

1 **ANTIDISCRIMINATION ACT AMENDMENTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Ed P. Mayne**

5 AN ACT RELATING TO LABOR; CHANGING THE TERM HANDICAP TO DISABILITY
6 THROUGHOUT THE ANTIDISCRIMINATION ACT; REPEALING APPOINTMENT OF
7 COORDINATOR; CLARIFYING ORDERS ISSUED BY DIVISION DIRECTOR; AND
8 MAKING TECHNICAL CORRECTIONS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **34A-5-102**, as renumbered and amended by Chapter 375, Laws of Utah 1997

12 **34A-5-104**, as last amended by Chapter 296 and renumbered and amended by Chapter 375,
13 Laws of Utah 1997

14 **34A-5-106**, as renumbered and amended by Chapter 375, Laws of Utah 1997

15 **34A-5-107**, as renumbered and amended by Chapter 375, Laws of Utah 1997

16 REPEALS:

17 **34A-5-103**, as renumbered and amended by Chapter 375, Laws of Utah 1997

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

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

20 **34A-5-102. Definitions.**

21 As used in this chapter:

22 (1) "Apprenticeship" means [any] a program for the training of apprentices including a
23 program providing the training of those persons defined as apprentices by Section 35A-6-102.

24 (2) "Bona fide occupational qualification" means a characteristic applying to an employee:

25 (a) that is necessary to the operation; or

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

27 (3) "Court" means:

28 (a) the district court in the judicial district of the state in which the asserted unfair
29 employment practice occurred[;]; or

30 (b) if this court is not in session at that time, [~~then any~~] a judge of the court described in
31 Subsection (3)(a).

32 (4) "Director" means the director of the division.

33 [~~(9) "Handicap"~~] (5) "Disability" means a physical or mental impairment [~~which~~] that
34 substantially limits one or more of [~~a person's~~] an individual's major life activities.

35 [~~(5)~~] (6) "Division" means the Division of Antidiscrimination and Labor.

36 [~~(6)~~] (7) "Employee" means any person applying with or employed by an employer.

37 [~~(7)~~] (8) (a) "Employer" means:

38 (i) the state [~~or~~];

39 (ii) any political subdivision [~~or~~];

40 (iii) a board, commission, department, institution, school district, trust, or agent [thereof,
41 and every other] of the state or its political subdivisions; or

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

44 (b) "Employer" does not include:

45 (i) a religious [~~organizations~~] organization or [~~associations;~~] association;

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

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

49 [~~(8)~~] (9) "Employment agency" means any person:

50 (a) undertaking to procure employees or opportunities to work for any other person[;]; or
51 [the]

52 (b) holding itself out to be equipped to [~~do so~~] take an action described in Subsection
53 (9)(a).

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

57 (11) "Labor organization" means any organization [~~which~~] that exists for the purpose in
58 whole or in part of;

59 (a) collective bargaining [or of];

60 (b) dealing with employers concerning grievances, terms or conditions of employment[;];

61 or [of]

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

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

65 (13) "On-the-job-training" means any program designed to instruct a person who, while
66 learning the particular job for which [he] the person is receiving instruction[;];

67 (a) is also employed at that job[;]; or [who]

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

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

73 (15) "Presiding officer" means the same as that term is defined in Section 63-46b-2.

74 (16) "Prohibited employment practice" means a practice specified as discriminatory, and
75 therefore unlawful, in Section 34A-5-106.

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

79 (a) has opposed any employment practice prohibited under this chapter; or

80 (b) filed charges, testified, assisted, or participated in any way in any proceeding,
81 investigation, or hearing under this chapter.

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

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

87 **34A-5-104. Powers.**

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

- 90 [~~(1)~~] (b) The commission may adopt, publish, amend, and rescind rules, consistent with,
91 and for the enforcement of this chapter.
- 92 (2) The division may:
- 93 (a) appoint and prescribe the duties of investigators and other employees and agents that
94 it considers necessary for the enforcement of this chapter;
- 95 (b) receive, reject, investigate, and pass upon complaints alleging:
- 96 (i) discrimination in:
- 97 (A) employment[;];
- 98 (B) apprenticeship programs[;];
- 99 (C) on-the-job training programs[;]; and
- 100 (D) vocational schools; or
- 101 (ii) the existence of a discriminatory or prohibited employment practice by:
- 102 (A) a person;
- 103 (B) an employer;
- 104 (C) an employment agency;
- 105 (D) a labor organization;
- 106 (E) the employees or members of an employment agency or labor organization;
- 107 (F) a joint apprenticeship committee; and
- 108 (G) vocational school;
- 109 (c) investigate and study the existence, character, causes, and extent of discrimination in
110 employment, apprenticeship programs, on-the-job training programs, and vocational schools in this
111 state by:
- 112 (i) employers[;];
- 113 (ii) employment agencies[;];
- 114 (iii) labor organizations[;];
- 115 (iv) joint apprenticeship committees[;]; and
- 116 (v) vocational schools;
- 117 (d) formulate plans for the elimination of discrimination by educational or other means;
- 118 (e) hold hearings upon complaint made against:
- 119 (i) a person;
- 120 (ii) an employer;

- 121 (iii) an employment agency;
- 122 (iv) a labor organization [or];
- 123 (v) the employees or members of an employment agency or labor organization;
- 124 [~~(v)~~] (vi) a joint apprenticeship committee; or
- 125 [~~(vi)~~] (vii) a vocational school;
- 126 (f) issue publications and reports of investigations and research that [~~will tend to~~];
- 127 (i) promote good will among the various racial, religious, and ethnic groups of the state[;];
- 128 and [~~that will~~]
- 129 (ii) minimize or eliminate discrimination in employment because of race, color, sex,
- 130 religion, national origin, age, or [~~handicap~~] disability;
- 131 (g) prepare and transmit to the governor, at least once each year, reports describing:
- 132 (i) its proceedings, investigations, and hearings [~~it has conducted and~~];
- 133 (ii) the outcome of those hearings[;];
- 134 (iii) decisions [~~it~~] the division has rendered[;]; and
- 135 (iv) the other work performed by [~~it~~] the division;
- 136 (h) recommend policies to the governor, and submit recommendation to employers,
- 137 employment agencies, and labor organizations to implement those policies;
- 138 (i) recommend any legislation concerning discrimination because of race, sex, color,
- 139 national origin, religion, age, or [~~handicap~~] disability to the governor that it considers necessary;
- 140 and
- 141 (j) within the limits of any appropriations made for its operation, cooperate with other
- 142 agencies or organizations, both public and private, in the planning and conducting of educational
- 143 programs designed to eliminate discriminatory practices prohibited under this chapter.
- 144 (3) The division shall investigate alleged discriminatory practices involving officers or
- 145 employees of state government if requested to do so by the Career Service Review Board.
- 146 (4) (a) In any hearing held under [~~the authority of~~] this chapter, the division may:
- 147 (i) subpoena witnesses and compel their attendance at the hearing;
- 148 (ii) administer oaths and take the testimony of any person under oath; and
- 149 (iii) compel any person to produce for examination any books, papers, or other information
- 150 relating to the matters raised by the complaint.
- 151 (b) The division director or a hearing examiner appointed by the division director may

152 conduct hearings.

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

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

158 Section 3. Section 34A-5-106 is amended to read:

159 **34A-5-106. Discriminatory or unfair employment practices -- Permitted practices.**

160 (1) It is a discriminatory or prohibited employment practice[?] to take any action described
161 in Subsections (1)(a) through (f).

162 (a) (i) [for an] An employer [to] may not refuse to hire, [or] promote, [or to] discharge,
163 demote, or terminate any person, or to retaliate against, harass, or discriminate in matters of
164 compensation or in terms, privileges, and conditions of employment against any person otherwise
165 qualified, because of:

- 166 (A) race[?];
- 167 (B) color[?];
- 168 (C) sex[?];
- 169 (D) pregnancy, childbirth, or pregnancy-related conditions[?];
- 170 (E) age, if the individual is 40 years of age or older[?];
- 171 (F) religion[?];
- 172 (G) national origin[?]; or [handicap]
- 173 (H) disability. [No]

174 (ii) An applicant [nor] or candidate for any job or position may not be considered
175 "otherwise qualified," unless [he] the applicant or candidate possesses the education, training,
176 ability, moral character, integrity, disposition to work, adherence to reasonable rules and
177 regulations, and other job related qualifications required by an employer for any particular job, job
178 classification, or position to be filled or created[?].

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

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

183 (I) nothing in this chapter prevents increases in pay as a result of longevity with the
184 employer, if the salary increases are uniformly applied and available to all employees on a
185 substantially proportional basis[. ~~Nothing~~]; and

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

189 (b) [~~for an~~] An employment agency may not:

190 (i) [~~to~~] refuse to list and properly classify for employment, or [~~to~~] refuse to refer an
191 individual for employment, in a known available job for which the individual is otherwise
192 qualified, because of:

193 (A) race[;];

194 (B) color[;];

195 (C) sex[;];

196 (D) pregnancy, childbirth, or pregnancy-related conditions[;];

197 (E) religion[;];

198 (F) national origin[;];

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

200 (H) disability;

201 (ii) [~~to~~] comply with a request from an employer for referral of applicants for employment
202 if the request indicates either directly or indirectly that the employer discriminates in employment
203 on account of:

204 (A) race[;];

205 (B) color[;];

206 (C) sex[;];

207 (D) pregnancy, childbirth, or pregnancy-related conditions[;];

208 (E) religion[;];

209 (F) national origin[;];

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

211 (H) disability.

212 (c) [~~for a~~] A labor organization [~~to~~] may not exclude any individual otherwise qualified
213 from full membership rights in the labor organization, [~~or to~~] expel the individual from

214 membership in the labor organization, or [tø] otherwise discriminate against or harass any of its
215 members in full employment of work opportunity, or representation, because of:

216 (i) race[;];

217 (ii) sex[;];

218 (iii) pregnancy, childbirth, or pregnancy-related conditions[;];

219 (iv) religion[;];

220 (v) national origin[;];

221 (vi) age, if the individual is 40 years of age or older[;]; or [handicap;]

222 (vii) disability.

223 (d) [for any] Unless based upon a bona fide occupational qualification, or required by, and
224 given to, an agency of government for security reasons, an employer, employment agency, or labor
225 organization [tø] may not print, or circulate, or cause to be printed or circulated, any statement,
226 advertisement, or publication, [ø-tø] use any form of application for employment or membership,
227 or [tø] make any inquiry in connection with prospective employment or membership[, which] that
228 expresses, either directly or indirectly[;];

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

230 (A) race[;];

231 (B) color[;];

232 (C) religion[;];

233 (D) sex[;];

234 (E) pregnancy, childbirth, or pregnancy-related conditions[;];

235 (F) national origin[;];

236 (G) age, if the individual is 40 years of age or older[;]; or [handicap ør]

237 (H) disability;

238 (ii) the intent to make any [such] limitation, specification, or discrimination[; unless based
239 upon a bona fide occupational qualification, or required by, and given to, an agency of government
240 for security reasons;] described in Subsection (1)(d)(i).

241 (e) [for any] A person, whether or not an employer, an employment agency, a labor
242 organization, or the employees or members thereof, [tø] may not:

243 (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a
244 discriminatory or prohibited employment practice; [ø-tø]

245 (ii) obstruct or prevent any person from complying with this chapter, or any order issued
 246 under it; or [to]

247 (iii) attempt, either directly or indirectly, to commit any act prohibited in this section[;].

248 (f) [for any] An employer, labor organization, joint apprenticeship committee, or
 249 vocational school, providing, coordinating, or controlling apprenticeship programs, or providing,
 250 coordinating, or controlling on-the-job-training programs, instruction, training, or retraining
 251 programs may not:

252 (i) [to] deny to, or withhold from, any qualified person, the right to be admitted to, or
 253 participate in any apprenticeship training program, on-the-job-training program, or other
 254 occupational instruction, training or retraining program because of:

255 (A) race[;];

256 (B) color[;];

257 (C) sex[;];

258 (D) pregnancy, childbirth, or pregnancy-related conditions[;];

259 (E) religion[;];

260 (F) national origin[;];

261 (G) age, if the individual is 40 years of age or older[, or handicap the right to be admitted
 262 to, or participate in any apprenticeship training program, on-the-job-training program, or other
 263 occupational instruction, training or retraining program;]; or

264 (H) disability;

265 (ii) [to] discriminate against or harass any qualified person in that person's pursuit of such
 266 programs, or to discriminate against such a person in the terms, conditions, or privileges of such
 267 programs, because of:

268 (A) race[;];

269 (B) color[;];

270 (C) sex[;];

271 (D) pregnancy, childbirth, or pregnancy-related conditions[;];

272 (E) religion[;];

273 (F) national origin[;];

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

275 (H) disability; or

276 (iii) [~~to~~] print, [~~or~~] publish, or cause to be printed or published, any notice or advertisement
277 relating to employment by the employer, or membership in or any classification or referral for
278 employment by a labor organization, or relating to any classification or referral for employment
279 by an employment agency, indicating any preference, limitation, specification, or discrimination
280 based on race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, religion, national
281 origin, age, if the individual is 40 years of age or older, or [~~handicap~~] disability except that a notice
282 or advertisement may indicate a preference, limitation, specification, or discrimination based on
283 race, color, religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national
284 origin, or [~~handicap~~] disability when religion, race, color, sex, age, national origin, or [~~handicap~~]
285 disability is a bona fide occupational qualification for employment.

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

287 (a) the termination of employment of an individual who is physically, mentally, or
288 emotionally unable to perform the duties required by that individual's employment[~~, or to~~
289 ~~preclude~~];

290 (b) the variance of insurance premiums, of coverage on account of age[~~;~~]; or [~~affect any~~]

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

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

294 (i) for an employer to hire and employ employees, for an employment agency to classify
295 or refer for employment any individual, for a labor organization to classify its membership or to
296 classify or refer for employment any individual or for an employer, labor organization, or joint
297 labor-management committee controlling apprenticeship or other training or retraining programs
298 to admit or employ any individual in any such program, on the basis of religion, sex, pregnancy,
299 childbirth, or pregnancy-related conditions, age, national origin, or [~~handicap~~] disability in those
300 certain instances where religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age,
301 if the individual is 40 years of age or older, national origin, or [~~handicap~~] disability is a bona fide
302 occupational qualification reasonably necessary to the normal operation of that particular business
303 or enterprise;

304 (ii) for a school, college, university, or other educational institution to hire and employ
305 employees of a particular religion if the school, college, university, or other educational institution
306 is, in whole or in substantial part, owned, supported, controlled, or managed by a particular

307 religious corporation, association, or society, or if the curriculum of the school, college, university,
308 or other educational institution is directed toward the propagation of a particular religion;

309 (iii) for an employer to give preference in employment to ~~[his own]~~;

310 (A) the employer's:

311 (I) spouse~~[, son,]~~;

312 (II) child; or

313 (III) son-in-law~~[, daughter,]~~ or daughter-in-law~~[, or to]~~;

314 (B) any person for whom the employer is or would be liable to furnish financial support

315 if those persons were unemployed; ~~[or for an employer to give preference in employment to]~~

316 (C) any person to whom the employer during the preceding six months has furnished more

317 than one-half of total financial support regardless of whether or not the employer was or is legally

318 obligated to furnish support; or ~~[for an employer to give preference in employment to]~~

319 (D) any person whose education or training was substantially financed by the employer

320 for a period of two years or more.

321 (b) Nothing ~~[contained]~~ in this chapter applies to any business or enterprise on or near an

322 Indian reservation with respect to any publicly announced employment practice of the business or

323 enterprise under which preferential treatment is given to any individual because ~~[he]~~ that individual

324 is a native American Indian living on or near an Indian reservation.

325 (c) Nothing ~~[contained]~~ in this chapter shall be interpreted to require any employer,

326 employment agency, labor organization, vocational school, joint labor-management committee,

327 or apprenticeship program subject to this chapter to grant preferential treatment to any individual

328 or to any group because of the race, color, religion, sex, age, national origin, or ~~[handicap]~~

329 disability of the individual or group on account of an imbalance which may exist with respect to

330 the total number or percentage of persons of any race, color, religion, sex, age, national origin, or

331 ~~[handicap]~~ disability employed by any employer, referred or classified for employment by an

332 employment agency or labor organization, admitted to membership or classified by any labor

333 organization, or admitted to or employed in, any apprenticeship or other training program, in

334 comparison with the total number or percentage of persons of that race, color, religion, sex, age,

335 national origin, or ~~[handicap]~~ disability in any community or county or in the available work force

336 in any community or county.

337 (4) It is not a discriminatory or prohibited practice with respect to age to observe the terms

338 of a bona fide seniority system or any bona fide employment benefit plan such as a retirement,
 339 pension, or insurance plan [~~which~~] that is not a subterfuge to evade the purposes of this chapter,
 340 except that no such employee benefit plan shall excuse the failure to hire [any] an individual.

341 (5) Notwithstanding Subsection (4), or any other statutory provision to the contrary, [~~other~~
 342 ~~than Subsection (6) and Section 67-5-8, and except where age is a bona fide occupational~~
 343 ~~qualification, no]~~ a person [~~shall~~] may not be subject to involuntary termination or retirement from
 344 employment on the basis of age alone, if the individual is 40 years of age or older, except:

345 (a) under Subsection (6);

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

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

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

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

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

355 Section 4. Section **34A-5-107** is amended to read:

356 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
 357 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

361 (b) Every request for agency action shall be verified under oath or affirmation.

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

364 (2) Any employer, labor organization, joint apprenticeship committee, or vocational school
 365 who has employees or members who refuse or threaten to refuse to comply with this chapter may
 366 file with the division a request for agency action asking the division for assistance to obtain their
 367 compliance by conciliation or other remedial action.

368 (3) (a) Before a hearing is set or held as part of any adjudicative proceeding, the division

369 shall promptly assign an investigator to attempt a settlement between the parties by conference,
370 conciliation, or persuasion.

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

373 (c) The division and its staff, agents, and employees shall conduct every investigation in
374 fairness to all parties and agencies involved, and may not attempt a settlement between the parties
375 if it is clear that no discriminatory or prohibited employment practice has occurred.

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

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

382 (b) Upon receipt of the investigator's report, the director or the director's designee may
383 issue a determination and order for dismissal of the adjudicative proceeding. If based on the
384 investigator's report the director or the director's designee finds that a party engaged in a
385 discriminatory or prohibited employment practice, the director or the director's designee shall issue
386 an order requiring the respondent to:

387 (i) cease any discriminatory or prohibited employment practice; and

388 (ii) provide relief to the complaining party, including reinstatement, back pay and benefits,
389 and attorneys' fees and costs.

390 (c) A party may make a written request to the Division of Adjudication for an evidentiary
391 hearing to review de novo the director's or the director's designee's determination and order within
392 30 days of the date [of] the determination and order for dismissal is issued.

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

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

400 (b) Upon receipt of the investigator's report the director or the director's designee may
401 issue a determination and order based on the investigator's report.

402 (c) A party may file a written request to the Division of Adjudication for an evidentiary
403 hearing to review de novo the director's or the director's designee's determination and order within
404 30 days of the date [of] the determination and order is issued.

405 (d) If the director or the director's designee receives no timely request for a hearing, the
406 determination and order issued by the director or the director's designee requiring the respondent
407 to cease any discriminatory or prohibited employment practice and to provide relief to the
408 aggrieved party becomes the final order of the commission.

409 (6) In any adjudicative proceeding to review the director's or the director's designee's
410 determination that a prohibited employment practice has occurred, the division shall present the
411 factual and legal basis of its determination.

412 (7) Prior to commencement of an evidentiary hearing, the party filing the request for
413 agency action may reasonably and fairly amend any allegation, and the respondent may amend its
414 answer. Those amendments may be made during or after a hearing but only with permission of
415 the presiding officer.

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

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

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

425 (a) cease any discriminatory or prohibited employment practice; and [to]

426 (b) provide relief to the complaining party, including reinstatement, back pay and benefits,
427 and attorneys' fees and costs.

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

430 (11) (a) Either party may file with the Division of Adjudication a written request for

431 review before the commissioner or Appeals Board of the order issued by the presiding officer in
432 accordance with Section 63-46b-12 and Chapter 1, Part 3, Adjudicative Proceedings.

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

435 (12) An order of the commission under Subsection (11)(a) is subject to judicial review as
436 provided in Section 63-46b-16 and Chapter 1, Part 3, Adjudicative Proceedings.

437 (13) The commission shall have authority to make rules concerning procedures under this
438 chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

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

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

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

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

451 (15) The procedures contained in this section are the exclusive remedy under state law for
452 employment discrimination based upon race, color, sex, retaliation, pregnancy, childbirth, or
453 pregnancy-related conditions, age, religion, national origin, or [handicap] disability.

454 (16) The commencement of an action under federal law for relief based upon any act
455 prohibited by this chapter bars the commencement or continuation of any adjudicative proceeding
456 before the commission in connection with the same claims under this chapter. Nothing in this
457 subsection is intended to alter, amend, modify, or impair the exclusive remedy provision set forth
458 in Subsection (15).

459 Section 5. **Repealer.**

460 This act repeals:

461 Section **34A-5-103, Jurisdiction of commission -- Coordinator of fair employment**

462 **practices.**

Legislative Review Note
as of 12-15-98 7:45 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel