

HB0105S01 compared with HB0105

~~{deleted text}~~ shows text that was in HB0105 but was deleted in HB0105S01.

inserted text shows text that was not in HB0105 but was inserted into HB0105S01.

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Representative Justin J. Miller proposes the following substitute bill:

ANTIDISCRIMINATION MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Justin J. Miller

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Antidiscrimination Act to address ~~{pregnancy, childbirth, pregnancy-related conditions,}~~ breastfeeding ~~{,}~~ or medical conditions related to breastfeeding.

Highlighted Provisions:

This bill:

- ▶ includes ~~{pregnancy, childbirth, pregnancy-related conditions,}~~ breastfeeding ~~{,}~~ or medical conditions related to breastfeeding ~~{in certain provisions related to the powers of the division;~~

→ ~~includes}~~ under pregnancy, childbirth, or pregnancy-related conditions ~~{,~~ breastfeeding, or medical conditions related to breastfeeding in certain provisions relating to discriminatory or prohibited employment practice~~};~~ and

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- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{34A-5-104}~~34A-5-102, as last amended by Laws of Utah ~~{2012}~~2011, Chapter ~~{369}~~
~~34A-5-106~~, as last amended by Laws of Utah 2013, Chapter 278
~~34A-5-107~~, as last amended by Laws of Utah 2008, Chapter 382
~~{413}~~

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

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

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

- (1) As used in this chapter:
- (a) "Apprenticeship" means a program for the training of apprentices including a program providing the training of those persons defined as apprentices by Section 35A-6-102.
 - (b) "Bona fide occupational qualification" means a characteristic applying to an employee that:
 - (i) is necessary to the operation; or
 - (ii) is the essence of the employee's employer's business.
 - (c) "Court" means:
 - (i) the district court in the judicial district of the state in which the asserted unfair employment practice occurred; or
 - (ii) if this court is not in session at that time, a judge of the court described in Subsection (1)(c)(i).
 - (d) "Director" means the director of the division.
 - (e) "Disability" means a physical or mental disability as defined and covered by the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.
 - (f) "Division" means the Division of Antidiscrimination and Labor.

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(g) "Employee" means any person applying with or employed by an employer.

(h) (i) "Employer" means:

(A) the state;

(B) any political subdivision;

(C) a board, commission, department, institution, school district, trust, or agent of the state or its political subdivisions; or

(D) a ~~+~~ person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.

(ii) "Employer" does not include:

(A) a religious organization or association;

(B) a religious corporation sole; or

(C) any corporation or association constituting a wholly owned subsidiary or agency of any religious organization or association or religious corporation sole.

(i) "Employment agency" means any person:

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

(ii) holding the person out to be equipped to take an action described in Subsection (1)(i)(i).

(j) "Joint apprenticeship committee" means any association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.

(k) "Labor organization" means any organization that exists for the purpose in whole or in part of:

(i) collective bargaining;

(ii) dealing with employers concerning grievances, terms or conditions of employment;

or

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

(l) "National origin" means the place of birth, domicile, or residence of an individual or of an individual's ancestors.

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

(i) is also employed at that job; or

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(ii) may be employed by the employer conducting the program during the course of the program, or when the program is completed.

(n) "Person" means one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, receivers, the state and all political subdivisions and agencies of the state.

(o) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or medical conditions related to breastfeeding.

~~(o)~~ (p) "Presiding officer" means the same as that term is defined in Section 63G-4-103.

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

~~(q)~~ (r) "Retaliate" means the taking of adverse action by an employer, employment agency, labor organization, apprenticeship program, on-the-job training program, or vocational school against one of its employees, applicants, or members because the employee, applicant, or member has:

- (i) opposed any employment practice prohibited under this chapter; or
- (ii) filed charges, testified, assisted, or participated in any way in any proceeding, investigation, or hearing under this chapter.

~~(r)~~ (s) "Unincorporated entity" means an entity organized or doing business in the state that is not:

- (i) an individual;
- (ii) a corporation; or
- (iii) publicly traded.

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

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

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

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

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

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

(A) the unincorporated entity; or

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

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

(i) "active manager";

(ii) "directly or indirectly holds at least an 8% ownership interest"; and

(iii) "subject to supervision or control in the performance of work."

~~{ Section 1. Section 34A-5-104 is amended to read:~~

~~34A-5-104. Powers.~~

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

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

~~(2) The division may:~~

~~(a) appoint and prescribe the duties of investigators and other employees and agents that it considers necessary for the enforcement of this chapter;~~

~~(b) receive, reject, investigate, and pass upon complaints alleging:~~

~~(i) discrimination in:~~

~~(A) employment;~~

~~(B) apprenticeship programs;~~

~~(C) on-the-job training programs; and~~

~~(D) vocational schools; or~~

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

~~(A) a person;~~

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- ~~—— (B) an employer;~~
- ~~—— (C) an employment agency;~~
- ~~—— (D) a labor organization;~~
- ~~—— (E) the employees or members of an employment agency or labor organization;~~
- ~~—— (F) a joint apprenticeship committee; and~~
- ~~—— (G) vocational school;~~
- ~~—— (c) investigate and study the existence, character, causes, and extent of discrimination in employment, apprenticeship programs, on-the-job training programs, and vocational schools in this state by:~~
 - ~~—— (i) employers;~~
 - ~~—— (ii) employment agencies;~~
 - ~~—— (iii) labor organizations;~~
 - ~~—— (iv) joint apprenticeship committees; and~~
 - ~~—— (v) vocational schools;~~
- ~~—— (d) formulate plans for the elimination of discrimination by educational or other means;~~
- ~~—— (e) hold hearings upon complaint made against:~~
 - ~~—— (i) a person;~~
 - ~~—— (ii) an employer;~~
 - ~~—— (iii) an employment agency;~~
 - ~~—— (iv) a labor organization;~~
 - ~~—— (v) the employees or members of an employment agency or labor organization;~~
 - ~~—— (vi) a joint apprenticeship committee; or~~
 - ~~—— (vii) a vocational school;~~
- ~~—— (f) issue publications and reports of investigations and research that:~~
 - ~~—— (i) promote good will among the various racial, religious, and ethnic groups of the state; and~~
 - ~~—— (ii) minimize or eliminate discrimination in employment because of race, color, sex, religion, national origin, age, pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding, or disability;~~
 - ~~—— (g) prepare and transmit to the governor, at least once each year, reports describing:~~

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- ~~—— (i) its proceedings, investigations, and hearings;~~
- ~~—— (ii) the outcome of those hearings;~~
- ~~—— (iii) decisions the division has rendered; and~~
- ~~—— (iv) the other work performed by the division;~~
- ~~—— (h) recommend policies to the governor, and submit recommendation to employers, employment agencies, and labor organizations to implement those policies;~~
- ~~—— (i) recommend any legislation to the governor that the division considers necessary concerning discrimination because of:~~
 - ~~—— (A) race[.];~~
 - ~~—— (B) sex[.];~~
 - ~~—— (C) color[.];~~
 - ~~—— (D) national origin[.];~~
 - ~~—— (E) religion[.];~~
 - ~~—— (F) age[.];~~
 - ~~—— (G) pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding; or~~
 - ~~—— (H) disability [to the governor that it considers necessary]; and~~
- ~~—— (j) within the limits of any appropriations made for its operation, cooperate with other agencies or organizations, both public and private, in the planning and conducting of educational programs designed to eliminate discriminatory practices prohibited under this chapter.~~
- ~~—— (3) The division shall investigate alleged discriminatory practices involving officers or employees of state government if requested to do so by the Career Service Review Office.~~
- ~~—— (4) (a) In any hearing held under this chapter, the division may:~~
 - ~~—— (i) subpoena witnesses and compel their attendance at the hearing;~~
 - ~~—— (ii) administer oaths and take the testimony of any person under oath; and~~
 - ~~—— (iii) compel any person to produce for examination any books, papers, or other information relating to the matters raised by the complaint.~~
- ~~—— (b) The division director or a hearing examiner appointed by the division director may conduct hearings.~~
- ~~—— (c) If a witness fails or refuses to obey a subpoena issued by the division, the division~~

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~~may petition the district court to enforce the subpoena.~~

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

~~—— Section 2. Section ~~34A-5-106~~ is amended to read:~~

~~—— **34A-5-106. Discriminatory or prohibited employment practices == Permitted practices:**~~

~~—— (1) It is a discriminatory or prohibited employment practice to take any action described in Subsections (1)(a) through (f).~~

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

~~—— (A) race;~~

~~—— (B) color;~~

~~—— (C) sex;~~

~~—— (D) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

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

~~—— (F) religion;~~

~~—— (G) national origin; or~~

~~—— (H) disability.~~

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

~~—— (A) education;~~

~~—— (B) training;~~

~~—— (C) ability, with or without reasonable accommodation;~~

~~—— (D) moral character;~~

~~—— (E) integrity;~~

~~—— (F) disposition to work;~~

~~—— (G) adherence to reasonable rules and regulations; and~~

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- ~~—— (H) other job related qualifications required by an employer.~~
- ~~—— (iii) (A) As used in this chapter, "to discriminate in matters of compensation" means the payment of differing wages or salaries to employees having substantially equal experience, responsibilities, and skill for the particular job.~~
- ~~—— (B) Notwithstanding Subsection (1)(a)(iii)(A):~~
- ~~—— (I) nothing in this chapter prevents increases in pay as a result of longevity with the employer, if the salary increases are uniformly applied and available to all employees on a substantially proportional basis; and~~
- ~~—— (H) nothing in this section prohibits an employer and employee from agreeing to a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or benefits if the employee is eligible for those payments:~~
- ~~—— (b) An employment agency may not:~~
- ~~—— (i) refuse to list and properly classify for employment, or refuse to refer an individual for employment, in a known available job for which the individual is otherwise qualified, because of:~~
- ~~—— (A) race;~~
- ~~—— (B) color;~~
- ~~—— (C) sex;~~
- ~~—— (D) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~
- ~~—— (E) religion;~~
- ~~—— (F) national origin;~~
- ~~—— (G) age, if the individual is 40 years of age or older; or~~
- ~~—— (H) disability; or~~
- ~~—— (ii) comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of:~~
- ~~—— (A) race;~~
- ~~—— (B) color;~~
- ~~—— (C) sex;~~
- ~~—— (D) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical~~

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conditions related to breastfeeding;

~~—— (E) religion;~~

~~—— (F) national origin;~~

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

~~—— (H) disability.~~

~~—— (c) A labor organization may not exclude any individual otherwise qualified from full membership rights in the labor organization, expel the individual from membership in the labor organization, or otherwise discriminate against or harass any of the labor organization's members in full employment of work opportunity, or representation, because of:~~

~~—— (i) race;~~

~~—— (ii) sex;~~

~~—— (iii) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

~~—— (iv) religion;~~

~~—— (v) national origin;~~

~~—— (vi) age, if the individual is 40 years of age or older; or~~

~~—— (vii) disability.~~

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

~~—— (i) any limitation, specification, or discrimination as to:~~

~~—— (A) race;~~

~~—— (B) color;~~

~~—— (C) religion;~~

~~—— (D) sex;~~

~~—— (E) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

~~—— (F) national origin;~~

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

~~—— (H) disability; or~~

~~—— (ii) the intent to make any limitation, specification, or discrimination described in Subsection (1)(d)(i):~~

~~—— (e) A person, whether or not an employer, an employment agency, a labor organization, or the employees or members of an employer, employment agency, or labor organization, may not:~~

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

~~—— (ii) obstruct or prevent any person from complying with this chapter, or any order issued under this chapter; or~~

~~—— (iii) attempt, either directly or indirectly, to commit any act prohibited in this section.~~

~~—— (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational school, providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on-the-job-training programs, instruction, training, or retraining programs may not:~~

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

~~—— (I) race;~~

~~—— (II) color;~~

~~—— (III) sex;~~

~~—— (IV) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

~~—— (V) religion;~~

~~—— (VI) national origin;~~

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

~~—— (VIII) disability;~~

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

~~—— (I) race;~~

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~~—— (II) color;~~

~~—— (III) sex;~~

~~—— (IV) pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

~~—— (V) religion;~~

~~—— (VI) national origin;~~

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

~~—— (VIII) disability;~~

~~—— (C) discriminate against such a person in the terms, conditions, or privileges of programs described in Subsection (1)(f)(i)(A), because of:~~

~~—— (I) race;~~

~~—— (II) color;~~

~~—— (III) sex;~~

~~—— (IV) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

~~—— (V) religion;~~

~~—— (VI) national origin;~~

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

~~—— (VIII) disability; or~~

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

~~—— (I) race;~~

~~—— (II) color;~~

~~—— (III) sex;~~

~~—— (IV) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

~~—— (V) religion;~~

~~—— (VI) national origin;~~

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

~~—— (VIII) disability.~~

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

~~—— (A) race;~~

~~—— (B) color;~~

~~—— (C) religion;~~

~~—— (D) sex;~~

~~—— (E) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

~~—— (F) age;~~

~~—— (G) national origin; or~~

~~—— (H) disability.~~

~~—— (2) Nothing contained in Subsections (1)(a) through (1)(f) shall be construed to prevent:~~

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

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

~~—— (c) a restriction on the activities of individuals licensed by the liquor authority with respect to persons under 21 years of age.~~

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

~~—— (i) for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of religion, sex, pregnancy, childbirth, [or] pregnancy-related conditions, age, national origin, [or] disability, breastfeeding, or medical conditions related to breastfeeding, in those certain~~

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~~instances where religion, sex, pregnancy, childbirth, [or] pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin, [or] disability, breastfeeding, or medical conditions related to breastfeeding is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;~~

~~—— (ii) for a school, college, university, or other educational institution to hire and employ employees of a particular religion if:~~

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

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

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

~~—— (A) the employer's:~~

~~—— (I) spouse;~~

~~—— (II) child; or~~

~~—— (III) son-in-law or daughter-in-law;~~

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

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

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

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

~~—— (c) Nothing in this chapter shall be interpreted to require any employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, age, national origin, pregnancy,~~

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~~childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding, or disability of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, age, national origin, pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding, or disability employed by any employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, age, national origin, pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding, or disability in any community or county or in the available work force in any community or county.~~

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

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

~~—— (a) under Subsection (6); and~~

~~—— (b) when age is a bona fide occupational qualification.~~

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

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

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

~~—— Section 3. Section ~~34A-5-107~~ is amended to read:~~

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

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~~—— (1) (a) Any 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 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 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 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 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 investigation in fairness to all parties and agencies involved; and~~

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

~~—— (d) An aggrieved party may withdraw the request for agency action prior to the issuance of a final order:~~

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (7) (a) Prior to commencement of an evidentiary hearing:~~

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- ~~—— (i) the party filing the request for agency action may reasonably and fairly amend any allegation; and~~
- ~~—— (ii) the respondent may amend its answer.~~
- ~~—— (b) An amendment permitted under this Subsection (7) may be made:~~
 - ~~—— (i) during or after a hearing; and~~
 - ~~—— (ii) only with permission of the presiding officer.~~
- ~~—— (8) (a) If, upon all the evidence at a hearing, the presiding officer finds that a respondent has not engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order dismissing the request for agency action containing the allegation of a discriminatory or prohibited employment practice.~~
- ~~—— (b) The presiding officer may order that the respondent be reimbursed by the complaining party for the respondent's attorneys' fees and costs.~~
- ~~—— (9) If upon all the evidence at the hearing, the presiding officer finds that a respondent has engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order requiring the respondent to:~~
 - ~~—— (a) cease any discriminatory or prohibited employment practice; and~~
 - ~~—— (b) provide relief to the complaining party, including:~~
 - ~~—— (i) reinstatement;~~
 - ~~—— (ii) back pay and benefits;~~
 - ~~—— (iii) attorneys' fees; and~~
 - ~~—— (iv) costs.~~
- ~~—— (10) Conciliation between the parties is to be urged and facilitated at all stages of the adjudicative process.~~
- ~~—— (11) (a) Either party may file with the Division of Adjudication a written request for review before the commissioner or Appeals Board of the order issued by the presiding officer in accordance with:~~
 - ~~—— (i) Section 63G-4-301; and~~
 - ~~—— (ii) Chapter 1, Part 3, Adjudicative Proceedings.~~
- ~~—— (b) If there is no timely request for review, the order issued by the presiding officer becomes the final order of the commission.~~
- ~~—— (12) An order of the commission under Subsection (11)(a) is subject to judicial review~~

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as provided in:

~~—— (a) Section 63G-4-403; and~~

~~—— (b) Chapter 1, Part 3, Adjudicative Proceedings.~~

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

~~—— (14) The commission and its staff may not divulge or make public any information gained from any investigation, settlement negotiation, or proceeding before the commission except as provided in Subsections (14)(a) through (d):~~

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

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

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

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

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

~~—— (a) race;~~

~~—— (b) color;~~

~~—— (c) sex;~~

~~—— (d) retaliation;~~

~~—— (e) pregnancy, childbirth, [or] pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding;~~

~~—— (f) age;~~

~~—— (g) religion;~~

~~—— (h) national origin; or~~

~~—— (i) disability.~~

~~—— (16) (a) The commencement of an action under federal law for relief based upon any act prohibited by this chapter bars the commencement or continuation of any adjudicative~~

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~~proceeding before the commission in connection with the same claims under this chapter.~~

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

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

Legislative Review Note

~~—— as of 1-8-15 6:31 PM~~

~~————— Office of Legislative Research and General Counsel}~~