

1 **AMENDMENTS TO THE UTAH**
2 **ANTIDISCRIMINATION ACT**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Ed P. Mayne**

6 **This act modifies the Utah Antidiscrimination Act to clarify that a person employing six**
7 **or more employees may not discriminate under the Utah Antidiscrimination Act.**

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

9 AMENDS:

10 **34A-5-102**, as last amended by Chapter 73, Laws of Utah 2001

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

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

13 **34A-5-102. Definitions.**

14 As used in this chapter:

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

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

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

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

21 (3) "Court" means:

22 (a) the district court in the judicial district of the state in which the asserted unfair
23 employment practice occurred; or

24 (b) if this court is not in session at that time, a judge of the court described in

25 Subsection (3)(a).

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

27 (5) "Disability" means a physical or mental disability as defined and covered by the



28 Americans with Disabilities Act of 1990, 42 U.S.C. 12102 et seq.

29 (6) "Division" means the Division of Antidiscrimination and Labor.

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

31 (8) (a) [~~"Employer"~~] Except as provided in Subsection (8)(b), "employer" means:

32 (i) the state;

33 (ii) any political subdivision;

34 (iii) any of the following of the state or one of the state's political subdivisions:

35 (A) a board[;];

36 (B) a commission[;];

37 (C) a department[;];

38 (D) an institution[;];

39 (E) a school district[;];

40 (F) a trust[;]; or

41 (G) an agent [~~of the state or its political subdivisions~~]; or

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

44 (b) "Employer" does not include:

45 (i) a religious organization or association;

46 (ii) a religious corporation sole; or

47 (iii) any corporation or association constituting a wholly owned subsidiary or agency of

48 [~~any~~];

49 (A) a religious organization or association; or

50 (B) a religious corporation sole.

51 (9) "Employment agency" means any person:

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

53 (b) holding itself out to be equipped to take an action described in Subsection (9)(a).

54 (10) "Joint apprenticeship committee" means any association of representatives;

55 (a) of:

56 (i) a labor organization; and

57 (ii) an employer; and

58 (b) providing, coordinating, or controlling an apprentice training program.

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

61 (a) collective bargaining;

62 (b) dealing with employers concerning:

63 (i) grievances[;]; or

64 (ii) terms or conditions of employment; or

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

66 (12) "National origin" means the place of birth, domicile, or residence of:

67 (a) an individual; or [of]

68 (b) an individual's ancestors.

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

71 (a) is also employed at that job; or

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

74 (14) "Person" means:

75 (a) one or more:

76 (i) individuals[;];

77 (ii) partnerships[;];

78 (iii) associations[;];

79 (iv) corporations[;];

80 (v) legal representatives[;];

81 (vi) trusts or trustees[;]; or

82 (vii) receivers[;];

83 (b) the state; and

84 (c) all political subdivisions and agencies of the state.

85 (15) "Presiding officer" [~~means the same as that term~~] is as defined in Section
86 63-46b-2.

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

89 (17) "Retaliate" means the taking of adverse action;

- 90 (a) by:
 - 91 (i) an employer[;];
 - 92 (ii) an employment agency[;];
 - 93 (iii) a labor organization[;];
 - 94 (iv) an apprenticeship program[;];
 - 95 (v) an on-the-job training program[;]; or
 - 96 (vi) a vocational school;
- 97 (b) against [~~one of its employees, applicants, or members~~] an employee, applicant, or
- 98 member of a person described in Subsection (17)(a); and
- 99 (c) because the employee, applicant, or member:
 - 100 ~~[(a)]~~ (i) has opposed any employment practice prohibited under this chapter; or
 - 101 ~~[(b)]~~ (ii) filed charges, testified, assisted, or participated in any way in any proceeding,
 - 102 investigation, or hearing under this chapter.
- 103 (18) "Vocational school" means any school or institution conducting a course of
- 104 instruction, training, or retraining to prepare individuals to:
 - 105 (a) follow an occupation or trade[;]; or [~~to~~]
 - 106 (b) pursue a manual, technical, industrial, business, commercial, office, personal
 - 107 services, or other nonprofessional occupations.

Legislative Review Note
as of 12-9-02 3:35 PM

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

Office of Legislative Research and General Counsel

State Impact

Increasing the number of employers and employees subject to Utah's Antidiscrimination Act the bill could result in an increase of about 30 additional complaints to investigate, the cost of which would not be eligible for federal reimbursement. It is estimated that this can be done within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst