

**Representative Mark A. Wheatley** proposes the following substitute bill:

**WORKPLACE DISCRIMINATION**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mark A. Wheatley**

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

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to workplace discrimination.

**Highlighted Provisions:**

This bill:

- ▶ modifies the remedies available in an administrative action based on prohibited employment practices;
- ▶ provides for civil actions seeking relief from discriminatory or prohibited employment practices;
- ▶ bars further agency action if a civil action is commenced;
- ▶ removes language related to exclusive remedy; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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



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

Section 1. Section **34A-5-107** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) may not attempt a settlement between the parties if it is clear that no discriminatory

57 or prohibited employment practice has occurred.

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

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

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

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

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

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

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

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

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

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

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

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

91 (6) In ~~[any]~~ an adjudicative proceeding to review the director's or the director's  
92 designee's determination that a prohibited employment practice has occurred, the division shall  
93 present the factual and legal basis of the determination ~~[or]~~ and order issued under Subsection  
94 (5).

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

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

98 (ii) the respondent may amend its answer.

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

100 (i) during or after a hearing; and

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

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

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

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

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

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

113 (i) reinstatement;

114 (ii) back pay and benefits;

115 (iii) compensatory damages in an amount not to exceed that available under 42 U.S.C.

116 Sec. 1981a;

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

118 ~~[(iv)]~~ (v) costs.

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

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

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

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

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

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

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

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

132 (13) The commission shall have authority to make rules concerning procedures under  
133 this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

137 (a) Information used by the director or the director's designee in making [any] a  
138 determination may be provided to [aff] the interested parties for the purpose of preparation for  
139 and participation in proceedings before the commission.

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

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

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

146 [~~15~~] ~~The procedures contained in this section are the exclusive remedy under state law~~  
147 ~~for employment discrimination based upon:]~~

148 [~~(a) race;~~]

149 [~~(b) color;~~]

- 150           ~~[(e) sex;]~~  
151           ~~[(d) retaliation;]~~  
152           ~~[(e) pregnancy, childbirth, or pregnancy-related conditions;]~~  
153           ~~[(f) age;]~~  
154           ~~[(g) religion;]~~  
155           ~~[(h) national origin; or]~~  
156           ~~[(i) disability.]~~

157           (15) (a) A person claiming to be aggrieved by a prohibited employment practice may  
158 request a state right to sue letter from the division after the person files with the division a  
159 request for agency action under Subsection (1), but no later than the day on which the  
160 commission issues a final order under this section.

161           (b) A person who obtains a state right to sue letter under Subsection (15)(a) may file a  
162 civil action in state district court by no later than 90 days after the day on which the state right  
163 to sue letter is issued by the division.

164           (c) The commencement of a civil action under this Subsection (15) seeking relief from  
165 a prohibited employment practice bars the commencement or continuation of any proceeding  
166 before the division or commission in connection with the same claim of a prohibited  
167 employment practice under this chapter.

168           (d) If a court finds discriminatory or prohibited employment practices, the court may  
169 order relief to the complaining party, including:

170           (i) reinstatement;

171           (ii) back pay and benefits;

172           (iii) compensatory and punitive damages in an amount not to exceed that available  
173 under 42 U.S.C. Sec. 1981a;

174           (iv) attorney fees; and

175           (v) costs.

176           (16) (a) The commencement of an action under federal law for relief based upon any  
177 act prohibited by this chapter bars the commencement or continuation of any adjudicative  
178 proceeding before the commission in connection with the same claims under this chapter.

179           (b) The transfer of a request for agency action to the Equal Employment Opportunity  
180 Commission in accordance with Subsection (1)(d) is considered the commencement of an

181 action under federal law for purposes of Subsection (16)(a).

182           ~~[(c) Nothing in this Subsection (16) is intended to alter, amend, modify, or impair the~~  
183 ~~exclusive remedy provision set forth in Subsection (15).]~~