

Senator Ed P. Mayne proposes the following substitute bill:

**AMENDMENTS TO THE UTAH
ANTIDISCRIMINATION ACT**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

This act modifies the Utah Antidiscrimination Act to address the application of the Utah Antidiscrimination Act to employers with 14 or fewer employees. This act makes technical changes.

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

AMENDS:

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

34A-5-107, as last amended by Chapter 161, Laws of Utah 1999

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

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

34A-5-102. Definitions.

As used in this chapter:

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

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

(a) that is necessary to the operation; or

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

(3) "Court" means:

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



- 26 (b) if this court is not in session at that time, a judge of the court described in
27 Subsection (3)(a).
- 28 (4) "Director" means the director of the division.
- 29 (5) "Disability" means a physical or mental disability as defined and covered by the
30 Americans with Disabilities Act of 1990, 42 U.S.C. 12102 et seq.
- 31 (6) "Division" means the Division of Antidiscrimination and Labor.
- 32 (7) "Employee" means any person applying with or employed by an employer.
- 33 (8) (a) [~~"Employer"~~] Except as provided in Subsection (8)(b), "employer" means:
- 34 (i) the state;
- 35 (ii) any political subdivision;
- 36 (iii) any of the following of the state or one of the state's political subdivisions:
- 37 (A) a board[;];
- 38 (B) a commission[;];
- 39 (C) a department[;];
- 40 (D) an institution[;];
- 41 (E) a school district[;];
- 42 (F) a trust[;]; or
- 43 (G) an agent [~~of the state or its political subdivisions~~]; or
- 44 (iv) a person employing [~~15~~] one or more employees within the state for each working
45 day in each of at least 20 calendar weeks [~~or more~~] in the current or preceding calendar year.
- 46 (b) "Employer" does not include:
- 47 (i) a religious organization or association;
- 48 (ii) a religious corporation sole; or
- 49 (iii) any corporation or association constituting a wholly owned subsidiary or agency of
50 [~~any~~];
- 51 (A) a religious organization or association; or
- 52 (B) a religious corporation sole.
- 53 (9) "Employment agency" means any person:
- 54 (a) undertaking to procure employees or opportunities to work for any other person; or
- 55 (b) holding itself out to be equipped to take an action described in Subsection (9)(a).
- 56 (10) "Joint apprenticeship committee" means any association of representatives;

57 (a) of;

58 (i) a labor organization; and

59 (ii) an employer; and

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

61 (11) "Labor organization" means any organization that exists for the purpose in whole

62 or in part of:

- 63 (a) collective bargaining;
- 64 (b) dealing with employers concerning:
 - 65 (i) grievances[;]; or
 - 66 (ii) terms or conditions of employment; or
- 67 (c) other mutual aid or protection in connection with employment.

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

69 (a) an individual; or [of]

70 (b) an individual's ancestors.

71 (13) "On-the-job-training" means any program designed to instruct a person who, while

72 learning the particular job for which the person is receiving instruction:

- 73 (a) is also employed at that job; or
- 74 (b) may be employed by the employer conducting the program during the course of the
- 75 program, or when the program is completed.

76 (14) "Person" means:

- 77 (a) one or more:
 - 78 (i) individuals[;];
 - 79 (ii) partnerships[;];
 - 80 (iii) associations[;];
 - 81 (iv) corporations[;];
 - 82 (v) legal representatives[;];
 - 83 (vi) trusts or trustees[;]; or
 - 84 (vii) receivers[;];
- 85 (b) the state; and
- 86 (c) all political subdivisions and agencies of the state.

87 (15) "Presiding officer" [~~means the same as that term~~] is as defined in Section

88 63-46b-2.

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

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

92 (a) by:

93 (i) an employer[;];

94 (ii) an employment agency[;];

95 (iii) a labor organization[;];

96 (iv) an apprenticeship program[;];

97 (v) an on-the-job training program[;]; or

98 (vi) a vocational school;

99 (b) against [~~one of its employees, applicants, or members~~] an employee, applicant, or
100 member of a person described in Subsection (17)(a); and

101 (c) because the employee, applicant, or member:

102 [~~(a)~~] (i) has opposed any employment practice prohibited under this chapter; or

103 [~~(b)~~] (ii) filed charges, testified, assisted, or participated in any way in any proceeding,
104 investigation, or hearing under this chapter.

105 (18) "Small employer" means an employer that employs at least one but no more than
106 14 employees within the state for each working day in each of at least 20 calendar weeks in the
107 current or preceding calendar year

108 [~~(18)~~] (19) "Vocational school" means any school or institution conducting a course of
109 instruction, training, or retraining to prepare individuals to:

110 (a) follow an occupation or trade[;]; or [~~(a)~~]

111 (b) pursue a manual, technical, industrial, business, commercial, office, personal
112 services, or other nonprofessional occupations.

113 Section 2. Section 34A-5-107 is amended to read:

114 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
115 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

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

129 (ii) If a request for agency action involves a small employer, if any party involved in
130 the agency action incurs attorneys' fees or costs during the period of time described in
131 Subsection (3)(a)(i):

132 (A) the party that incurs the attorneys' fees or costs during that period is solely
133 responsible for those attorneys' fees and costs; and

134 (B) a party to the agency action may not be held responsible for the attorneys' fees or
135 costs incurred by any other party in the agency action that are incurred during the period of
136 time described in Subsection (3)(a)(i).

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

139 (ii) If an investigation of allegations in a request for agency action described in
140 Subsection (3)(b) involves a small employer, if any party involved in the agency action incurs
141 attorneys' fees or costs during the investigation period described in Subsection (3)(b)(i):

142 (A) the party that incurs the attorneys' fees or costs during the investigation period is
143 solely responsible for those attorneys' fees and costs; and

144 (B) a party may not be held responsible for the attorneys' fees or costs incurred by any
145 other party in the agency action that are incurred during the investigation period described in
146 Subsection (3)(b)(i).

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

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

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

156 (b) Upon receipt of the investigator's report, the director or the director's designee may
157 issue a determination and order for dismissal of the adjudicative proceeding.

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

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

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

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

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

173 (d) [Hf] (i) Subject to Subsection (5)(d)(ii), if the director or the director's designee
174 receives no timely request for a hearing, the determination and order issued by the director or
175 the director's designee requiring the respondent to cease any discriminatory or prohibited
176 employment practice and to provide relief to the aggrieved party becomes the final order of the
177 commission.

178 (ii) Notwithstanding Subsection (5)(d)(i), in addition to requiring a respondent to cease
179 any discriminatory or prohibited employment practice, the relief that the director or the
180 director's designee may order a small employer to provide an aggrieved party is limited to:

181 (A) reinstatement;

182 (B) an amount of money equal to the lesser of:

183 (I) back pay and benefits for a period not to exceed the 180 days; or

184 (II) \$15,000; or

185 (C) both Subsection (5)(d)(ii)(A) and (B).

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

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

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

197 (b) ~~[The]~~ (i) Except as provided in Subsection (8)(b)(ii), the presiding officer may
198 order that the respondent be reimbursed by the complaining party for the respondent's attorneys'
199 fees and costs.

200 (ii) Notwithstanding Subsection (8)(b)(i), the presiding officer shall order that the
201 respondent be reimbursed by the complaining party for the lesser of:

202 (A) the respondent's reasonable attorneys' fees and costs incurred after the time periods
203 described in Subsections (3)(a)(ii) and (3)(b)(ii); or

204 (B) \$500.

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

208 (a) cease any discriminatory or prohibited employment practice; ~~[and]~~

209 (b) provide relief to the complaining party, including reinstatement, back pay and
210 benefits, and attorneys' fees and costs[-], except that for a small employer, the relief to the
211 complaining party is limited to:

- 212 (i) reinstatement;
- 213 (ii) an amount of money equal to the lesser of:
- 214 (A) back pay and benefits for a period not to exceed 180 days; or
- 215 (B) \$15,000;
- 216 (iii) the lesser of:
- 217 (A) the reasonable attorneys' fees and costs incurred after the time periods described in
- 218 Subsections (3)(a)(ii) and (3)(b)(ii); or
- 219 (B) \$500; or
- 220 (iv) a combinations of Subsections (9)(b)(i) through (iii).
- 221 (10) Conciliation between the parties is to be urged and facilitated at all stages of the
- 222 adjudicative process.
- 223 (11) (a) Either party may file with the Division of Adjudication a written request for
- 224 review before the commissioner or Appeals Board of the order issued by the presiding officer
- 225 in accordance with Section 63-46b-12 and Chapter 1, Part 3, Adjudicative Proceedings.
- 226 (b) If there is no timely request for review, the order issued by the presiding officer
- 227 becomes the final order of the commission.
- 228 (12) An order of the commission under Subsection (11)(a) is subject to judicial review
- 229 as provided in Section 63-46b-16 and Chapter 1, Part 3, Adjudicative Proceedings.
- 230 (13) The commission shall have authority to make rules concerning procedures under
- 231 this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 232 (14) The commission and its staff may not divulge or make public any information
- 233 gained from any investigation, settlement negotiation, or proceeding before the commission
- 234 except as provided in Subsections (14)(a) through (d).
- 235 (a) Information used by the director or the director's designee in making any
- 236 determination may be provided to all interested parties for the purpose of preparation for and
- 237 participation in proceedings before the commission.
- 238 (b) General statistical information may be disclosed provided the identities of the
- 239 individuals or parties are not disclosed.
- 240 (c) Information may be disclosed for inspection by the attorney general or other legal
- 241 representatives of the state or commission.
- 242 (d) Information may be disclosed for information and reporting requirements of the

243 federal government.

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

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

250 Nothing in this subsection is intended to alter, amend, modify, or impair the exclusive remedy
251 provision set forth in Subsection (15).