

**UTAH ANTIDISCRIMINATION ACT**

**AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Scott K. Jenkins**

**This act modifies the Utah Antidiscrimination Act to reduce the membership of the Antidiscrimination and Labor Advisory Committee; to amend what constitutes discriminatory or unfair employment practices; and to amend provisions related to the procedure for assured persons to file claims. This act makes technical changes.**

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

AMENDS:

**17-33-10**, as last amended by Chapter 375, Laws of Utah 1997

**34A-5-105**, as last amended by Chapter 69, Laws of Utah 2000

**34A-5-106**, as last amended by Chapter 161, Laws of Utah 1999

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

**34A-5-108**, as renumbered and amended by Chapter 375, Laws of Utah 1997

**67-19-4**, as last amended by Chapter 375, Laws of Utah 1997

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

Section 1. Section **17-33-10** is amended to read:

**17-33-10. Grievance and appeals procedure -- Employees' complaints of discriminatory or unfair employment practice.**

(1) Any county to which the provisions of this act apply shall establish in its personnel rules and regulations a grievance and appeals procedure. The procedure shall be used to resolve disputes arising from grievances as defined in the rules and regulations, including but not limited to acts of discrimination. The procedure may also be used by employees in the event of dismissal, demotion, suspension, or transfer.

(2) Any charge by a county career service employee of discriminatory or [unfair]



28 prohibited employment practice as prohibited by Section 34A-5-106, can be filed with the  
29 Division of Antidiscrimination and Labor within the Labor Commission. Complaints shall be  
30 filed within 30 days of the issuance of a written decision of the county career service council.

31 Section 2. Section **34A-5-105** is amended to read:

32 **34A-5-105. Antidiscrimination and Labor Advisory Council -- Membership --**  
33 **Appointment -- Term -- Powers and duties -- Chair.**

34 (1) There is created an Antidiscrimination and Labor Advisory Council consisting of:

35 (a) [~~17~~] 13 voting members appointed by the commissioner as follows:

36 (i) [~~four~~] three employer representatives;

37 (ii) [~~four~~] three employee representatives;

38 (iii) two representatives of persons who seek to rent or purchase dwellings as defined  
39 in Section 57-21-2;

40 (iv) two representatives of persons who:

41 (A) sell or rent dwellings; and

42 (B) are subject to Title 57, Chapter 21, Utah Fair Housing Act; and

43 (v) [~~five~~] three representatives of the general public; and

44 (b) the commissioner or the commissioner's designee as a nonvoting member of the  
45 council.

46 (2) In making the appointments under Subsection (1), the commissioner shall consider  
47 representation of the following protected classes:

48 (a) race;

49 (b) color;

50 (c) national origin;

51 (d) gender;

52 (e) religion;

53 (f) age;

54 (g) persons with disabilities;

55 (h) familial status as defined in Section 57-21-2; and

56 (i) source of income as defined in Section 57-21-2.

57 (3) The division shall provide any necessary staff support for the council.

58 (4) (a) Except as required by Subsection (4)(b), as terms of current council members

59 expire, the commissioner shall appoint each new member or reappointed member to a four-year  
60 term.

61 (b) Notwithstanding the requirements of Subsection (4)(a), the commissioner shall, at  
62 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
63 council members are staggered so that approximately half of the council is appointed every two  
64 years.

65 (5) (a) When a vacancy occurs in the membership for any reason, the replacement shall  
66 be appointed for the unexpired term.

67 (b) The commissioner shall terminate the term of a council member who ceases to be  
68 representative as designated by the original appointment.

69 (6) (a) (i) Members who are not government employees shall receive no compensation  
70 or benefits for their services, but may receive per diem and expenses incurred in the  
71 performance of the member’s official duties at the rates established by the Division of Finance  
72 under Sections 63A-3-106 and 63A-3-107.

73 (ii) Members may decline to receive per diem and expenses for their service.

74 (b) (i) State government officer and employee members who do not receive salary, per  
75 diem, or expenses from their agency for their service may receive per diem and expenses  
76 incurred in the performance of their official duties from the council at the rates established by  
77 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

78 (ii) State government officer and employee members may decline to receive per diem  
79 and expenses for their service.

80 (7) (a) The advisory council shall:

81 (i) offer advice on issues requested by:

82 (A) the commission[;];

83 (B) the division[~~and~~]; or

84 (C) the Legislature; and [~~also~~]

85 (ii) make recommendations to the commission and division regarding issues related to:

86 [(i) of] (A) employment discrimination;

87 [(ii)] (B) housing discrimination; and

88 [(iii) related to] (C) the administration by the commission of:

89 [(A)] (D) the provisions of Title 34, Labor in General, that are administered by the

90 commission;

91 ~~[(B)]~~ (II) Title 34A, Chapter 5, Utah Antidiscrimination Act; and

92 ~~[(C)]~~ (III) Title 57, Chapter 21, Utah Fair Housing Act.

93 (b) The council shall confer at least quarterly for the purpose of advising the  
94 commission, division, and the Legislature regarding issues described in Subsection (7)(a).

95 (8) (a) The commissioner or the commissioner's designee shall serve as chair of the  
96 council.

97 (b) The chair is charged with the responsibility of calling the necessary meetings.

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

99 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**  
100 **practices.**

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

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

107 (A) race;

108 (B) color;

109 (C) sex;

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

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

112 (F) religion;

113 (G) national origin; or

114 (H) disability.

115 (ii) ~~[An applicant or candidate for any job or position]~~ A person may not be considered  
116 "otherwise qualified," unless ~~[the applicant or candidate]~~ that person possesses the following  
117 required by an employer for any particular job, job classification, or position:

118 (A) education[;];

119 (B) training[;];

120 (C) ability[;];

- 121 (D) moral character[;];
- 122 (E) integrity[;];
- 123 (F) disposition to work[;];
- 124 (G) adherence to reasonable rules and regulations[;]; and
- 125 (H) other job related qualifications required by an employer [~~for any particular job, job~~
- 126 ~~classification, or position to be filled or created~~].

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

128 the payment of differing wages or salaries to employees having substantially equal experience,

129 responsibilities, and skill for the particular job.

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

131 (I) nothing in this chapter prevents increases in pay as a result of longevity with the

132 employer, if the salary increases are uniformly applied and available to all employees on a

133 substantially proportional basis; and

134 (II) nothing in this section prohibits an employer and employee from agreeing to a rate

135 of pay or work schedule designed to protect the employee from loss of Social Security payment

136 or benefits if the employee is eligible for those payments.

137 (b) An employment agency may not:

138 (i) refuse to list and properly classify for employment, or refuse to refer an individual

139 for employment, in a known available job for which the individual is otherwise qualified,

140 because of:

141 (A) race;

142 (B) color;

143 (C) sex;

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

145 (E) religion;

146 (F) national origin;

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

148 (H) disability; or

149 (ii) comply with a request from an employer for referral of applicants for employment

150 if the request indicates either directly or indirectly that the employer discriminates in

151 employment on account of:

- 152 (A) race;
- 153 (B) color;
- 154 (C) sex;
- 155 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 156 (E) religion;
- 157 (F) national origin;
- 158 (G) age, if the individual is 40 years of age or older; or
- 159 (H) disability.

160 (c) A labor organization may not exclude any individual otherwise qualified from full  
161 membership rights in the labor organization, expel the individual from membership in the labor  
162 organization, or otherwise discriminate against or harass any of [its] the labor organization's  
163 members in full employment of work opportunity, or representation, because of:

- 164 (i) race;
- 165 (ii) sex;
- 166 (iii) pregnancy, childbirth, or pregnancy-related conditions;
- 167 (iv) religion;
- 168 (v) national origin;
- 169 (vi) age, if the individual is 40 years of age or older; or
- 170 (vii) disability.

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

- 177 (i) any limitation, specification, or discrimination as to:
  - 178 (A) race;
  - 179 (B) color;
  - 180 (C) religion;
  - 181 (D) sex;
  - 182 (E) pregnancy, childbirth, or pregnancy-related conditions;

183 (F) national origin;

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

185 (H) disability;

186 (ii) the intent to make any limitation, specification, or discrimination described in

187 Subsection (1)(d)(i).

188 (e) A person, whether or not an employer, an employment agency, a labor organization,

189 or the employees or members ~~[thereof]~~ of an employer, employment agency, or labor

190 organization, may not:

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

193 (ii) obstruct or prevent any person from complying with this chapter, or any order  
194 issued under ~~[it]~~ this chapter; or

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

196 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational

197 school, providing, coordinating, or controlling apprenticeship programs, or providing,

198 coordinating, or controlling on-the-job-training programs, instruction, training, or retraining

199 programs may not:

200 ~~[(+)]~~ (A) deny to, or withhold from, any qualified person, the right to be admitted to, or

201 participate in any apprenticeship training program, on-the-job-training program, or other

202 occupational instruction, training or retraining program because of:

203 ~~[(A)]~~ (I) race;

204 ~~[(B)]~~ (II) color;

205 ~~[(C)]~~ (III) sex;

206 ~~[(D)]~~ (IV) pregnancy, childbirth, or pregnancy-related conditions;

207 ~~[(E)]~~ (V) religion;

208 ~~[(F)]~~ (VI) national origin;

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

210 ~~[(H)]~~ (VIII) disability;

211 ~~[(+)]~~ (B) discriminate against or harass any qualified person in that person's pursuit of

212 ~~[such]~~ programs described in Subsection (1)(f)(i)(A), or to discriminate against such a person

213 in the terms, conditions, or privileges of ~~[such]~~ programs described in Subsection (1)(f)(i)(A),

214 because of:

215 [~~(A)~~] (I) race;

216 [~~(B)~~] (II) color;

217 [~~(C)~~] (III) sex;

218 [~~(D)~~] (IV) pregnancy, childbirth, or pregnancy-related conditions;

219 [~~(E)~~] (V) religion;

220 [~~(F)~~] (VI) national origin;

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

222 [~~(H)~~] (VIII) disability; or

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

228 (I) race[;];

229 (II) color[;];

230 (III) sex[;];

231 (IV) pregnancy, childbirth, or pregnancy-related conditions[;];

232 (V) religion[;];

233 (VI) national origin[;];

234 (VII) age, if the individual is 40 years of age or older[;]; or

235 (VIII) disability [~~except that~~].

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

239 (A) race[;]

240 (B) color[;];

241 (C) religion[;];

242 (D) sex[;];

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

244 (F) age[;];



245 (G) national origin~~[-];~~ or

246 (H) disability [~~when religion, race, color, sex, age, national origin, or disability is a~~  
247 ~~bona fide occupational qualification for employment~~].

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

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

253 (b) the variance of insurance premiums~~[-of]~~ or coverage on account of age; or

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

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

257 (i) for an employer to hire and employ employees, for an employment agency to  
258 classify or refer for employment any individual, for a labor organization to classify its  
259 membership or to classify or refer for employment any individual or for an employer, labor  
260 organization, or joint labor-management committee controlling apprenticeship or other training  
261 or retraining programs to admit or employ any individual in any such program, on the basis of  
262 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, or  
263 disability in those certain instances where religion, sex, pregnancy, childbirth, or  
264 pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin,  
265 or disability is a bona fide occupational qualification reasonably necessary to the normal  
266 operation of that particular business or enterprise;

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

269 (A) the school, college, university, or other educational institution is, in whole or in  
270 substantial part, owned, supported, controlled, or managed by a particular religious corporation,  
271 association, or society~~[-];~~ or [~~if~~]

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

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

275 (A) the employer's:

276 (I) spouse;  
277 (II) child; or  
278 (III) son-in-law or daughter-in-law;  
279 (B) any person for whom the employer is or would be liable to furnish financial  
280 support if those persons were unemployed;  
281 (C) any person to whom the employer during the preceding six months has furnished  
282 more than one-half of total financial support regardless of whether or not the employer was or  
283 is legally obligated to furnish support; or  
284 (D) any person whose education or training was substantially financed by the employer  
285 for a period of two years or more.  
286 (b) Nothing in this chapter applies to any business or enterprise on or near an Indian  
287 reservation with respect to any publicly announced employment practice of the business or  
288 enterprise under which preferential treatment is given to any individual because that individual  
289 is a native American Indian living on or near an Indian reservation.  
290 (c) Nothing in this chapter shall be interpreted to require any employer, employment  
291 agency, labor organization, vocational school, joint labor-management committee, or  
292 apprenticeship program subject to this chapter to grant preferential treatment to any individual  
293 or to any group because of the race, color, religion, sex, age, national origin, or disability of the  
294 individual or group on account of an imbalance which may exist with respect to the total  
295 number or percentage of persons of any race, color, religion, sex, age, national origin, or  
296 disability employed by any employer, referred or classified for employment by an employment  
297 agency or labor organization, admitted to membership or classified by any labor organization,  
298 or admitted to or employed in, any apprenticeship or other training program, in comparison  
299 with the total number or percentage of persons of that race, color, religion, sex, age, national  
300 origin, or disability in any community or county or in the available work force in any  
301 community or county.  
302 (4) It is not a discriminatory or prohibited practice with respect to age to observe the  
303 terms of a bona fide seniority system or any bona fide employment benefit plan such as a  
304 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this  
305 chapter, except that no such employee benefit plan shall excuse the failure to hire an individual.  
306 (5) Notwithstanding Subsection (4), or any other statutory provision to the contrary, a

307 person may not be subject to involuntary termination or retirement from employment on the  
308 basis of age alone, if the individual is 40 years of age or older, except:

309 (a) under Subsection (6);

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

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

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

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

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

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

320 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**

321 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

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

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

333 (2) Any employer, labor organization, joint apprenticeship committee, or vocational  
334 school who has [~~employees or members~~] an employee or member who [~~refuse~~] refuses or  
335 [~~threaten~~] threatens to refuse to comply with this chapter may file with the division a request  
336 for agency action asking the division for assistance to obtain [~~their~~] the employee's or member's  
337 compliance by conciliation or other remedial action.

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

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

343 (c) The division and its staff, agents, and employees;

344 (i) shall conduct every investigation in fairness to all parties and agencies involved[;];  
345 and

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

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

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

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

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

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

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

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

369 investigator's report.

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

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

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

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

378 (d) If the director or the director's designee receives no timely request for a hearing, the  
379 determination and order issued by the director or the director's designee [~~requiring the~~  
380 ~~respondent to cease any discriminatory or prohibited employment practice and to provide relief~~  
381 ~~to the aggrieved party] in accordance with Subsection (5)(b) becomes the final order of the  
382 commission.~~

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

386 (7) (a) Prior to commencement of an evidentiary hearing[;]:

387 (i) the party filing the request for agency action may reasonably and fairly amend any  
388 allegation[;]; and

389 (ii) the respondent may amend its answer. [~~Those amendments]~~

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

391 (i) during or after a hearing [~~but~~]; and

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

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

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

399 (9) If upon all the evidence at the hearing, the presiding officer finds that a respondent

400 has engaged in a discriminatory or prohibited employment practice, the presiding officer shall  
401 issue an order requiring the respondent to:

- 402 (a) cease any discriminatory or prohibited employment practice; and
- 403 (b) provide relief to the complaining party, including:
  - 404 (i) reinstatement[;];
  - 405 (ii) back pay and benefits[~~and~~];
  - 406 (iii) attorneys' fees; and
  - 407 (iv) costs.

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

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

- 413 (i) Section 63-46b-12; and
- 414 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

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

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

- 419 (a) Section 63-46b-16; and
- 420 (b) Chapter 1, Part 3, Adjudicative Proceedings.

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

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

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

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

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

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

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

437 (a) race[;];

438 (b) color[;];

439 (c) sex[;];

440 (d) retaliation[;];

441 (e) pregnancy, childbirth, or pregnancy-related conditions[;];

442 (f) age[;];

443 (g) religion[;];

444 (h) national origin[;]; or

445 (i) disability.

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

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

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

454 Section 5. Section **34A-5-108** is amended to read:

455 **34A-5-108. Judicial enforcement of division findings.**

456 (1) The commission or the attorney general at the request of the commission shall  
457 commence an action under Section 63-46b-19 for civil enforcement of a final order of the  
458 commission issued under Subsection 34A-5-107[~~(12)~~] (11) if:

459 (a) the order finds that there is reasonable cause to believe that a respondent has  
460 engaged or is engaging in discriminatory or prohibited employment practices made unlawful by  
461 this chapter;

462 (b) counsel to the commission or the attorney general determines after reasonable  
463 inquiry that the order is well grounded in fact and is warranted by existing law;

464 (c) the respondent has not received an order of automatic stay or discharge from the  
465 United States Bankruptcy Court; and

466 (d) (i) the commission has not accepted a conciliation agreement to which the  
467 aggrieved party and respondent are parties; or

468 (ii) the respondent has not conciliated or complied with the final order of the  
469 commission within 30 days from the date the order is issued.

470 (2) If the respondent seeks judicial review of the final order under Section 63-46b-16,  
471 pursuant to Section 63-46b-18 the commission may stay seeking civil enforcement pending the  
472 completion of the judicial review.

473 Section 6. Section **67-19-4** is amended to read:

474 **67-19-4. Discriminatory or prohibited employment practices.**

475 The state, its officers, and employees shall be governed by the provisions of Section  
476 34A-5-106 of the Utah Antidiscrimination Act concerning discriminatory or [~~unfair~~] prohibited  
477 employment practices.

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**Legislative Review Note**  
**as of 1-15-03 1:39 PM**

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

**Office of Legislative Research and General Counsel**



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**Fiscal Note**  
**Bill Number SB0122**

**Utah Antidiscrimination Act Amendments**

*23-Jan-03*

*12:45 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**