impairment.

823 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
824 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
825 Sec. 802.

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

827 (11) "Discriminatory housing practice" means an act that is unlawful under this  
828 chapter.

829 (12) "Division" means the Division of Antidiscrimination and Labor established under  
830 the commission.

831 (13) ~~[(a)]~~ "Dwelling" means ~~[any]~~:

832 (a) a building or structure, or a portion of a building or structure, occupied as, ~~[or]~~  
833 designed as, or intended for occupancy as, a residence of one or more families~~[-]; or~~

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

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

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

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

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

844 (i) is pregnant;

845 (ii) is in the process of securing legal custody of any individual who has not attained  
846 the age of 18 years; or

847 (iii) is a single individual.

848 (15) "Gender identity" means a person's actual or perceived gender identity,  
849 appearance, mannerisms, or other characteristics of an individual with or without regard to the  
850 person's sex at birth.

851 [~~(15)~~] (16) "National origin" means the place of birth of an individual or of any lineal  
852 ancestors.

853 [~~(16)~~] (17) "Person" includes one or more individuals, corporations, limited liability  
854 companies, partnerships, associations, labor organizations, legal representatives, mutual  
855 companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in  
856 cases under the United States Bankruptcy Code, receivers, and fiduciaries.

857 [~~(17)~~] (18) "Presiding officer" has the same meaning as provided in Section  
858 63G-4-103.

859 [~~(18)~~] (19) "Real estate broker" or "salesperson" means a principal real estate broker,  
860 an associate real estate broker, or a real estate sales agent as those terms are defined in Section  
861 61-2-2.

862 (20) "Religious organization or association" means:

863 (a) a religious corporation;

864 (b) a religious association;

865 (c) a religious educational institution;

866 (d) a religious society;

867 (e) a religious trust; or

868 (f) an entity or association that is a subsidiary or agency that is wholly owned or

869 controlled by:

870 (i) a religious corporation;

871 (ii) a religious association;

872 (iii) a religious society;

873 (iv) a religious trust; or

874 (v) a corporation sole.

875 (21) "Rent" means to lease, sublease, let, or otherwise grant for a consideration the  
876 right to occupy premises that are not owned by the occupant.

877 (22) "Residential real estate related transaction" means a transaction to:

878 (a) make a loan, purchase a loan, or provide other financial assistance for the purchase,  
879 construction, improvement, repair, or maintenance of a dwelling;

880 (b) make a loan or purchase a loan secured by residential real estate in the state; or

881 (c) sell, broker, or appraise residential real property in the state.

882 ~~[(19)]~~ (23) "Respondent" means a person against whom a complaint of housing  
883 discrimination has been initiated.

884 ~~[(20)]~~ (24) "Sex" means gender and includes pregnancy, childbirth, and disabilities  
885 related to pregnancy or childbirth.

886 (25) "Sexual orientation" means a person's actual or perceived orientation as  
887 heterosexual, homosexual, or bisexual.

888 ~~[(21)]~~ (26) "Source of income" means the verifiable condition of being a recipient of  
889 federal, state, or local assistance, including medical assistance, or of being a tenant receiving  
890 federal, state, or local subsidies, including rental assistance or rent supplements.

891 Section 8. Section **57-21-3** is amended to read:

892 **57-21-3. Exemptions.**

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

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

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

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

901 (d) the owner does not retain or use the facilities or services of ~~[any]~~ a real estate  
902 broker or salesperson; and

903 (e) the owner does not use ~~[any]~~ a discriminatory housing practice under Subsection  
904 57-21-5(2) in the sale or rental of the dwelling.

905 (2) This chapter does not apply to a temporary or permanent residence facility operated  
906 by a nonprofit or charitable organization, including ~~[any]~~ a dormitory operated by a public or  
907 private educational institution, if the discrimination is by sex or familial status;

908 (a) for reasons of personal modesty or privacy; or

909 (b) in the furtherance of a religious ~~[institution's]~~ organization or association's free  
910 exercise of religious rights under the First Amendment of the United States Constitution.

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

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

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

916 (4) ~~[This]~~ Unless membership in a religion is restricted by race, color, sex, or national  
917 origin, this chapter does not prohibit a religious organization~~;~~ or association, ~~[or society;]~~ or  
918 ~~[any]~~ a nonprofit institution or organization operated, supervised, or controlled by or in  
919 conjunction with a religious organization~~;~~ or association, ~~[or society;]~~ from:

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

922 (b) giving preference to ~~[such]~~ persons~~[-, unless membership in the religion is restricted~~  
923 ~~by race, color, sex, or national origin]~~ of the same religion.

924 (5) ~~[This]~~ (a) If the conditions of Subsection (5)(b) are met, this chapter does not  
925 prohibit a private club not open to the public, including ~~[fraternities and sororities]~~ a fraternity  
926 or sorority associated with ~~[institutions]~~ an institution of higher education, from:

- 927 (i) limiting the rental or occupancy of lodgings to members; or ~~[from]~~
- 928 (ii) giving preference to its members~~[-but]~~.
- 929 (b) This Subsection (5) applies only if ~~[it]~~ a private club owns or operates the lodgings
- 930 as an incident to its primary purpose and not for a commercial purpose.
- 931 (6) This chapter does not prohibit distinctions based on inability to fulfill the terms and
- 932 conditions, including financial obligations, of:
- 933 (a) a lease~~[-]~~;
- 934 (b) a rental agreement~~[-]~~;
- 935 (c) a contract of purchase or sale~~[-]~~;
- 936 (d) a mortgage~~[-]~~;
- 937 (e) a trust deed~~[-]~~; or
- 938 (f) other financing agreement.
- 939 (7) This chapter does not prohibit ~~[any]~~ a nonprofit educational institution from:
- 940 (a) requiring its single students to live in housing approved, operated, or owned by the
- 941 nonprofit educational institution;
- 942 (b) segregating housing that the nonprofit education institution approves, operates, or
- 943 owns on the basis of sex ~~[or]~~, familial status, or both;
- 944 (i) for reasons of personal modesty or privacy~~[-]~~; or
- 945 (ii) in the furtherance of a religious ~~[institution's]~~ organization or association's free
- 946 exercise of religious rights under the First Amendment of the ~~[United States]~~ Constitution of
- 947 the United States; or
- 948 (c) otherwise assisting ~~[others]~~ another person in making sex-segregated housing
- 949 available to students as may be permitted by regulations implementing the federal Fair Housing
- 950 Amendments Act of 1988 and Title IX of the Education Amendments of 1972.
- 951 (8) This chapter does not prohibit ~~[any]~~ a reasonable local, state, or federal
- 952 ~~[restrictions]~~ restriction regarding the maximum number of occupants permitted to occupy a
- 953 dwelling.
- 954 (9) ~~[The provisions pertaining]~~ A provision of this chapter that pertains to familial
- 955 status ~~[do]~~ does not apply to the existence, development, sale, rental, advertisement, or
- 956 financing of ~~[any]~~ an apartment complex, condominium, or other housing development
- 957 designated as housing for older persons, as defined by Title VIII of the Civil Rights Act of

958 1968, as amended.

959 (10) This chapter does not apply to:

960 (a) the federal government or a federal department, federal agency, or a corporation  
 961 wholly owned by the federal government;

962 (b) the state, a state department, or a state agency; or

963 (c) a political subdivision of the state.

964 (11) Nothing in this chapter prohibits conduct against a person because of the person's  
 965 conviction by a court of competent jurisdiction of the illegal manufacture or distribution of a  
 966 controlled substance under federal or state law.

967 Section 9. Section **57-21-5** is amended to read:

968 **57-21-5. Discriminatory practices enumerated -- Protected persons, classes**  
 969 **enumerated.**

970 (1) It is a discriminatory housing practice to do any of the following because of a  
 971 person's race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~  
 972 disability, sexual orientation, or gender identity:

973 (a) (i) refuse to sell or rent after the making of a bona fide offer[;];

974 (ii) refuse to negotiate for the sale or rental[;]; or

975 (iii) otherwise deny or make unavailable [~~any~~] a dwelling from any person;

976 (b) discriminate against [~~any~~] a person in the terms, conditions, or privileges;

977 (i) of the sale or rental of [~~any~~] a dwelling; or

978 (ii) in providing facilities or services in connection with the dwelling; or

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

981 (2) It is a discriminatory housing practice;

982 (a) to:

983 (i) make a representation orally or in writing; [~~or~~]

984 (ii) make, print, circulate, publish, post, or cause to be made, printed, circulated,  
 985 published, or posted [~~any~~] a notice, statement, or advertisement[;]; or [~~to~~]

986 (iii) use any application form for the sale or rental of a dwelling[~~, that~~]; and

987 (b) if the action described in Subsection (2)(a) directly or indirectly expresses [~~any~~];

988 (i) a preference, limitation, or discrimination based on race, color, religion, sex,

989 national origin, familial status, source of income, [~~or~~] disability, sexual orientation, or gender  
990 identity; or [~~expresses any~~]

991 (ii) an intent to make any such preference, limitation, or discrimination.

992 (3) It is a discriminatory housing practice to induce or attempt to induce, for profit,  
993 [~~any~~] a person to buy, sell, or rent [~~any~~] a dwelling by making [~~representations~~] a  
994 representation about the entry or prospective entry into the neighborhood of one or more  
995 persons of a particular race, color, religion, sex, national origin, familial status, source of  
996 income, [~~or~~] disability, sexual orientation, or gender identity.

997 (4) A discriminatory housing practice includes:

998 (a) a refusal to permit, at the expense of the disabled person, a reasonable  
999 [~~modifications~~] modification of existing premises occupied or to be occupied by the person if  
1000 the [~~modifications are~~] modification is necessary to afford that person full enjoyment of the  
1001 premises, except that in the case of a rental, the landlord, [~~where~~] when it is reasonable to do  
1002 so, may condition permission for a modification on the renter agreeing to restore the interior of  
1003 the premises, when reasonable, to the condition that existed before the modification, reasonable  
1004 wear and tear excepted;

1005 (b) a refusal to make a reasonable [~~accommodations in rules, policies, practices, or~~  
1006 ~~services when the accommodations~~] accommodation in a rule, policy, practice, or service if the  
1007 accommodation may be necessary to afford the person equal opportunity to use and enjoy a  
1008 dwelling; and

1009 (c) in connection with the design and construction of covered multifamily dwellings for  
1010 first occupancy after March 13, 1991, a failure to design and construct [~~those~~] the covered  
1011 multifamily dwellings in a manner that:

1012 (i) the covered multifamily dwellings have at least one building entrance on an  
1013 accessible route, unless it is impracticable to have one because of the terrain or unusual  
1014 characteristics of the site; and

1015 (ii) with respect to covered multifamily dwellings with a building entrance on an  
1016 accessible route:

1017 (A) the public use and common use portions of the covered multifamily dwelling are  
1018 readily accessible to and usable by disabled persons;

1019 (B) all the doors designed to allow passage into and within the covered multifamily

1020 dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

1021 (C) all premises within these covered multifamily dwellings contain the following  
1022 features of adaptive design:

1023 (I) an accessible route into and through the covered multifamily dwelling;

1024 (II) light switches, electrical outlets, thermostats, and other environmental controls in  
1025 accessible locations;

1026 (III) reinforcements in the bathroom walls to allow later installation of grab bars; and

1027 (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver  
1028 about and use the space.

1029 (5) This section also applies to discriminatory housing practices because of race, color,  
1030 religion, sex, national origin, familial status, source of income, ~~[or]~~ disability, sexual  
1031 orientation, or gender identity based upon a person's association with another person.

1032 Section 10. Section **57-21-6** is amended to read:

1033 **57-21-6. Discriminatory housing practices regarding residential real**  
1034 **estate-related transactions -- Discriminatory housing practices regarding the provisions**  
1035 **of brokerage services.**

1036 (1) It is a discriminatory housing practice for ~~[any]~~ a person whose business includes  
1037 engaging in residential real ~~[estate-related]~~ estate related transactions to discriminate against  
1038 ~~[any]~~ a person in making available ~~[such]~~ a residential real estate related transaction, or in the  
1039 terms or conditions of the residential real estate related transaction, because of race, color,  
1040 religion, sex, disability, familial status, source of income, ~~[or]~~ national origin, sexual  
1041 orientation, or gender identity. ~~[Residential real estate-related transactions include:]~~

1042 ~~[(a) making or purchasing loans or providing other financial assistance:]~~

1043 ~~[(i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or]~~

1044 ~~[(ii) secured by residential real estate; or]~~

1045 ~~[(b) selling, brokering, or appraising residential real property.]~~

1046 (2) It is a discriminatory housing practice to, because of race, color, religion, sex,  
1047 disability, familial status, source of income, national origin, sexual orientation, or gender  
1048 identity:

1049 (a) deny ~~[any]~~ a person access to, or membership or participation in, ~~[any]~~ a  
1050 multiple-listing service, real estate brokers' organization, or other service, organization, or

1051 facility relating to the business of selling or renting dwellings; or ~~[to]~~

1052 (b) discriminate against ~~[any]~~ a person in the terms or conditions of access,  
1053 membership, or participation in the organization, service, or facility ~~[because of race, color,~~  
1054 ~~religion, sex, disability, familial status, source of income, or national origin]~~.

1055 (3) This section also applies to a discriminatory housing ~~[practices]~~ practice because of  
1056 race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~ disability,  
1057 sexual orientation, or gender identity based upon a person's association with another person.

1058 Section 11. Section ~~57-21-7~~ is amended to read:

1059 **57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions --**  
1060 **Obstruction of division investigation -- Reprisals.**

1061 (1) It is a discriminatory housing practice to do any of the following:

1062 (a) coerce, intimidate, threaten, or interfere with ~~[any]~~ a person:

1063 (i) in the exercise or enjoyment of ~~[any]~~ a right granted or protected under this chapter;

1064 (ii) because that person exercised ~~[any]~~ a right granted or protected under this chapter;

1065 or

1066 (iii) because that person aided or encouraged any other person in the exercise or  
1067 enjoyment of ~~[any]~~ a right granted or protected under this chapter;

1068 (b) aid, abet, incite, compel, or coerce a person to engage in ~~[any of the practices]~~ a  
1069 practice prohibited by this chapter;

1070 (c) attempt to aid, abet, incite, compel, or coerce a person to engage in ~~[any of the~~  
1071 ~~practices]~~ a practice prohibited by this chapter;

1072 (d) obstruct or prevent ~~[any]~~ a person from complying with this chapter, or any order  
1073 issued under this chapter;

1074 (e) resist, prevent, impede, or interfere with the director or ~~[any]~~ a division ~~[employees~~  
1075 ~~or representatives]~~ employee or representative in the performance of duty under this chapter; or

1076 (f) engage in any reprisal against ~~[any]~~ a person because that person:

1077 (i) opposed a practice prohibited under this chapter; or

1078 (ii) filed a complaint, testified, assisted, or participated in any manner in ~~[any]~~ an  
1079 investigation, proceeding, or hearing under this chapter.

1080 (2) This section also applies to discriminatory housing practices because of race, color,  
1081 religion, sex, national origin, familial status, source of income, ~~[or]~~ disability, sexual

1082 orientation, or gender identity based upon a person's association with another person.

1083 Section 12. Section **57-21-9** is amended to read:

1084 **57-21-9. Procedure for an aggrieved person to file a complaint -- Conciliation --**  
1085 **Investigation -- Determination.**

1086 (1) [~~Any~~] An aggrieved person may file a written verified complaint with the division  
1087 within 180 days after an alleged discriminatory housing practice occurs.

1088 (2) (a) The commission shall adopt rules consistent with the provisions of 24 C.F.R.  
1089 Sec. 115.3 (1990), relating to procedures under related federal law, to govern:

1090 (i) the form of the complaint;

1091 (ii) the form of any answer to the complaint;

1092 (iii) procedures for filing or amending a complaint or answer; and

1093 (iv) the form of notice to parties accused of the acts or omissions giving rise to the  
1094 complaint.

1095 (b) The commission may, by rule, prescribe any other procedure pertaining to the  
1096 division's processing of the complaint.

1097 (3) During the period beginning with the filing of the complaint and ending with the  
1098 director's determination, the division shall, to the extent feasible, engage in conciliation with  
1099 respect to the complaint.

1100 (4) The division shall commence proceedings to investigate and conciliate a complaint  
1101 alleging a discriminatory housing practice within 30 days after the filing of the complaint.  
1102 After the commencement of an investigation, any party may request that the commission  
1103 review the proceedings to insure compliance with the requirements of this chapter.

1104 (5) The division shall complete the investigation within 100 days after the filing of the  
1105 complaint, unless it is impracticable to do so. If the division is unable to complete the  
1106 investigation within 100 days after the filing of the complaint, the division shall notify the  
1107 complainant and respondent in writing of the reasons for the delay.

1108 (6) (a) If, as a result of the division's investigation, the director determines that there is  
1109 no reasonable cause to support the allegations in the complaint, the director shall issue a  
1110 written determination dismissing the complaint.

1111 (b) If the director dismisses the complaint pursuant to Subsection (6)(a), the  
1112 complainant may request that the director reconsider the dismissal pursuant to Section

1113 63G-4-302.

1114 (c) Notwithstanding the provisions of Title 63G, Chapter 4, Administrative Procedures  
1115 Act, the director's determination to dismiss a complaint or, in the case of a request for  
1116 reconsideration, the director's order denying reconsideration is not subject to further agency  
1117 action or direct judicial review. However, the complainant may commence a private action  
1118 pursuant to Section 57-21-12.

1119 (7) If, as a result of the division's investigation of a complaint, the director determines  
1120 that there is reasonable cause to support the allegations in the complaint, all of the following  
1121 apply:

1122 (a) The division shall informally endeavor to eliminate or correct ~~[the]~~ a discriminatory  
1123 housing practice through a conciliation conference between the parties, presided over by the  
1124 division. ~~[Nothing said or done]~~

1125 (b) A conciliation conference is not subject to Title 63G, Chapter 4, Administrative  
1126 Procedures Act.

1127 (c) A statement or action in the course of the conciliation conference may not be made  
1128 public or admitted as evidence in a subsequent proceeding under this chapter without the  
1129 written consent of the parties concerned.

1130 ~~[(b)]~~ (d) If the conciliation conference results in voluntary compliance with this  
1131 chapter, a conciliation agreement setting forth the resolution of the ~~[issues]~~ issue shall be  
1132 executed by the parties and approved by the division.

1133 (e) The parties may enforce ~~[the]~~ a conciliation agreement in an action filed in a court  
1134 of competent jurisdiction.

1135 ~~[(e)]~~ (f) If the division is unable to obtain a conciliation agreement, the director shall  
1136 issue a written determination stating the director's findings and ordering any appropriate relief  
1137 under Section 57-21-11.

1138 Section 13. Section **57-21-10** is amended to read:

1139 **57-21-10. Judicial election or formal adjudicative hearing.**

1140 (1) If, pursuant to Subsection 57-21-9(7)~~[(e)]~~(f), the director issues a written  
1141 determination finding reasonable cause to believe that a discriminatory housing practice has  
1142 occurred, or is about to occur, a respondent may obtain de novo review of the determination by  
1143 submitting a written request for a formal adjudicative hearing to be conducted by the

1144 commission's Division of Adjudication in accordance with Title 34A, Chapter 1, Part 3,  
1145 Adjudicative Proceedings, to the director within 30 days from the date of issuance of the  
1146 determination. If the director does not receive a timely request for review, the director's  
1147 determination becomes the final order of the commission and is not subject to further agency  
1148 action or direct judicial review.

1149 (2) If a respondent files a timely request for review pursuant to Subsection (1):

1150 (a) any respondent, complainant, or aggrieved party may elect to have the de novo  
1151 review take place in a civil action in the district court rather than in a formal adjudicative  
1152 hearing with the Division of Adjudication by filing an election with the commission in  
1153 accordance with rules established by the commission pursuant to Title 63G, Chapter 3, Utah  
1154 Administrative Rulemaking Act, regarding the form and time period for the election;

1155 (b) the complainant shall file a complaint for review in the forum selected pursuant to  
1156 Subsection (2)(a) within 30 days after the completion of the forum selection process; and

1157 (c) the commission shall determine whether the director's determination is supported  
1158 by substantial evidence.

1159 (3) If, pursuant to Subsection (2)(c), the commission determines that the director's  
1160 determination is supported by substantial evidence, the commission shall provide legal  
1161 representation on behalf of the aggrieved person, including the filing of a complaint for review  
1162 as required by Subsection (2)(b), to support and enforce the director's determination in the de  
1163 novo review proceeding. Notwithstanding any provisions of Title 63G, Chapter 4,  
1164 Administrative Procedures Act, the commission's determination regarding the existence or  
1165 nonexistence of substantial evidence to support the director's determination is not subject to  
1166 further agency action or direct judicial review.

1167 (4) Upon timely application, an aggrieved person may intervene with respect to the  
1168 issues to be determined in a formal adjudicative hearing or in a civil action brought under this  
1169 section.

1170 (5) If a formal adjudicative hearing is elected, all of the following apply:

1171 (a) The presiding officer shall commence the formal adjudicative hearing within 150  
1172 days after the respondent files a request for review of the director's determination unless it is  
1173 impracticable to do so.

1174 (b) The investigator who investigated the matter may not participate in the formal

1175 adjudicative hearing, except as a witness, nor may the investigator participate in the  
1176 deliberations of the presiding officer.

1177 (c) Any party to the complaint may file a written request to the Division of  
1178 Adjudication for review of the presiding officer's order in accordance with Section 63G-4-301  
1179 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.

1180 (d) A final order of the commission under this section is subject to judicial review as  
1181 provided in Section 63G-4-403 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.

1182 (6) If a civil action is elected, the commission is barred from continuing or  
1183 commencing any adjudicative proceeding in connection with the same claims under this  
1184 chapter.

1185 (7) The commission shall make final administrative disposition of the complaint  
1186 alleging a discriminatory housing practice within one year after the filing of the complaint,  
1187 unless it is impracticable to do so. If the commission is unable to make final administrative  
1188 disposition within one year, the commission shall notify the complainant, respondent, and any  
1189 other interested party in writing of the reasons for the delay.

1190 Section 14. Section **57-21-15** is enacted to read:

1191 **57-21-15. Severability.**

1192 (1) If a provision of this chapter, or the application of a provision to any person or  
1193 circumstance is held invalid, the remainder of this chapter shall be given effect without the  
1194 invalid provision or application.

1195 (2) The provisions of this chapter are severable.

1196 Section 15. Section **67-19-6.3** is amended to read:

1197 **67-19-6.3. Equal employment opportunity plan.**

1198 (1) In conjunction with the director's duties under Section 67-19-6, and  
1199 notwithstanding the general prohibition in Subsection 34A-5-106(3)(~~c~~)(d), the executive  
1200 director shall prepare an equal employment opportunity plan for state employment consistent  
1201 with the guidelines provided in federal equal employment opportunity laws and in related  
1202 federal regulations.

1203 (2) The equal employment opportunity plan required by this section applies only to  
1204 state career service employees described in Section 67-19-15.

1205 (3) The Legislature shall review the equal employment opportunity plan required by

1206 this section before it may be implemented.

1207 (4) Nothing in this section requires the establishment of hiring quotas or preferential

1208 treatment of any identifiable group.

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**Legislative Review Note**

**as of 2-4-10 12:42 PM**

**Office of Legislative Research and General Counsel**