

1 STATEWIDE NONDISCRIMINATION PROTECTION

2 AMENDMENTS

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Benjamin M. McAdams

6 House Sponsor: \_\_\_\_\_

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8 LONG TITLE

9 General Description:

10 This bill modifies the Utah Antidiscrimination Act and Utah Fair Housing Act to  
11 address discrimination, including discrimination on the basis of sexual orientation,  
12 gender identity, or political speech or activity as it relates to employment.

13 Highlighted Provisions:

14 This bill:

- 15 ▶ modifies definition provisions related to employment and housing discrimination,  
16 including defining "gender identity" and "sexual orientation";
- 17 ▶ defines "political speech or activity" for purposes of employment;
- 18 ▶ includes sexual orientation and gender identity as a consideration in appointments to  
19 the Antidiscrimination and Labor Advisory Council;
- 20 ▶ includes sexual orientation and gender identity as a prohibited basis for  
21 discrimination in employment;
- 22 ▶ prohibits political speech or activity as a basis for discrimination in employment;
- 23 ▶ modifies exemptions to the Utah Fair Housing Act;
- 24 ▶ includes sexual orientation and gender identity as a prohibited basis for  
25 discriminatory housing practices; and
- 26 ▶ makes technical and conforming amendments.

27 Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **34A-5-102**, as last amended by Laws of Utah 2011, Chapter 413

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

35 **34A-5-105**, as last amended by Laws of Utah 2010, Chapter 286

36 **34A-5-106**, as last amended by Laws of Utah 2003, Chapter 65

37 **34A-5-107**, as last amended by Laws of Utah 2008, Chapter 382

38 **57-21-2**, as last amended by Laws of Utah 2010, Chapter 379

39 **57-21-3**, as last amended by Laws of Utah 1993, Chapter 114

40 **57-21-5**, as last amended by Laws of Utah 2011, Chapter 366

41 **57-21-6**, as last amended by Laws of Utah 1993, Chapter 114

42 **57-21-7**, as last amended by Laws of Utah 1993, Chapter 114



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

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

46 **34A-5-102. Definitions -- Unincorporated entities.**

47 (1) As used in this chapter:

48 (a) "Apprenticeship" means a program for the training of apprentices including a  
49 program providing the training of those persons defined as apprentices by Section 35A-6-102.

50 (b) "Bona fide occupational qualification" means a characteristic applying to an  
51 employee that:

52 (i) is necessary to the operation of the employee's employer's business; or

53 (ii) is the essence of the employee's employer's business.

54 (c) "Court" means:

55 (i) the district court in the judicial district of the state in which the asserted unfair  
56 employment practice [~~occurred~~] occurs; or

57 (ii) if [~~this~~] the district court is not in session at that time, a judge of the court described  
58 in Subsection (1)(c)(i).

- 59 (d) "Director" means the director of the division.
- 60 (e) "Disability" means a physical or mental disability as defined and covered by the  
61 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.
- 62 (f) "Division" means the Division of Antidiscrimination and Labor.
- 63 (g) "Employee" means ~~any~~ a person applying with or employed by an employer.
- 64 (h) (i) "Employer" means:
  - 65 (A) the state;
  - 66 (B) ~~any~~ a political subdivision;
  - 67 (C) a board, commission, department, institution, school district, trust, or agent of the  
68 state or ~~its~~ a political ~~subdivisions~~ subdivision of the state; or
  - 69 (D) a person employing 15 or more employees within the state for each working day in  
70 each of 20 calendar weeks or more in the current or preceding calendar year.
- 71 (ii) "Employer" does not include:
  - 72 (A) a religious organization or association;
  - 73 (B) a religious corporation sole; ~~or~~
  - 74 (C) ~~any~~ a corporation or association constituting a wholly owned subsidiary or  
75 agency of any religious organization or association or religious corporation sole~~[-]; or~~
  - 76 (D) an expressive association if employing an individual would significantly burden  
77 the expressive association's rights of expressive association under decisions of the United  
78 States Supreme Court.
- 79 (i) "Employment agency" means ~~any~~ a person:
  - 80 (i) undertaking to procure employees or opportunities to work for any other person; or
  - 81 (ii) holding the person out to be equipped to take an action described in Subsection  
82 (1)(i)(i).
- 83 (j) "Gender identity" means an individual's actual or perceived sense of being male,  
84 female, or transgendered, without regard to the person's physiology. Evidence of an  
85 individual's gender identity includes the individual's gender-related appearance, mannerisms,  
86 and other gender-related characteristics.
- 87 ~~(j)~~ (k) "Joint apprenticeship committee" means ~~any~~ an association of representatives  
88 of a labor organization and an employer providing, coordinating, or controlling an apprentice  
89 training program.

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

- 92 (i) collective bargaining;
- 93 (ii) dealing with employers concerning grievances, terms or conditions of employment;

94 or

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

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

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

- 100 (i) is also employed at that job; or
- 101 (ii) may be employed by the employer conducting the program during the course of the  
102 program, or when the program is completed.

103 ~~[(n)]~~ (o) "Person" means:

- 104 (i) one or more individuals, partnerships, associations, corporations, legal  
105 representatives, trusts or trustees, receivers~~;~~;
- 106 (ii) the state; and ~~[all political subdivisions and agencies]~~
- 107 (iii) a political subdivision or agency of the state.

108 ~~[(p)]~~ (i) "Political speech or activity" means an individual's lawful speech or activity  
109 regarding issues of public concern protected by the First Amendment or Utah Constitution,  
110 Article I, Sections 1 and 15.

111 (ii) "Political speech or activity" includes an individual's opinion manifested in speech  
112 or association, concerning the social, economic, and governmental structure of society and its  
113 institutions.

114 ~~[(o)]~~ (q) "Presiding officer" means the same as that term is defined in Section  
115 63G-4-103.

116 ~~[(p)]~~ (r) "Prohibited employment practice" means a practice specified as  
117 discriminatory, and therefore unlawful, in Section 34A-5-106.

118 ~~[(q)]~~ (s) "Retaliate" means the taking of adverse action by an employer, employment  
119 agency, labor organization, apprenticeship program, on-the-job training program, or vocational  
120 school against one of its employees, applicants, or members because the employee, applicant,

121 or member [~~has~~]:

122 (i) [~~opposed any~~] opposes an employment practice prohibited under this chapter; or

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

125 (t) "Sexual orientation" means an individual's actual or perceived orientation as  
126 heterosexual, homosexual, or bisexual.

127 [~~(r)~~] (u) "Unincorporated entity" means an entity organized or doing business in the  
128 state that is not:

129 (i) an individual;

130 (ii) a corporation; or

131 (iii) publicly traded.

132 [~~(s)~~] (v) "Vocational school" means [~~any~~] a school or institution conducting a course of  
133 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to  
134 pursue a manual, technical, industrial, business, commercial, office, personal services, or other  
135 nonprofessional occupations.

136 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
137 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
138 be the employer of each individual who, directly or indirectly, holds an ownership interest in  
139 the unincorporated entity.

140 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
141 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
142 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that  
143 the individual:

144 (i) is an active manager of the unincorporated entity;

145 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
146 entity; or

147 (iii) is not subject to supervision or control in the performance of work by:

148 (A) the unincorporated entity; or

149 (B) a person with whom the unincorporated entity contracts.

150 (c) As part of the rules made under Subsection (2)(b), the commission may define:

151 (i) "active manager";

152 (ii) "directly or indirectly holds at least an 8% ownership interest"; and  
153 (iii) "subject to supervision or control in the performance of work."

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

155 **34A-5-104. Powers.**

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

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

160 (2) The division may:

161 (a) appoint and prescribe the duties of [~~investigators and other employees and agents~~  
162 ~~that it~~] an investigator, other employee, or agent of the commission that the commission  
163 considers necessary for the enforcement of this chapter;

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

165 (i) discrimination in:

166 (A) employment;

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

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

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

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

171 (A) a person;

172 (B) an employer;

173 (C) an employment agency;

174 (D) a labor organization;

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

177 (F) a joint apprenticeship committee; and

178 (G) a vocational school;

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

180 [~~it~~];

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

182 (A) employment[;];

- 183            (B) apprenticeship programs[;];
- 184            (C) on-the-job training programs[;]; and
- 185            (D) vocational schools [~~in this state~~]; and
- 186            (ii) by:
- 187            [(~~i~~)] (A) employers;
- 188            [(~~ii~~)] (B) employment agencies;
- 189            [(~~iii~~)] (C) labor organizations;
- 190            [(~~iv~~)] (D) joint apprenticeship committees; and
- 191            [(~~v~~)] (E) vocational schools;
- 192            (d) formulate one or more plans for the elimination of discrimination by educational or
- 193 other means;
- 194            (e) hold [~~hearings upon~~] a hearing on a complaint made against:
- 195            (i) a person;
- 196            (ii) an employer;
- 197            (iii) an employment agency;
- 198            (iv) a labor organization;
- 199            (v) [~~the employees or members~~] an employee or member of an employment agency or
- 200 labor organization;
- 201            (vi) a joint apprenticeship committee; or
- 202            (vii) a vocational school;
- 203            (f) issue one or more publications and reports of investigations and research that:
- 204            (i) promote good will among the various racial, religious, and ethnic groups of the
- 205 state; and
- 206            (ii) minimize or eliminate discrimination in employment because of race, color, sex,
- 207 religion, national origin, age, [~~or~~] disability, sexual orientation, or gender identity;
- 208            (g) prepare and transmit to the governor, at least once each year, reports describing:
- 209            (i) [~~its~~] the division's proceedings, investigations, and hearings;
- 210            (ii) the outcome of those hearings;
- 211            (iii) decisions the division [~~has rendered~~] renders; and
- 212            (iv) the other work performed by the division;
- 213            (h) recommend policies to the governor, and submit recommendation to employers,

214 employment agencies, and labor organizations to implement those policies;

215 (i) recommend ~~[any]~~ legislation to the governor that the division considers necessary  
216 concerning discrimination because of:

217 (A) race~~[-];~~;

218 (B) sex~~[-];~~;

219 (C) color~~[-];~~;

220 (D) national origin~~[-];~~;

221 (E) religion~~[-];~~;

222 (F) age~~[-,or];~~;

223 (G) disability [~~to the governor that it considers necessary; and~~];

224 (H) sexual orientation; or

225 (I) gender identity; and

226 (j) within the limits of ~~[any]~~ appropriations made for its operation, cooperate with other  
227 agencies or organizations, both public and private, in the planning and conducting of  
228 educational programs designed to eliminate discriminatory practices prohibited under this  
229 chapter.

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

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

234 (i) subpoena witnesses and compel their attendance at the hearing;

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

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

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

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

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



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

246 **34A-5-105. Antidiscrimination and Labor Advisory Council -- Membership --**  
 247 **Appointment -- Term -- Powers and duties -- Chair.**

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

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

250 (i) three employer representatives;

251 (ii) three employee representatives;

252 (iii) two representatives of persons who seek to rent or purchase [~~dwellings~~] a

253 dwelling, as defined in Section 57-21-2;

254 (iv) two representatives of persons who:

255 (A) sell or rent dwellings; and

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

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

258 (b) the commissioner or the commissioner's designee as a nonvoting member of the

259 council.

260 (2) In making [~~the appointments~~] an appointment under Subsection (1), the

261 commissioner shall consider representation of the following protected classes:

262 (a) race;

263 (b) color;

264 (c) national origin;

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

266 (e) religion;

267 (f) age;

268 (g) persons with disabilities;

269 (h) sexual orientation;

270 (i) gender identity;

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

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

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

274 (4) (a) Except as required by Subsection (4)(b), as terms of current council members

275 expire, the commissioner shall appoint each new member or reappointed member to a four-year

276 term.

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

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

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

285 (6) A member may not receive compensation or benefits for the member's service, but  
286 may receive per diem and travel expenses in accordance with:

287 (a) Section 63A-3-106;

288 (b) Section 63A-3-107; and

289 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
290 63A-3-107.

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

292 (i) offer advice on issues requested by:

293 (A) the commission;

294 (B) the division; or

295 (C) the Legislature; and

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

297 (A) employment discrimination;

298 (B) housing discrimination; and

299 (C) the administration by the commission of:

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

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

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

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

306 (8) (a) The commissioner or the commissioner's designee shall serve as chair of the

307 council.

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

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

311 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**  
312 **practices.**

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

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

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

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

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

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

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

342 [~~(B)~~] (iv) Notwithstanding Subsection (1)(a)(iii)[~~(A)~~]:

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

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

349 (b) An employment agency may not:

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

353 (A) race;

354 (B) color;

355 (C) sex;

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

357 (E) religion;

358 (F) national origin;

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

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

361 (I) sexual orientation; or

362 (J) gender identity; or

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

366 (A) race;

367 (B) color;

368 (C) sex;

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

370 (E) religion;

371 (F) national origin;

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

373 (H) disability[~~;~~];

374 (I) sexual orientation; or

375 (J) gender identity.

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

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

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

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

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

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

386 [~~(ii)~~] (B) sex;

387 [~~(iii)~~] (C) pregnancy, childbirth, or pregnancy-related conditions;

388 [~~(iv)~~] (D) religion;

389 [~~(v)~~] (E) national origin;

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

391 [~~(vii)~~] (G) disability[~~;~~];

392 (H) sexual orientation; or

393 (I) gender identity.

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

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

400 (B) use ~~[any]~~ a form of application for employment or membership~~[-];~~ or

401 (C) make ~~[any]~~ an inquiry in connection with prospective employment or membership.

402 (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or

403 inquiry that expresses, either directly or indirectly~~[-(i) any]~~, a limitation, specification, or

404 discrimination, or the intent to make a limitation, specification, or discrimination as to:

405 (A) race;

406 (B) color;

407 (C) religion;

408 (D) sex;

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

410 (F) national origin;

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

412 (H) disability;

413 (I) sexual orientation; or

414 (J) gender identity.

415 ~~[(ii) the intent to make any limitation, specification, or discrimination described in~~

416 ~~Subsection (1)(d)(i):]~~

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

418 or ~~[the employees or members]~~ an employee or member of an employer, employment agency,

419 or labor organization, may not:

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

421 discriminatory or prohibited employment practice;

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

423 order issued under this chapter; or

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

425 section.

426 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational

427 school, providing, coordinating, or controlling an apprenticeship ~~[programs]~~ program, or

428 providing, coordinating, or controlling an on-the-job-training ~~[programs]~~ program, instruction,

429 training, or retraining ~~[programs]~~ program, may not:

430 (A) deny to, or withhold from, ~~[any]~~ a qualified person, the right to be admitted to, or

431 participate in [~~any~~] an apprenticeship training program, on-the-job-training program, or other  
432 occupational instruction, training, or retraining program because of:

- 433 (I) race;
- 434 (II) color;
- 435 (III) sex;
- 436 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 437 (V) religion;
- 438 (VI) national origin;
- 439 (VII) age, if the individual is 40 years of age or older; [~~or~~]
- 440 (VIII) disability;
- 441 (IX) sexual orientation; or
- 442 (X) gender identity;

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

- 445 (I) race;
- 446 (II) color;
- 447 (III) sex;
- 448 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 449 (V) religion;
- 450 (VI) national origin;
- 451 (VII) age, if the individual is 40 years of age or older;
- 452 (VIII) disability;
- 453 (IX) sexual orientation; or
- 454 (X) gender identity;

455 (C) discriminate against [~~such~~] a qualified person in the terms, conditions, or privileges  
456 of [~~programs~~] a program described in Subsection (1)(f)(i)(A), because of:

- 457 (I) race;
- 458 (II) color;
- 459 (III) sex;
- 460 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 461 (V) religion;

462 (VI) national origin;

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

464 (VIII) disability; [or]

465 (IX) sexual orientation; or

466 (X) gender identity; or

467 [~~C~~] (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be

468 printed or published, [any] a notice or advertisement relating to employment by the employer,

469 or membership in or [any] a classification or referral for employment by a labor organization,

470 or relating to [any] a classification or referral for employment by an employment agency,

471 indicating [any] a preference, limitation, specification, or discrimination based on:

472 (I) race;

473 (II) color;

474 (III) sex;

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

476 (V) religion;

477 (VI) national origin;

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

479 (VIII) disability[-];

480 (IX) sexual orientation; or

481 (X) gender identity.

482 (ii) Notwithstanding Subsection (1)(f)(i)[~~C~~](D), if the following is a bona fide

483 occupational qualification for employment, a notice or advertisement described in Subsection

484 (1)(f)(i)[~~C~~](D) may indicate a preference, limitation, specification, or discrimination based

485 on:

486 (A) race;

487 (B) color;

488 (C) religion;

489 (D) sex;

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

491 (F) age;

492 (G) national origin; [or]



493 (H) disability[-];

494 (I) sexual orientation; or

495 (J) gender identity.

496 (g) Subject to Subsection (7), an employer may not discriminate against an employee  
 497 or applicant for employment because of the employee's or applicant's political speech or  
 498 activity that occurs off the employer's premises and during nonworking hours.

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

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

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

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

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

509 (i) for an employer to hire and employ [~~employees;~~] an employee for an employment  
 510 agency to classify or refer for employment [~~any~~] an individual, for a labor organization to  
 511 classify its membership or to classify or refer for employment [~~any~~] an individual, or for an  
 512 employer, labor organization, or joint labor-management committee controlling an  
 513 apprenticeship or other training or retraining [~~programs~~] program to admit or employ [~~any~~] an  
 514 individual in [~~any such~~] the program, on the basis of religion, sex, pregnancy, childbirth, or  
 515 pregnancy-related conditions, age, national origin, [~~or~~] disability, sexual orientation, or gender  
 516 identity in those certain instances [~~where~~] when religion, sex, pregnancy, childbirth, or  
 517 pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin,  
 518 [~~or~~] disability, sexual orientation, or gender identity is a bona fide occupational qualification  
 519 reasonably necessary to the normal operation of that particular business or enterprise;

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

522 (A) the school, college, university, or other educational institution is, in whole or in  
 523 substantial part, owned, supported, controlled, or managed by a particular religious corporation,

524 association, or society; or

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

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

528 (A) the employer's:

529 (I) spouse;

530 (II) child; or

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

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

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

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

539 (b) Nothing in this chapter applies to [~~any~~] a business or enterprise on or near an Indian  
540 reservation with respect to [~~any~~] a publicly announced employment practice of the business or  
541 enterprise under which preferential treatment is given to [~~any~~] an individual because that  
542 individual is a native American Indian living on or near an Indian reservation.

543 (c) Nothing in this chapter [~~shall~~] may be interpreted to require [~~any~~] an employer,  
544 employment agency, labor organization, vocational school, joint labor-management committee,  
545 or apprenticeship program subject to this chapter to grant preferential treatment to [~~any~~] an  
546 individual or to [~~any~~] a group because of the race, color, religion, sex, age, national origin, [~~or~~]  
547 disability, sexual orientation, or gender identity of the individual or group on account of an  
548 imbalance [~~which~~] that may exist with respect to the total number or percentage of persons of  
549 [~~any~~] a race, color, religion, sex, age, national origin, [~~or~~] disability, sexual orientation, or  
550 gender identity employed by [~~any~~] an employer, referred or classified for employment by an  
551 employment agency or labor organization, admitted to membership or classified by [~~any~~] a  
552 labor organization, or admitted to or employed in, any apprenticeship or other training  
553 program, in comparison with the total number or percentage of persons of that race, color,  
554 religion, sex, age, national origin, [~~or~~] disability, sexual orientation, or gender identity in any

555 community or county or in the available work force in any community or county.

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

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

564 (a) under Subsection (6);

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

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

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

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

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

574 (7) (a) Subsection (1)(g) does not protect an employee or applicant who engages in  
575 political speech or activity that creates a material conflict of interest with:

576 (i) a private employer's business related interests; or

577 (ii) a government employer's government interests.

578 (b) Subsection (1)(g) does not protect an employee who engages in political speech or  
579 activity that the employee is prohibited from engaging in under state or federal law.

580 (c) Subsection (1)(g) does not protect an employee or applicant who engages in  
581 political speech or activity if political neutrality is a bona fide occupational qualification.

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

583 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**  
584 **Adjudicative proceedings -- Conciliation -- Reconsideration -- Determination.**

585 (1) (a) ~~[Any]~~ A person claiming to be aggrieved by a discriminatory or prohibited

586 employment practice may, or that person's attorney or agent may, make, sign, and file with the  
587 division a request for agency action.

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

589 (c) A request for agency action made under this section shall be filed within 180 days  
590 after the alleged discriminatory or prohibited employment practice ~~[occurred]~~ occurs.

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

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

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

601 (3) (a) Before a hearing is set or held as part of any adjudicative proceeding, the  
602 division shall promptly assign an investigator to attempt a settlement between the parties by  
603 conference, conciliation, or persuasion.

604 (b) If no settlement is reached, the investigator shall make a prompt impartial  
605 investigation of all allegations made in the request for agency action.

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

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

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

611 (d) An aggrieved party may withdraw the request for agency action prior to the  
612 issuance of a final order.

613 (4) (a) If the initial attempts at settlement are unsuccessful, and the investigator  
614 uncovers insufficient evidence during the investigation to support the allegations of a  
615 discriminatory or prohibited employment practice set out in the request for agency action, the  
616 investigator shall formally report these findings to the director or the director's designee.

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

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

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

626 (5) (a) If the initial attempts at settlement are unsuccessful and the investigator  
627 uncovers sufficient evidence during the investigation to support the allegations of a  
628 discriminatory or prohibited employment practice set out in the request for agency action, the  
629 investigator shall formally report these findings to the director or the director's designee.

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

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

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

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

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

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

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

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

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

650 (ii) the respondent may amend its answer.

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

652 (i) during or after a hearing; and

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

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

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

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

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

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

665 (i) reinstatement;

666 (ii) back pay and benefits;

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

668 (iv) costs.

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

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

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

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

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

678 (12) An order of the commission under Subsection (11)(a) is subject to judicial review

679 as provided in:

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

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

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

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

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

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

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

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

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

699 (a) race;

700 (b) color;

701 (c) sex;

702 (d) retaliation;

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

704 (f) age;

705 (g) religion;

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

707 (i) disability[~~;~~];

708 (j) sexual orientation; or

709 (k) gender identity.

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

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

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

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

720 **57-21-2. Definitions.**

721 As used in this chapter:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

752 (12) "Division" means the Division of Antidiscrimination and Labor established under  
753 the commission.

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

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

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

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

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

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

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

767 (i) is pregnant;

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

770 (iii) is a single individual.

771 (15) "Gender identity" means an individual's actual or perceived sense of being male.

772 female, or transgendered, without regard to the person's physiology. Evidence of an  
773 individual's gender identity includes the individual's gender-related appearance, mannerisms,  
774 and other gender-related characteristics.

775 [~~15~~] (16) "National origin" means the place of birth of an individual or of any lineal  
776 ancestors.

777 [~~16~~] (17) "Person" includes one or more:

778 (a) individuals[;];

779 (b) corporations[;];

780 (c) limited liability companies[;];

781 (d) partnerships[;];

782 (e) associations[;];

783 (f) labor organizations[;];

784 (g) legal representatives[;];

785 (h) mutual companies[;];

786 (i) joint-stock companies[;];

787 (j) trusts[;];

788 (k) unincorporated organizations[;];

789 (l) trustees[;];

790 (m) trustees in cases under the United States Bankruptcy Code[;];

791 (n) receivers[;]; and

792 (o) fiduciaries.

793 [~~17~~] (18) "Presiding officer" has the same meaning as provided in Section  
794 63G-4-103.

795 [~~18~~] (19) "Real estate broker" or "salesperson" means a principal broker, an associate  
796 broker, or a sales agent as those terms are defined in Section 61-2f-102.

797 [~~19~~] (20) "Respondent" means a person against whom a complaint of housing  
798 discrimination has been initiated.

799 [~~20~~] (21) "Sex" means gender and includes pregnancy, childbirth, and disabilities  
800 related to pregnancy or childbirth.

801 (22) "Sexual orientation" means an individual's actual or perceived orientation as  
802 heterosexual, homosexual, or bisexual.

803           ~~[(21)]~~ (23) "Source of income" means the verifiable condition of being a recipient of  
 804 federal, state, or local assistance, including medical assistance, or of being a tenant receiving  
 805 federal, state, or local subsidies, including rental assistance or rent supplements.

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

807           **57-21-3. Exemptions.**

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

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

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

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

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

818           (e) the owner does not use ~~[any]~~ a discriminatory housing practice under Subsection  
 819 57-21-5(2) in the sale or rental of the dwelling.

820           (2) This chapter does not apply to a temporary or permanent residence facility operated  
 821 by a nonprofit ~~[or]~~ organization, a charitable organization, or a person in conjunction with a  
 822 religious organization, including ~~[any]~~ a dormitory operated by a public or private educational  
 823 institution, if the discrimination is by sex, sexual orientation, gender identity, or familial status;

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

825           (b) in the furtherance of a religious institution's free exercise of religious rights under  
 826 the First Amendment of the United States Constitution.

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

830           (a) the dwelling is designed for occupancy by four or fewer families~~[-]~~; and

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

832           (4) ~~[This]~~ Unless membership in a religion is restricted by race, color, sex, or national  
 833 origin, sexual orientation, or gender identity, this chapter does not prohibit a religious

834 organization, association, or society, or ~~[any]~~ a nonprofit institution or organization operated,  
835 supervised, or controlled by or in conjunction with a religious organization, association, or  
836 society, from:

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

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

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

844 (i) limiting the rental or occupancy of lodgings to members~~;~~ or ~~[from]~~

845 (ii) giving preference to its members~~[-, but]~~.

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

848 (6) This chapter does not prohibit distinctions based on inability to fulfill the terms and  
849 conditions, including financial obligations, of:

850 (a) a lease~~[-];~~

851 (b) a rental agreement~~[-];~~

852 (c) a contract of purchase or sale~~[-];~~

853 (d) a mortgage~~[-];~~

854 (e) a trust deed~~[-, or other];~~ or

855 (f) another financing agreement.

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

857 (a) requiring its single students to live in housing approved, operated, or owned by the  
858 nonprofit educational institution;

859 (b) segregating housing that the nonprofit educational institution approves, operates, or  
860 owns on the basis of sex or familial status or both:

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

862 (ii) in the furtherance of a religious institution's free exercise of religious rights under  
863 the First Amendment of the ~~[United States]~~ Constitution of the United States; or

864 (c) otherwise assisting ~~[others]~~ another person in making sex-segregated housing

865 available to students as may be permitted by regulations implementing the federal Fair Housing  
866 Amendments Act of 1988 and Title IX of the Education Amendments of 1972.

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

870 (9) ~~[The provisions pertaining]~~ A provision of this chapter that pertains to familial  
871 status ~~[do]~~ does not apply to the existence, development, sale, rental, advertisement, or  
872 financing of ~~[any]~~ an apartment complex, condominium, or other housing development  
873 designated as housing for older persons, as defined by Title VIII of the Civil Rights Act of  
874 1968, as amended.

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

876 **57-21-5. Discriminatory practices enumerated -- Protected persons, classes**  
877 **enumerated.**

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

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

882 (ii) refuse to negotiate for the sale or rental~~[-];~~ or

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

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

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

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

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

889 (2) It is a discriminatory housing practice~~;~~

890 (a) to~~;~~

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

892 (ii) make, print, circulate, publish, post, or cause to be made, printed, circulated,

893 published, or posted ~~[any]~~ a notice, statement, or advertisement~~[-];~~ or ~~[to]~~

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

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

896 (i) a preference, limitation, or discrimination based on race, color, religion, sex,  
897 national origin, familial status, source of income, [or] disability, sexual orientation, or gender  
898 identity; or [~~expresses any~~]

899 (ii) an intent to make [~~any such~~] a preference, limitation, or discrimination described in  
900 Subsection (2)(b)(i).

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

906 (4) A discriminatory housing practice includes:

907 (a) a refusal to permit, at the expense of the person with a disability, reasonable  
908 modifications of existing premises occupied or to be occupied by the person if the  
909 modifications are necessary to afford that person full enjoyment of the premises, except that in  
910 the case of a rental, the landlord, where it is reasonable to do so, may condition permission for  
911 a modification on the renter agreeing to restore the interior of the premises, when reasonable, to  
912 the condition that existed before the modification, reasonable wear and tear excepted;

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

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

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

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

925 (A) the public use and common use portions of the covered multifamily dwelling are  
926 readily accessible to and usable by a person with a disability;

927 (B) all the doors designed to allow passage into and within the covered multifamily  
 928 dwellings are sufficiently wide to allow passage by a person with a disability who is in a  
 929 wheelchair; and

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

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

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

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

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

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

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

942 **57-21-6. Discriminatory housing practices regarding residential real**  
 943 **estate-related transactions -- Discriminatory housing practices regarding the provisions**  
 944 **of brokerage services.**

945 (1) (a) It is a discriminatory housing practice for ~~[any]~~ a person whose business  
 946 includes engaging in residential real estate-related transactions to discriminate against ~~[any]~~ a  
 947 person in making available ~~[such]~~ a residential real estate-related transaction, or in the terms or  
 948 conditions of the residential real estate-related transaction, because of race, color, religion, sex,  
 949 disability, familial status, source of income, ~~[or]~~ national origin, sexual orientation, or gender  
 950 identity.

951 (b) Residential real estate-related transactions include:

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

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

954 or

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

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

957 (2) It is a discriminatory housing practice to, because of race, color, religion, sex,

958 disability, familial status, source of income, national origin, sexual orientation, or gender  
959 identity:

960 (a) deny [any] a person access to, or membership or participation in, [any] a  
961 multiple-listing service, real estate brokers' organization, or other service, organization, or  
962 facility relating to the business of selling or renting dwellings; or [to]

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

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

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

970 **57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions --**  
971 **Obstruction of division investigation -- Reprisals.**

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

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

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

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

976 or

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

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

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

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

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

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

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



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

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

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**Legislative Review Note**

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**Office of Legislative Research and General Counsel**