

1 **ANTIDISCRIMINATION AND RELIGIOUS FREEDOM**
2 **AMENDMENTS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsors: Stephen H. Urquhart and J. Stuart Adams**

6 House Sponsor: Brad L. Dee

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Antidiscrimination Act and the Utah Fair Housing Act to
11 address discrimination and religious freedoms.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies definition provisions related to employment and housing discrimination,
15 including defining "employer," "gender identity," and "sexual orientation";
- 16 ▶ includes sexual orientation and gender identity as prohibited bases for
17 discrimination in employment;
- 18 ▶ provides that the remedies in the Utah Antidiscrimination Act and the Utah Fair
19 Housing Act preempt local government remedies;
- 20 ▶ provides that protections for employment and housing do not create a special or
21 protected class for other purposes;
- 22 ▶ modifies powers of the Division of Antidiscrimination and Labor;
- 23 ▶ addresses the Utah Antidiscrimination Act's application to:
 - 24 • employee dress and grooming standards;
 - 25 • sex-specific facilities; and
 - 26 • freedom of expressive association and the free exercise of religion;
- 27 ▶ addresses employee free speech in the workplace;



- 28 ▶ prohibits an employer from taking certain actions in response to certain employee
- 29 speech outside the workplace;
- 30 ▶ modifies exemptions to the Utah Fair Housing Act;
- 31 ▶ includes sexual orientation and gender identity as prohibited bases for
- 32 discrimination in housing;
- 33 ▶ includes nonseverability clauses; and
- 34 ▶ makes technical and conforming amendments.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides revisor instructions.

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 34A-5-102, as last amended by Laws of Utah 2011, Chapter 413
- 42 34A-5-104, as last amended by Laws of Utah 2012, Chapter 369
- 43 34A-5-106, as last amended by Laws of Utah 2013, Chapter 278
- 44 34A-5-107, as last amended by Laws of Utah 2008, Chapter 382
- 45 57-21-2, as last amended by Laws of Utah 2010, Chapter 379
- 46 57-21-3, as last amended by Laws of Utah 1993, Chapter 114
- 47 57-21-5, as last amended by Laws of Utah 2011, Chapter 366
- 48 57-21-6, as last amended by Laws of Utah 1993, Chapter 114
- 49 57-21-7, as last amended by Laws of Utah 1993, Chapter 114
- 50 57-21-12, as last amended by Laws of Utah 1999, Chapter 160

51 ENACTS:

- 52 34A-5-102.5, Utah Code Annotated 1953
- 53 34A-5-102.7, Utah Code Annotated 1953
- 54 34A-5-109, Utah Code Annotated 1953
- 55 34A-5-110, Utah Code Annotated 1953
- 56 34A-5-111, Utah Code Annotated 1953
- 57 34A-5-112, Utah Code Annotated 1953
- 58 57-21-2.5, Utah Code Annotated 1953

59 [57-21-2.7](#), Utah Code Annotated 1953

60 **Utah Code Sections Affected by Revisor Instructions:**

61 [34A-5-102.7](#), Utah Code Annotated 1953

62 [57-21-2.7](#), Utah Code Annotated 1953

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

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

66 **34A-5-102. Definitions -- Unincorporated entities.**

67 (1) As used in this chapter:

68 (a) "Affiliate" means the same as that term is defined in Section [16-6a-102](#).

69 ~~(a)~~ (b) "Apprenticeship" means a program for the training of apprentices including a
70 program providing the training of those persons defined as apprentices by Section [35A-6-102](#).

71 ~~(b)~~ (c) "Bona fide occupational qualification" means a characteristic applying to an
72 employee that:

73 (i) is necessary to the operation; or

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

75 ~~(c)~~ (d) "Court" means:

76 (i) the district court in the judicial district of the state in which the asserted unfair
77 employment practice ~~occurred~~ occurs; or

78 (ii) if ~~this~~ the district court is not in session at that time, a judge of the court described
79 in Subsection (1)~~(c)~~(d)(i).

80 ~~(d)~~ (e) "Director" means the director of the division.

81 ~~(e)~~ (f) "Disability" means a physical or mental disability as defined and covered by
82 the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

83 ~~(f)~~ (g) "Division" means the Division of Antidiscrimination and Labor.

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

85 ~~(h)~~ (i) "Employer" means:

86 (A) the state;

87 (B) ~~any~~ a political subdivision;

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

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

92 (ii) "Employer" does not include:

93 (A) a religious organization [~~or association~~], a religious corporation sole, a religious
94 association, a religious society, a religious educational institution, or a religious leader, when
95 that individual is acting in the capacity of a religious leader;

96 [~~(B) a religious corporation sole; or~~]

97 [~~(C)~~] (B) any corporation or association constituting an affiliate, a wholly owned
98 subsidiary, or an agency of any religious organization [~~or association or religious corporation~~
99 ~~sole.~~], religious corporation sole, religious association, or religious society; or

100 (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.

101 [~~(j)~~] (j) "Employment agency" means [~~any~~] a person:

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

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

104 (1)[~~(j)~~](j)(i).

105 (k) "Gender identity" has the meaning provided in the Diagnostic and Statistical
106 Manual (DSM-5). A person's gender identity can be shown by providing evidence, including,
107 but not limited to, medical history, care or treatment of the gender identity, consistent and
108 uniform assertion of the gender identity, or other evidence that the gender identity is sincerely
109 held, part of a person's core identity, and not being asserted for an improper purpose.

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

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

115 (i) collective bargaining;

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

117 or

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

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

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

123 (i) is also employed at that job; or

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

126 ~~[(n)]~~ (p) "Person" means:

127 (i) one or more individuals, partnerships, associations, corporations, legal
 128 representatives, trusts or trustees, or receivers~~[-]~~;

129 (ii) the state; and ~~[all political subdivisions and agencies of the state.]~~

130 (iii) a political subdivision of the state.

131 ~~[(o)]~~ (q) "Presiding officer" means the same as that term is defined in Section
 132 [63G-4-103](#).

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

135 (s) "Religious leader" means an individual who is associated with, and is an authorized
 136 representative of, a religious organization or association or a religious corporation sole,
 137 including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual
 138 advisor.

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

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

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

146 (u) "Sexual orientation" means an individual's actual or perceived orientation as
 147 heterosexual, homosexual, or bisexual.

148 ~~[(r)]~~ (v) "Unincorporated entity" means an entity organized or doing business in the
 149 state that is not:

150 (i) an individual;

151 (ii) a corporation; or

152 (iii) publicly traded.

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

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

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

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

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

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

169 (A) the unincorporated entity; or

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

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

172 (i) "active manager";

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

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

175 Section 2. Section **34A-5-102.5** is enacted to read:

176 **34A-5-102.5. Supremacy over local regulations -- No special class created for**
177 **other purposes.**

178 (1) Consistent with the requirements of Subsection 34A-5-107(15), this chapter
179 supersedes and preempts any ordinance, regulation, standard, or other legal action by a local
180 government entity, a state entity, or the governing body of a political subdivision that relates to
181 the prohibition of discrimination in employment.

182 (2) This chapter shall not be construed to create a special or protected class for any

183 purpose other than employment.

184 Section 3. Section **34A-5-102.7** is enacted to read:

185 **34A-5-102.7. Nonseverability.**

186 This bill is the result of the Legislature's balancing of competing interests.

187 Accordingly, if any phrase, clause, sentence, provision, or subsection enacted or amended in

188 this chapter by this bill is held invalid in a final judgment by a court of last resort, the

189 remainder of the enactments and amendments of this bill affecting this chapter shall be thereby

190 rendered without effect and void.

191 Section 4. Section **34A-5-104** is amended to read:

192 **34A-5-104. Powers.**

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

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

197 (2) The division may:

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

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

202 (i) discrimination in:

203 (A) employment;

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

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

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

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

208 (A) a person;

209 (B) an employer;

210 (C) an employment agency;

211 (D) a labor organization;

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

- 214 (F) a joint apprenticeship committee; and
- 215 (G) a vocational school;
- 216 (c) investigate and study the existence, character, causes, and extent of discrimination
- 217 in employment, apprenticeship programs, on-the-job training programs, and vocational schools
- 218 in this state by:
 - 219 (i) employers;
 - 220 (ii) employment agencies;
 - 221 (iii) labor organizations;
 - 222 (iv) joint apprenticeship committees; and
 - 223 (v) vocational schools;
- 224 (d) formulate plans for the elimination of discrimination by educational or other
- 225 means;
 - 226 (e) hold hearings upon complaint made against:
 - 227 (i) a person;
 - 228 (ii) an employer;
 - 229 (iii) an employment agency;
 - 230 (iv) a labor organization;
 - 231 (v) ~~[the employees or members]~~ an employee or member of an employment agency or
 - 232 labor organization;
 - 233 (vi) a joint apprenticeship committee; or
 - 234 (vii) a vocational school;
 - 235 (f) issue publications and reports of investigations and research that:
 - 236 (i) promote good will among the various racial, religious, and ethnic groups of the
 - 237 state; and
 - 238 (ii) minimize or eliminate discrimination in employment because of race, color, sex,
 - 239 religion, national origin, age, ~~[or]~~ disability, sexual orientation, or gender identity;
 - 240 (g) prepare and transmit to the governor, at least once each year, reports describing:
 - 241 (i) ~~[its]~~ the division's proceedings, investigations, and hearings;
 - 242 (ii) the outcome of those hearings;
 - 243 (iii) decisions the division ~~[has rendered]~~ renders; and
 - 244 (iv) the other work performed by the division;

245 (h) recommend policies to the governor, and submit recommendation to employers,
246 employment agencies, and labor organizations to implement those policies;

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

249 (i) race~~;~~;

250 (ii) sex~~;~~;

251 (iii) color~~;~~;

252 (iv) national origin~~;~~;

253 (v) religion~~;~~;

254 (vi) age~~;~~~~or~~;

255 (vii) disability ~~[to the governor that it considers necessary; and];~~

256 (viii) sexual orientation; or

257 (ix) gender identity; and

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

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

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

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

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

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

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

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

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

276 Immunity.

277 Section 5. Section 34A-5-106 is amended to read:

278 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**
279 **practices.**

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

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

286 (A) race;

287 (B) color;

288 (C) sex;

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

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

291 (F) religion;

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

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

294 (I) sexual orientation; or

295 (J) gender identity.

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

298 (A) education;

299 (B) training;

300 (C) ability, with or without reasonable accommodation;

301 (D) moral character;

302 (E) integrity;

303 (F) disposition to work;

304 (G) adherence to reasonable rules and regulations; and

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

306 (iii) (A) As used in this chapter, "to discriminate in matters of compensation" means

307 the payment of differing wages or salaries to employees having substantially equal experience,
308 responsibilities, and skill for the particular job.

309 (B) Notwithstanding Subsection (1)(a)(iii)(A):

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

313 (II) nothing in this section prohibits an employer and employee from agreeing to a rate
314 of pay or work schedule designed to protect the employee from loss of Social Security payment
315 or benefits if the employee is eligible for those payments.

316 (b) An employment agency may not:

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

320 (A) race;

321 (B) color;

322 (C) sex;

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

324 (E) religion;

325 (F) national origin;

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

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

328 (I) sexual orientation; or

329 (J) gender identity; or

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

333 (A) race;

334 (B) color;

335 (C) sex;

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

337 (E) religion;

338 (F) national origin;

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

340 (H) disability[-];

341 (I) sexual orientation; or

342 (J) gender identity.

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

344 (A) exclude [~~any~~] an individual otherwise qualified from full membership rights in the

345 labor organization[-];

346 (B) expel the individual from membership in the labor organization[-]; or

347 (C) otherwise discriminate against or harass [~~any of the labor organization's members~~]

348 a member of the labor organization in full employment of work opportunity, or representation[-

349 because of:-]

350 (ii) A labor organization may not take an action listed in this Subsection (1)(c) because

351 of:

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

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

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

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

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

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

358 [~~(vii)~~] (G) disability[-];

359 (H) sexual orientation; or

360 (I) gender identity.

361 (d) (i) Unless based upon a bona fide occupational qualification, or required by and

362 given to an agency of government for a security [~~reasons~~] reason, an employer, employment

363 agency, or labor organization may not do the following if the statement, advertisement,

364 publication, form, or inquiry violates Subsection (1)(d)(ii):

365 (A) print, [~~or~~] circulate, or cause to be printed or circulated[-~~any~~] a statement,

366 advertisement, or publication[-];

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

368 (C) make any inquiry in connection with prospective employment or membership [~~that~~

369 expresses, either directly or indirectly: ~~(i) any~~].

370 (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or
 371 inquiry that directly expresses a limitation, specification, or discrimination as to:

372 (A) race;

373 (B) color;

374 (C) religion;

375 (D) sex;

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

377 (F) national origin;

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

379 (H) disability; ~~or~~

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

381 ~~Subsection (1)(d)(i);]~~

382 (I) sexual orientation; or

383 (J) gender identity.

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

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

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

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

393 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational
 394 school~~;~~ providing, coordinating, or controlling an apprenticeship ~~[programs;]~~ program or
 395 providing, coordinating, or controlling an on-the-job-training ~~[programs]~~ program, instruction,
 396 training, or retraining ~~[programs]~~ program may not:

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

400 (I) race;
 401 (II) color;
 402 (III) sex;
 403 (IV) pregnancy, childbirth, or pregnancy-related conditions;
 404 (V) religion;
 405 (VI) national origin;
 406 (VII) age, if the individual is 40 years of age or older; [~~or~~]
 407 (VIII) disability;
 408 (IX) sexual orientation; or
 409 (X) gender identity;
 410 (B) discriminate against or harass [~~any~~] a qualified person in that person's pursuit of
 411 [~~programs~~] a program described in Subsection (1)(f)(i)(A) [~~, or to~~] because of:

412 (I) race;
 413 (II) color;
 414 (III) sex;
 415 (IV) pregnancy, childbirth, or pregnancy-related conditions;
 416 (V) religion;
 417 (VI) national origin;
 418 (VII) age, if the individual is 40 years of age or older;
 419 (VIII) disability;
 420 (IX) sexual orientation; or
 421 (X) gender identity;

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

424 (I) race;
 425 (II) color;
 426 (III) sex;
 427 (IV) pregnancy, childbirth, or pregnancy-related conditions;
 428 (V) religion;
 429 (VI) national origin;
 430 (VII) age, if the individual is 40 years of age or older; [~~or~~]

431 (VIII) disability; [~~or~~]
 432 (IX) sexual orientation; or
 433 (X) gender identity; or
 434 [~~(C)~~] (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be
 435 printed or published, [~~any~~] a notice or advertisement relating to employment by the employer,
 436 or membership in or [~~any~~] a classification or referral for employment by a labor organization,
 437 or relating to [~~any~~] a classification or referral for employment by an employment agency,
 438 indicating [~~any~~] a preference, limitation, specification, or discrimination based on:

- 439 (I) race;
- 440 (II) color;
- 441 (III) sex;
- 442 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 443 (V) religion;
- 444 (VI) national origin;
- 445 (VII) age, if the individual is 40 years of age or older; [~~or~~]
- 446 (VIII) disability[~~;~~];
- 447 (IX) sexual orientation; or
- 448 (X) gender identity.

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

- 453 (A) race;
- 454 (B) color;
- 455 (C) religion;
- 456 (D) sex;
- 457 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 458 (F) age;
- 459 (G) national origin; [~~or~~]
- 460 (H) disability[~~;~~];
- 461 (I) sexual orientation; or

462 (J) gender identity.

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

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

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

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

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

473 (i) for an employer to hire and employ [~~employees~~] an employee, for an employment
474 agency to classify or refer for employment [~~any~~] an individual, for a labor organization to
475 classify its membership or to classify or refer for employment [~~any~~] an individual, or for an
476 employer, labor organization, or joint labor-management committee controlling an
477 apprenticeship or other training or retraining [~~programs~~] program to admit or employ [~~any~~] an
478 individual in [~~any such~~] the program[;] on the basis of religion, sex, pregnancy, childbirth, or
479 pregnancy-related conditions, age, national origin, [~~or~~] disability, sexual orientation, or gender
480 identity in those certain instances [~~where~~] when religion, sex, pregnancy, childbirth, or
481 pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin,
482 [~~or~~] disability, sexual orientation, or gender identity is a bona fide occupational qualification
483 reasonably necessary to the normal operation of that particular business or enterprise;

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

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

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

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

492 (A) the employer's:

- 493 (I) spouse;
- 494 (II) child; or
- 495 (III) son-in-law or daughter-in-law;
- 496 (B) ~~[any]~~ a person for whom the employer is or would be liable to furnish financial
- 497 support if ~~[those persons]~~ the person were unemployed;
- 498 (C) ~~[any]~~ a person to whom the employer during the preceding six months ~~[has~~
- 499 ~~furnished]~~ furnishes more than one-half of total financial support regardless of whether or not
- 500 the employer was or is legally obligated to furnish support; or
- 501 (D) ~~[any]~~ a person whose education or training ~~[was]~~ is substantially financed by the
- 502 employer for a period of two years or more.
- 503 (b) Nothing in this chapter applies to ~~[any]~~ a business or enterprise on or near an Indian
- 504 reservation with respect to ~~[any]~~ a publicly announced employment practice of the business or
- 505 enterprise under which preferential treatment is given to ~~[any]~~ an individual because that
- 506 individual is a native American Indian living on or near an Indian reservation.
- 507 (c) Nothing in this chapter ~~[shall]~~ may be interpreted to require ~~[any]~~ an employer,
- 508 employment agency, labor organization, vocational school, joint labor-management committee,
- 509 or apprenticeship program subject to this chapter to grant preferential treatment to ~~[any]~~ an
- 510 individual or to ~~[any]~~ a group because of the race, color, religion, sex, age, national origin, ~~[or]~~
- 511 disability, sexual orientation, or gender identity of the individual or group on account of an
- 512 imbalance ~~[which]~~ that may exist with respect to the total number or percentage of persons of
- 513 ~~[any]~~ a race, color, religion, sex, age, national origin, ~~[or]~~ disability, sexual orientation, or
- 514 gender identity employed by ~~[any]~~ an employer, referred or classified for employment by an
- 515 employment agency or labor organization, admitted to membership or classified by ~~[any]~~ a
- 516 labor organization, or admitted to or employed in, any apprenticeship or other training
- 517 program, in comparison with the total number or percentage of persons of that race, color,
- 518 religion, sex, age, national origin, ~~[or]~~ disability, sexual orientation, or gender identity in any
- 519 community or county or in the available work force in any community or county.
- 520 (4) It is not a discriminatory or prohibited practice with respect to age to observe the
- 521 terms of a bona fide seniority system or any bona fide employment benefit plan such as a
- 522 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this
- 523 chapter, except that ~~[no such]~~ an employee benefit plan ~~[shall]~~ may not excuse the failure to

524 hire an individual.

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

528 (a) under Subsection (6); and

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

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

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

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

537 Section 6. Section ~~34A-5-107~~ is amended to read:

538 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
539 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

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

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

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

555 other remedial action.

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

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

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

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

563 and

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

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

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

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

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

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

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

585 (b) (i) Upon receipt of the investigator's report described in Subsection (5)(a), the

586 director or the director's designee may issue a determination and order based on the
587 investigator's report.

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

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

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

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

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

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

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

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

605 (ii) the respondent may amend its answer.

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

607 (i) during or after a hearing; and

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

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

613 (b) The presiding officer may order that the respondent be reimbursed by the
614 complaining party for the respondent's attorneys' fees and costs.

615 (9) If, upon reviewing all the evidence at the hearing, the presiding officer finds that a
616 respondent has engaged in a discriminatory or prohibited employment practice, the presiding

617 officer shall issue an order requiring the respondent to:

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

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

620 (i) reinstatement;

621 (ii) back pay and benefits;

622 (iii) ~~attorneys'~~ attorney fees; and

623 (iv) costs.

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

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

629 (i) Section [63G-4-301](#); and

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

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

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

635 (a) Section [63G-4-403](#); and

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

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

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

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

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

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

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

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

- 654 (a) race;
- 655 (b) color;
- 656 (c) sex;
- 657 (d) retaliation;
- 658 (e) pregnancy, childbirth, or pregnancy-related conditions;
- 659 (f) age;
- 660 (g) religion;
- 661 (h) national origin; [or]
- 662 (i) disability[-];
- 663 (j) sexual orientation; or
- 664 (k) gender identity.

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

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

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

674 Section 7. Section **34A-5-109** is enacted to read:

675 **34A-5-109. Application to employee dress and grooming standards.**

676 This chapter may not be interpreted to prohibit an employer from adopting reasonable
677 dress and grooming standards not prohibited by other provisions of federal or state law,
678 provided that the employer's dress and grooming standards afford reasonable accommodations

679 based on gender identity to all employees.

680 Section 8. Section **34A-5-110** is enacted to read:

681 **34A-5-110. Application to sex-specific facilities.**

682 This chapter may not be interpreted to prohibit an employer from adopting reasonable
683 rules and policies that designate sex-specific facilities, including restrooms, shower facilities,
684 and dressing facilities, provided that the employer's rules and policies adopted under this
685 section afford reasonable accommodations based on gender identity to all employees.

686 Section 9. Section **34A-5-111** is enacted to read:

687 **34A-5-111. Application to the freedom of expressive association and the free**
688 **exercise of religion.**

689 This chapter may not be interpreted to infringe upon the freedom of expressive
690 association or the free exercise of religion protected by the First Amendment of the United
691 States Constitution and Article I, Sections 1, 4, and 15 of the Utah Constitution.

692 Section 10. Section **34A-5-112** is enacted to read:

693 **34A-5-112. Religious liberty protections -- Expressing beliefs and commitments in**
694 **workplace -- Prohibition on employment actions against certain employee speech.**

695 (1) An employee may express the employee's religious or moral beliefs and
696 commitments in the workplace in a reasonable, non-disruptive, and non-harassing way on
697 equal terms with similar types of expression of beliefs or commitments allowed by the
698 employer in the workplace, unless the expression is in direct conflict with the essential
699 business-related interests of the employer.

700 (2) An employer may not discharge, demote, terminate, or refuse to hire any person, or
701 retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and
702 conditions of employment against any person otherwise qualified, for lawful expression or
703 expressive activity outside of the workplace regarding the person's religious, political, or
704 personal convictions, including convictions about marriage, family, or sexuality, unless the
705 expression or expressive activity is in direct conflict with the essential business-related
706 interests of the employer.

707 Section 11. Section **57-21-2** is amended to read:

708 **57-21-2. Definitions.**

709 As used in this chapter:

710 (1) "Affiliate" means the same as that term is defined in Section 16-6a-102.
711 ~~[(+)]~~ (2) "Aggrieved person" includes ~~[any]~~ a person who:
712 (a) claims to have been injured by a discriminatory housing practice; or
713 (b) believes that the person will be injured by a discriminatory housing practice that is
714 about to occur.

715 ~~[(2)]~~ (3) "Commission" means the Labor Commission.

716 ~~[(3)]~~ (4) "Complainant" means an aggrieved person, including the director, who has
717 commenced a complaint with the division.

718 ~~[(4)]~~ (5) "Conciliation" means the attempted resolution of ~~[issues]~~ an issue raised ~~[by]~~
719 in a complaint of discriminatory housing practices by the investigation of the complaint
720 through informal negotiations involving the complainant, the respondent, and the division.

721 ~~[(5)]~~ (6) "Conciliation agreement" means a written agreement setting forth the
722 resolution of the issues in conciliation.

723 ~~[(6)]~~ (7) "Conciliation conference" means the attempted resolution of ~~[issues]~~ an issue
724 raised ~~[by]~~ in a complaint or by the investigation of a complaint through informal negotiations
725 involving the complainant, the respondent, and the division. The conciliation conference is not
726 subject to Title 63G, Chapter 4, Administrative Procedures Act.

727 ~~[(7)]~~ (8) "Covered multifamily ~~[dwellings]~~ dwelling" means:
728 (a) ~~[buildings]~~ a building consisting of four or more dwelling units if the ~~[buildings]~~
729 have] building has one or more elevators; and
730 (b) the ground floor units in other buildings consisting of four or more dwelling units.

731 ~~[(8)]~~ (9) "Director" means the director of the division or a designee.

732 ~~[(9)]~~ (10) (a) "Disability" means a physical or mental impairment that substantially
733 limits one or more of a person's major life activities, including a person having a record of such
734 an impairment or being regarded as having such an impairment.

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

738 ~~[(+)]~~ (11) "Discriminate" includes segregate or separate.

739 ~~[(+)]~~ (12) "Discriminatory housing practice" means an act that is unlawful under this
740 chapter.

741 ~~[(12)]~~ (13) "Division" means the Division of Antidiscrimination and Labor established
 742 under the commission.

743 ~~[(13)(a)]~~ (14) "Dwelling" means ~~[any]~~:

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

746 ~~(b) ["Dwelling" also includes]~~ vacant land that is offered for sale or lease for the
 747 construction or location of a dwelling as described in Subsection ~~[(13)]~~ (14)(a).

748 ~~[(14)]~~ (15) (a) "Familial status" means one or more individuals who have not attained
 749 the age of 18 years being domiciled with:

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

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

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

756 (i) is pregnant;

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

759 (iii) is a single individual.

760 (16) "Gender identity" has the meaning provided in the Diagnostic and Statistical
 761 Manual (DSM-5). A person's gender identity can be shown by providing evidence, including,
 762 but not limited to, medical history, care or treatment of the gender identity, consistent and
 763 uniform assertion of the gender identity, or other evidence that the gender identity is sincerely
 764 held, part of a person's core identity, and not being asserted for an improper purpose.

765 ~~[(15)]~~ (17) "National origin" means the place of birth of an individual or of any lineal
 766 ancestors.

767 ~~[(16)]~~ (18) "Person" includes one or more individuals, corporations, limited liability
 768 companies, partnerships, associations, labor organizations, legal representatives, mutual
 769 companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in
 770 cases under the United States Bankruptcy Code, receivers, and fiduciaries.

771 ~~[(17)]~~ (19) "Presiding officer" has the same meaning as provided in Section

772 63G-4-103.

773 [(18)] (20) "Real estate broker" or "salesperson" means a principal broker, an associate
774 broker, or a sales agent as those terms are defined in Section 61-2f-102.

775 [(19)] (21) "Respondent" means a person against whom a complaint of housing
776 discrimination has been initiated.

777 [(20)] (22) "Sex" means gender and includes pregnancy, childbirth, and disabilities
778 related to pregnancy or childbirth.

779 (23) "Sexual orientation" means an individual's actual or perceived orientation as
780 heterosexual, homosexual, or bisexual.

781 [(21)] (24) "Source of income" means the verifiable condition of being a recipient of
782 federal, state, or local assistance, including medical assistance, or of being a tenant receiving
783 federal, state, or local subsidies, including rental assistance or rent supplements.

784 Section 12. Section 57-21-2.5 is enacted to read:

785 **57-21-2.5. Supremacy over local regulations -- No special class created for other**
786 **purposes.**

787 (1) This chapter supersedes and preempts any ordinance, regulation, standard, or other
788 legal action by a local government entity, a state entity, or the governing body of a political
789 subdivision that relates to the prohibition of discrimination in housing.

790 (2) This chapter shall not be construed to create a special or protected class for any
791 purpose other than housing.

792 Section 13. Section 57-21-2.7 is enacted to read:

793 **57-21-2.7. Nonseverability.**

794 This bill is the result of the Legislature's balancing of competing interests.

795 Accordingly, if any phrase, clause, sentence, provision, or subsection enacted or amended in
796 this chapter by this bill is held invalid in a final judgment by a court of last resort, the
797 remainder of the enactments and amendments of this bill affecting this chapter shall be thereby
798 rendered without effect and void.

799 Section 14. Section 57-21-3 is amended to read:

800 **57-21-3. Exemptions -- Sale by private individuals -- Nonprofit organizations --**
801 **Noncommercial transactions.**

802 (1) This chapter does not apply to [any] a single-family dwelling unit sold or rented by

803 its owner if:

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

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

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

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

812 (e) the owner does not use ~~[any]~~ a discriminatory housing practice under Subsection
813 57-21-5(2) in the sale or rental of the dwelling.

814 (2) This chapter does not apply to a dwelling or a temporary or permanent residence
815 facility ~~[operated by a nonprofit or charitable organization, including any dormitory operated~~
816 ~~by a public or private educational institution;]~~ if:

817 (a) the discrimination is by sex, sexual orientation, gender identity, or familial status
818 for reasons of personal modesty or privacy, or in the furtherance of a religious institution's free
819 exercise of religious rights under the First Amendment of the United States Constitution[-] or
820 the Utah Constitution; and

821 (b) the dwelling or the temporary or permanent residence facility is:

822 (i) operated by a nonprofit or charitable organization;

823 (ii) owned by, operated by, or under contract with a religious organization, a religious
824 association, a religious educational institution, or a religious society;

825 (iii) owned by, operated by, or under contract with an affiliate of an entity described in
826 Subsection (2)(b)(ii); or

827 (iv) owned by or operated by a person under contract with an entity described in
828 Subsection (2)(b)(ii).

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

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

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

834 ~~[(4) This chapter does not prohibit a religious organization, association, or society, or~~
835 ~~any nonprofit institution or organization operated, supervised, or controlled by or in~~
836 ~~conjunction with a religious organization, association, or society, from]~~

837 (4) (a) (i) Unless membership in a religion is restricted by race, color, sex, or national
838 origin, this chapter does not prohibit an entity described in Subsection (4)(a)(ii) from:

839 (A) limiting the sale, rental, or occupancy of ~~[dwellings it]~~ a dwelling or temporary or
840 permanent residence facility the entity owns or operates for primarily noncommercial purposes
841 to persons of the same religion[;]; or ~~[from giving preference to such persons, unless~~
842 membership in the religion is restricted by race, color, sex, or national origin.]

843 (B) giving preference to persons of the same religion when selling, renting, or selecting
844 occupants for a dwelling, or a temporary or permanent residence facility, the entity owns or
845 operates for primarily noncommercial purposes.

846 (ii) The following entities are entitled to the exemptions described in Subsection
847 (4)(a)(i):

848 (A) a religious organization, association, or society; or

849 (B) a nonprofit institution or organization operated, supervised, or controlled by or in
850 conjunction with a religious organization, association, or society.

851 (b) (i) This chapter does not prohibit an entity described in Subsection (4)(b)(ii) from:

852 (A) limiting the sale, rental, or occupancy of a dwelling, or a temporary or permanent
853 residence facility, the entity owns or operates to persons of a particular religion, sex, sexual
854 orientation, or gender identity; or

855 (B) giving preference to persons of a particular religion, sex, sexual orientation, or
856 gender identity when selling, renting, or selecting occupants for a dwelling, or a temporary or
857 permanent residence facility, the entity owns or operates.

858 (ii) The following entities are entitled to the exemptions described in Subsection
859 (4)(b)(i):

860 (A) an entity described in Subsection (4)(a)(ii); and

861 (B) a person who owns a dwelling, or a temporary or permanent residence facility, that
862 is under contract with an entity described in Subsection (4)(a)(ii).

863 (5) ~~[This]~~ (a) If the conditions of Subsection (5)(b) are met, this chapter does not
864 prohibit a private club not open to the public, including ~~[fraternities and sororities]~~ a fraternity

865 or sorority associated with ~~[institutions]~~ an institution of higher education, from:

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

867 (ii) giving preference to its members~~[, but only if it]~~.

868 (b) This Subsection (5) applies only if the private club owns or operates the lodgings as
869 an incident to its primary purpose and not for a commercial purpose.

870 (6) This chapter does not prohibit distinctions based on inability to fulfill the terms and
871 conditions, including financial obligations, of a lease, rental agreement, contract of purchase or
872 sale, mortgage, trust deed, or other financing agreement.

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

874 (a) requiring its single students to live in ~~[housing approved, operated, or owned by the~~
875 ~~institution]~~ a dwelling, or a temporary or permanent residence facility, that is owned by,
876 operated by, or under contract with the nonprofit educational institution;

877 (b) segregating ~~[housing that the institution approves, operates, or owns]~~ a dwelling, or
878 a temporary or permanent residence facility, that is owned by, operated by, or under contract
879 with the nonprofit educational institution on the basis of sex or familial status or both:

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

881 (ii) in the furtherance of a religious institution's free exercise of religious rights under
882 the First Amendment of the United States Constitution or the Utah Constitution; or

883 (c) otherwise assisting ~~[others]~~ another person in making ~~[sex-segregated housing]~~ a
884 dwelling, or a temporary or permanent residence facility, available to students on a
885 sex-segregated basis as may be permitted by:

886 (i) regulations implementing the federal Fair Housing Amendments Act of 1988 ~~[and];~~

887 (ii) Title IX of the Education Amendments of 1972~~[;]~~; or

888 (iii) other applicable law.

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

891 (9) ~~[The provisions pertaining]~~ A provision of this chapter that pertains to familial
892 status ~~[do]~~ does not apply to the existence, development, sale, rental, advertisement, or
893 financing of ~~[any]~~ an apartment complex, condominium, or other housing development
894 designated as housing for older persons, as defined by Title VIII of the Civil Rights Act of
895 1968, as amended.

896 Section 15. Section 57-21-5 is amended to read:

897 **57-21-5. Discriminatory practices enumerated -- Protected persons, classes**
898 **enumerated.**

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

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

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

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

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

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

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

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

910 (2) It is a discriminatory housing practice to make a representation orally or in writing
911 or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or
912 posted any notice, statement, or advertisement, or to use any application form for the sale or
913 rental of a dwelling, that directly or indirectly expresses any preference, limitation, or
914 discrimination based on race, color, religion, sex, national origin, familial status, source of
915 income, [or] disability, sexual orientation, or gender identity, or expresses any intent to make
916 any such preference, limitation, or discrimination.

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

922 (4) A discriminatory housing practice includes:

923 (a) a refusal to permit, at the expense of the person with a disability, reasonable
924 modifications of existing premises occupied or to be occupied by the person if the
925 modifications are necessary to afford that person full enjoyment of the premises, except that in
926 the case of a rental, the landlord, where it is reasonable to do so, may condition permission for

927 a modification on the renter agreeing to restore the interior of the premises, when reasonable, to
928 the condition that existed before the modification, reasonable wear and tear excepted;

929 (b) a refusal to make a reasonable [accommodations in rules, policies, practices, or
930 services when the accommodations] accommodation in a rule, policy, practice, or service when
931 the accommodation may be necessary to afford the person equal opportunity to use and enjoy a
932 dwelling; and

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

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

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

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

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

946 (C) all premises within [~~these~~] the covered multifamily dwellings contain the following
947 features of adaptive design:

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

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

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

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

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

957 Section 16. Section **57-21-6** is amended to read:

958 **57-21-6. Discriminatory housing practices regarding residential real**
959 **estate-related transactions -- Discriminatory housing practices regarding the provisions**
960 **of brokerage services.**

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

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

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

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

970 or

971 ~~[(i)]~~ (B) secured by residential real estate; or

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

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

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

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

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

985 Section 17. Section **57-21-7** is amended to read:

986 **57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions --**
987 **Obstruction of division investigation -- Reprisals.**

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

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

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

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

992 or

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

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

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

999 (d) obstruct or prevent ~~[any]~~ a person from complying with this chapter, or any order
1000 issued under this chapter;

1001 (e) resist, prevent, impede, or interfere with the director or ~~[any division employees or
1002 representatives]~~ a division employee or representative in the performance of duty under this
1003 chapter; or

1004 (f) engage in ~~[any]~~ a reprisal against ~~[any]~~ a person because that person:

1005 (i) opposed a practice prohibited under this chapter; or

1006 (ii) filed a complaint, testified, assisted, or participated in any manner in ~~[any]~~ an
1007 investigation, proceeding, or hearing under this chapter.

1008 (2) This section also applies to discriminatory housing practices because of race, color,
1009 religion, sex, national origin, familial status, source of income, ~~[or]~~ disability, sexual
1010 orientation, or gender identity based upon a person's association with another person.

1011 Section 18. Section **57-21-12** is amended to read:

1012 **57-21-12. Other rights of action.**

1013 (1) In addition to the procedure outlined in Subsection **57-21-9**(1), a person aggrieved
1014 by a discriminatory housing practice may commence a private civil action in a court of
1015 competent jurisdiction within two years after an alleged discriminatory housing practice
1016 occurred, within two years after the termination of an alleged discriminatory housing practice,
1017 or within two years after a breach of a conciliation agreement. The division shall inform the
1018 aggrieved person in writing about this option within 30 days after the aggrieved person files a
1019 complaint under Section **57-21-9**.

1020 (2) (a) Except as provided in Subsection (2)(b), the computation of this two-year time
1021 period does not include any time during which an administrative proceeding under this chapter
1022 was pending with respect to a complaint filed under this chapter.

1023 (b) The tolling of the two-year time period does not apply to actions arising from a
1024 breach of a conciliation agreement.

1025 (3) An aggrieved person may commence a private civil action even though a complaint
1026 has been filed with the division, in which case the division is barred from continuing or
1027 commencing any adjudicative proceeding in connection with the same claims under this
1028 chapter after:

1029 (a) the beginning of a civil action brought by a complainant or aggrieved person; or

1030 (b) the parties have reached an agreement in settlement of claims arising from the
1031 complaint.

1032 (4) An aggrieved person may not file a private civil action under this section if:

1033 (a) the division has obtained a conciliation agreement, except for the purpose of
1034 enforcing the terms of the conciliation agreement; or

1035 (b) a formal adjudicative hearing has been commenced under Section 57-21-10
1036 regarding the same complaint.

1037 (5) Upon written application by a person alleging a discriminatory housing practice
1038 prohibited under this chapter in a private civil action, or by a person against whom the
1039 violations are alleged, the court may:

1040 (a) appoint an attorney for the applicant; and

1041 (b) authorize the commencement or continuation of a private civil action without the
1042 payment of fees, costs, or security if, in the opinion of the court, the applicant is financially
1043 unable to bear the costs of the civil action.

1044 (6) Upon timely application, the division may intervene in a private civil action
1045 brought under this subsection if the division certifies that the case is of general importance.

1046 (7) In a private civil action, if the court finds that a discriminatory housing practice has
1047 occurred or is about to occur, the court may:

1048 (a) order the respondent to cease any discriminatory housing practice;

1049 (b) award to the plaintiff actual damages, punitive damages, and reasonable [attorneys']
1050 attorney fees and costs; and

1051 (c) grant, as the court considers appropriate, any permanent or temporary injunction,
1052 temporary restraining order, or other order as may be appropriate, including civil penalties
1053 under Section [57-21-11](#).

1054 (8) This chapter does not preclude any private right of action by an aggrieved person
1055 based on otherwise applicable law not included in this chapter.

1056 Section 19. **Revisor instructions.**

1057 The Legislature intends that the Office of Legislative Research and General Counsel, in
1058 preparing the Utah Code database for publication, modify the language in Sections
1059 [34A-5-102.7](#) and [57-21-2.7](#) from "this bill" to the bill's designated chapter number in the Laws
1060 of Utah.

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