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**LABOR AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Labor Code to address procedures followed by the Labor Commission and persons subject to the jurisdiction of the Labor Commission.

**Highlighted Provisions:**

This bill:

- ▶ eliminates the commissioner's role in hearing motions for review;
- ▶ addresses the payment of attorney fees;
- ▶ imposes time frames for decisions of administrative law judges and the Appeals

Board;

- ▶ requires rulemaking to facilitate timely completion of certain administrative actions;
- ▶ requires monitoring and reporting regarding the time it takes to complete a workers'

compensation related administrative hearing; and

- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2013.

**Utah Code Sections Affected:**

AMENDS:

**34A-1-303**, as last amended by Laws of Utah 2008, Chapter 382



- 28           **34A-1-309**, as last amended by Laws of Utah 2009, Chapter 216
- 29           **34A-2-102**, as last amended by Laws of Utah 2008, Chapter 90
- 30           **34A-2-112**, as enacted by Laws of Utah 1997, Chapter 375
- 31           **34A-2-208**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 32           **34A-2-420**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 33           **34A-2-602**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 34           **34A-2-801**, as last amended by Laws of Utah 2009, Chapter 347
- 35           **34A-2-802**, as last amended by Laws of Utah 2011, Chapter 297
- 36           **34A-5-107**, as last amended by Laws of Utah 2008, Chapter 382
- 37           **34A-6-304**, as last amended by Laws of Utah 2008, Chapter 382



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

40           Section 1. Section **34A-1-303** is amended to read:

41           **34A-1-303. Review of administrative decision.**

42           (1) A decision entered by an administrative law judge under this title is the final order  
43 of the commission unless a further appeal is initiated:

- 44           (a) under this title; and
- 45           (b) in accordance with the rules of the commission governing the review.

46           (2) (a) Unless otherwise provided, a person who is entitled to appeal a decision of an  
47 administrative law judge under this title may appeal the decision by filing a motion for review  
48 with the Division of Adjudication.

49           ~~[(b) (i) Unless a party in interest to the appeal requests in accordance with Subsection~~  
50 ~~(3) that the appeal be heard by the Appeals Board, the commissioner shall hear the review in~~  
51 ~~accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~

52           ~~[(ii) A decision of the commissioner is a final order of the commission unless set aside~~  
53 ~~by the court of appeals.]~~

54           ~~[(c) (i) If in accordance with Subsection (3) a party in interest to the appeal requests~~  
55 ~~that the appeal be heard by the Appeals Board, the]~~

56           **(b) (i) The Appeals Board shall hear the motion for review in accordance with:**

- 57           (A) Section 34A-1-205; and
- 58           (B) Title 63G, Chapter 4, Administrative Procedures Act.

59 (ii) A decision of the Appeals Board is a final order of the commission unless set aside  
60 by the court of appeals.

61 ~~[(3) A party in interest may request that an appeal be heard by the Appeals Board by~~  
62 ~~filing the request with the Division of Adjudication.]~~

63 ~~[(a) as part of the motion for review; or]~~

64 ~~[(b) if requested by a party in interest who did not file a motion for review, within 20~~  
65 ~~days of the date the motion for review is filed with the Division of Adjudication.]~~

66 ~~[(4)]~~ (3) (a) On appeal, ~~[the commissioner or]~~ the Appeals Board may:

67 (i) affirm the decision of an administrative law judge;

68 (ii) modify the decision of an administrative law judge;

69 (iii) return the case to an administrative law judge for further action as directed; or

70 (iv) reverse the findings, conclusions, and decision of an administrative law judge.

71 (b) The ~~[commissioner or]~~ Appeals Board may not conduct a trial de novo of the case.

72 (c) The ~~[commissioner or]~~ Appeals Board may base its decision on:

73 (i) the evidence previously submitted in the case; or

74 (ii) ~~[or]~~ written argument or written supplemental evidence requested by the

75 ~~[commissioner or]~~ Appeals Board.

76 (d) The ~~[commissioner or]~~ Appeals Board may permit the parties to:

77 (i) file briefs or other papers; or

78 (ii) conduct oral argument.

79 (e) The ~~[commissioner or]~~ Appeals Board shall promptly notify the parties to any  
80 proceedings before the ~~[commissioner or]~~ Appeals Board of its decision, including its findings  
81 and conclusions.

82 ~~[(5)]~~ (4) (a) Each decision of a member of the Appeals Board shall represent the  
83 member's independent judgment.

84 (b) A member of the Appeals Board may not participate in any case in which the  
85 member is an interested party.

86 (c) If a member of the Appeals Board may not participate in a case because the member  
87 is an interested party, the two members of the Appeals Board that may hear the case shall  
88 assign an individual to participate as a member of the board in that case if the individual:

89 (i) is not an interested party in the case;

90 (ii) was not previously assigned to:  
91 (A) preside over any proceeding related to the case; or  
92 (B) take any administrative action related to the case; and  
93 (iii) is representative of the following group that was represented by the member that  
94 may not hear the case under Subsection [~~(5)~~] (4)(b):  
95 (A) employers;  
96 (B) employees; or  
97 (C) the public.  
98 (d) The two members of the Appeals Board may appoint an individual to participate as  
99 a member of the Appeals Board in a case if:  
100 (i) there is a vacancy on the board at the time the Appeals Board hears the review of  
101 the case;  
102 (ii) the individual appointed meets the conditions described in Subsections [~~(5)~~]  
103 (4)(c)(i) and (ii); and  
104 (iii) the individual appointed is representative of the following group that was  
105 represented by the member for which there is a vacancy:  
106 (A) employers;  
107 (B) employees; or  
108 (C) the public.  
109 [~~(6)~~] (5) If an order is appealed to the court of appeals after the party appealing the  
110 order has exhausted all administrative appeals, the court of appeals has jurisdiction to:  
111 (a) review, reverse, remand, or annul any order of the [~~commissioner or~~] Appeals  
112 Board; or  
113 (b) suspend or delay the operation or execution of the order of the [~~commissioner or~~]  
114 Appeals Board being appealed.  
115 Section 2. Section **34A-1-309** is amended to read:  
116 **34A-1-309. Attorney fees.**  
117 (1) In a case before the commission in which an attorney is employed, the commission  
118 has full power to regulate and fix the fees of the attorney.  
119 (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, an  
120 attorney may file an application for hearing with the Division of Adjudication to obtain an

121 award of attorney fees as authorized by this section and commission rules.

122 (3) (a) The commission may award reasonable attorney fees on a contingency basis  
123 when there is generated:

124 (i) disability or death benefits; or

125 (ii) interest on disability or death benefits.

126 (b) An employer or its insurance carrier shall pay attorney fees awarded under  
127 Subsection (3)(a) out of the award of:

128 (i) disability or death benefits; or

129 (ii) interest on disability or death benefits.

130 (4) (a) In addition to the attorney fees ordered under Subsection (3), the commission  
131 may award reasonable attorney fees on a contingency basis for medical benefits ordered paid in  
132 the same percentages for an award under Subsection (3) provided for in rule made by the  
133 commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if:

134 (i) medical benefits are not approved by:

135 (A) the employer or its insurance carrier; or

136 (B) the Uninsured Employer's Fund created in Section 34A-2-704;

137 (ii) after the employee employs an attorney, medical benefits are paid or ordered to be  
138 paid;

139 (iii) the commission's informal dispute resolution mechanisms are reasonably used by  
140 the parties before adjudication; and

141 (iv) the sum of the following at issue in the adjudication of the medical benefit claim is  
142 less than \$4,000:

143 (A) disability or death benefits; and

144 (B) interest on disability or death benefits.

145 (b) An employer or its insurance carrier shall pay attorney fees awarded under  
146 Subsection (4)(a) in addition to the payment of medical benefits ordered.

147 (5) Notwithstanding the other provisions of this section, in a case brought under  
148 Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act, the  
149 commission shall order that an employer or its workers' compensation insurance carrier pay the  
150 attorney fees from its own money and not from the compensation awarded to the employee if  
151 the employer or its workers' compensation insurance carrier:

152 (a) files a motion for review of the decision of an administrative law judge; and  
153 (b) does not prevail once a final order of the commission is issued.

154 Section 3. Section **34A-2-102** is amended to read:

155 **34A-2-102. Definition of terms.**

156 (1) As used in this chapter:

157 (a) "Average weekly wages" means the average weekly wages as determined under  
158 Section 34A-2-409.

159 (b) "Award" means a final order of the commission as to the amount of compensation  
160 due:

161 (i) an injured employee; or

162 (ii) a dependent of a deceased employee.

163 (c) "Compensation" means the payments and benefits provided for in this chapter or  
164 Chapter 3, Utah Occupational Disease Act.

165 (d) (i) "Decision" means a ruling of:

166 (A) an administrative law judge; or

167 (B) in accordance with Section 34A-2-801[~~:(I) the commissioner; or (H)~~], the Appeals  
168 Board.

169 (ii) "Decision" includes:

170 (A) an award or denial of a medical, disability, death, or other related benefit under this  
171 chapter or Chapter 3, Utah Occupational Disease Act; or

172 (B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah  
173 Occupational Disease Act.

174 (e) "Director" means the director of the division, unless the context requires otherwise.

175 (f) "Disability" means an administrative determination that may result in an entitlement  
176 to compensation as a consequence of becoming medically impaired as to function. Disability  
177 can be total or partial, temporary or permanent, industrial or nonindustrial.

178 (g) "Division" means the Division of Industrial Accidents.

179 (h) "Impairment" is a purely medical condition reflecting an anatomical or functional  
180 abnormality or loss. Impairment may be either temporary or permanent, industrial or  
181 nonindustrial.

182 (i) "Order" means an action of the commission that determines the legal rights, duties,

183 privileges, immunities, or other interests of one or more specific persons, but not a class of  
184 persons.

185 (j) (i) "Personal injury by accident arising out of and in the course of employment"  
186 includes an injury caused by the willful act of a third person directed against an employee  
187 because of the employee's employment.

188 (ii) "Personal injury by accident arising out of and in the course of employment" does  
189 not include a disease, except as the disease results from the injury.

190 (k) "Safe" and "safety," as applied to employment or a place of employment, means the  
191 freedom from danger to the life or health of employees reasonably permitted by the nature of  
192 the employment.

193 (l) "Workers' Compensation Fund" means the nonprofit, quasi-public corporation  
194 created in Title 31A, Chapter 33, Workers' Compensation Fund.

195 (2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:

196 (a) "Brother or sister" includes a half brother or sister.

197 (b) "Child" includes:

198 (i) a posthumous child; or

199 (ii) a child legally adopted prior to an injury.

200 Section 4. Section **34A-2-112** is amended to read:

201 **34A-2-112. Administration of this chapter and Chapter 3.**

202 (1) Administration of this chapter and Chapter 3, Utah Occupational Disease Act, is  
203 vested in the commission to be administered through the division, the Division of  
204 Adjudication, and for administrative appeals through the [~~commissioner and the~~] Appeals  
205 Board.

206 (2) The commission:

207 (a) has jurisdiction over every workplace in the state and may administer this chapter  
208 and Chapter 3, Utah Occupational Disease Act, and any rule or order issued under these  
209 chapters, to ensure that every employee in this state has a safe workplace in which employers  
210 have secured the payment of workers' compensation benefits for their employees in accordance  
211 with this chapter and Chapter 3, Utah Occupational Disease Act;

212 (b) through the division under the supervision of the director, has the duty and full  
213 authority to take any administrative action authorized under this chapter or Chapter 3, Utah

214 Occupational Disease Act; and

215 (c) through the Division of Adjudication[~~commissioner~~] and Appeals Board, provide  
216 for the adjudication and review of an administrative action, decision, or order of the  
217 commission in accordance with this title.

218 Section 5. Section **34A-2-208** is amended to read:

219 **34A-2-208. Right to compensation when employer fails to comply.**

220 (1) Any employee, or the employee's dependents if death has ensued, may, in lieu of  
221 proceeding against the employee's employer by civil action in the courts as provided in Section  
222 34A-2-207, file an application with the Division of Adjudication for compensation in  
223 accordance with this chapter or Chapter 3, Utah Occupational Disease Act, when:

- 224 (a) the employee's employer failed to comply with Section 34A-2-201;
- 225 (b) the employee has been injured by accident arising out of or in the course of the  
226 employee's employment, wherever the injury occurred; and
- 227 (c) the injury described in Subsection (1)(b) was not purposely self-inflicted.

228 (2) An application for compensation filed under Subsection (1) shall be treated by the  
229 commission, including for purposes of appeal to the [~~commissioner~~ or] Appeals Board, as an  
230 application for hearing under Section 34A-2-801.

231 (3) (a) If an application for compensation is filed under Subsection (1), in accordance  
232 with Part 8, Adjudication, the commission shall determine the award due to:

- 233 (i) the injured employee; or
- 234 (ii) the employee's dependents in case death has ensued.

235 (b) The employer shall pay the award determined under Subsection (3)(a) to the  
236 persons entitled to the compensation within 10 days after receiving notice from the commission  
237 of the amount of the award determined under Subsection (3)(a).

238 Section 6. Section **34A-2-420** is amended to read:

239 **34A-2-420. Continuing jurisdiction of commission -- No authority to change**  
240 **statutes of limitation -- Authority to destroy records -- Interest on award -- Authority to**  
241 **approve final settlement claims.**

242 (1) (a) The powers and jurisdiction of the commission over each case shall be  
243 continuing.

244 (b) After notice and hearing, the Division of Adjudication[~~commissioner~~] or Appeals



245 Board in accordance with Part 8, Adjudication, may from time to time modify or change a  
246 former finding or order of the commission.

247 (c) This section may not be interpreted as modifying in any respect the statutes of  
248 limitations contained in other sections of this chapter or Chapter 3, Utah Occupational Disease  
249 Act.

250 (d) The commission may not in any respect change the statutes of limitation referred to  
251 in Subsection (1)(c).

252 (2) Records pertaining to cases that have been closed and inactive for 10 years, other  
253 than cases of total permanent disability or cases in which a claim has been filed as in Section  
254 34A-2-417, may be destroyed at the discretion of the commission.

255 (3) Awards made by a final order of the commission shall include interest at the rate of  
256 8% per annum from the date when each benefit payment would have otherwise become due  
257 and payable.

258 (4) Notwithstanding Subsection (1) and Section 34A-2-108, an administrative law  
259 judge shall review and may approve the agreement of the parties to enter into a full and final:

260 (a) compromise settlement of disputed medical, disability, or death benefit entitlements  
261 under this chapter or Chapter 3, Utah Occupational Disease Act; or

262 (b) commutation and settlement of reasonable future medical, disability, or death  
263 benefit entitlements under this chapter or Chapter 3 by means of a lump sum payment,  
264 structured settlement, or other appropriate payout.

265 Section 7. Section **34A-2-602** is amended to read:

266 **34A-2-602. Physical examinations.**

267 (1) The division or an administrative law judge may require an employee claiming the  
268 right to receive compensation under this chapter to submit to a medical examination at any  
269 time, and from time to time, at a place reasonably convenient for the employee, and as may be  
270 provided by the rules of the commission.

271 (2) If an employee refuses to submit to an examination under Subsection (1), or  
272 obstructs the examination, the employee's right to have the employee's claim for compensation  
273 considered, if the employee's claim is pending before an administrative law judge[;  
274 ~~commissioner;~~] or the Appeals Board, or to receive any payments for compensation theretofore  
275 granted by a final order of the commission, shall be suspended during the period of the refusal

276 or obstruction.

277 Section 8. Section **34A-2-801** is amended to read:

278 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**  
279 **administrative action.**

280 (1) (a) To contest an action of the employee's employer or its insurance carrier  
281 concerning a compensable industrial accident or occupational disease alleged by the employee  
282 or a dependent any of the following shall file an application for hearing with the Division of  
283 Adjudication:

284 (i) the employee;

285 (ii) a representative of the employee, the qualifications of whom are defined in rule by  
286 the commission; or

287 (iii) a dependent as described in Section 34A-2-403.

288 (b) To appeal the imposition of a penalty or other administrative act imposed by the  
289 division on the employer or its insurance carrier for failure to comply with this chapter or  
290 Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for  
291 hearing with the Division of Adjudication:

292 (i) the employer;

293 (ii) the insurance carrier; or

294 (iii) a representative of either the employer or the insurance carrier, the qualifications  
295 of whom are defined in rule by the commission.

296 (c) A person providing goods or services described in Subsections 34A-2-407(11) and  
297 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or  
298 34A-3-108.

299 (d) An attorney may file an application for hearing in accordance with Section  
300 34A-1-309.

301 (2) Unless a party in interest appeals the decision of an administrative law judge in  
302 accordance with Subsection (3), the decision of an administrative law judge on an application  
303 for hearing filed under Subsection (1) is a final order of the commission 30 days after the day  
304 on which the decision is issued. An administrative law judge shall issue a decision by no later  
305 than 60 days from the day on which the hearing is held under this part unless:

306 (a) the parties agree to a longer period of time; or

307 (b) a decision within the 60-day period is impracticable.

308 (3) (a) A party in interest may appeal the decision of an administrative law judge by  
309 filing a motion for review with the Division of Adjudication within 30 days of the date the  
310 decision is issued.

311 [~~(b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the~~  
312 ~~appeal be heard by the Appeals Board, the commissioner shall hear the review.]~~

313 [~~(c) A party in interest may request that an appeal be heard by the Appeals Board by~~  
314 ~~filing the request with the Division of Adjudication:]~~

315 [~~(i) as part of the motion for review; or]~~

316 [~~(ii) if requested by a party in interest who did not file a motion for review, within 20~~  
317 ~~days of the day on which the motion for review is filed with the Division of Adjudication.]~~

318 [~~(d)~~] (b) A case appealed to the Appeals Board shall be decided by the majority vote of  
319 the Appeals Board.

320 (4) All records on appeals shall be maintained by the Division of Adjudication. Those  
321 records shall include an appeal docket showing the receipt and disposition of the appeals on  
322 review.

323 (5) Upon appeal, the [~~commissioner or~~] Appeals Board shall make its decision in  
324 accordance with Section 34A-1-303. The Appeals Board shall issue a decision under this part  
325 by no later than 90 days from the day on which the motion for review is filed unless:

326 (a) the parties agree to a longer period of time; or

327 (b) a decision within the 90-day period is impracticable.

328 (6) The [~~commissioner or~~] Appeals Board shall promptly notify the parties to a  
329 proceeding before it of its decision, including its findings and conclusions.

330 (7) The decision of the [~~commissioner or~~] Appeals Board is final unless within 30 days  
331 after the date the decision is issued further appeal is initiated under the provisions of this  
332 section or Title 63G, Chapter 4, Administrative Procedures Act.

333 (8) (a) Within 30 days after the day on which the decision of the [~~commissioner or~~]  
334 Appeals Board is issued, an aggrieved party may secure judicial review by commencing an  
335 action in the court of appeals against the [~~commissioner or~~] Appeals Board for the review of  
336 the decision of the [~~commissioner or~~] Appeals Board.

337 (b) In an action filed under Subsection (8)(a):

338 (i) any other party to the proceeding before the [~~commissioner or~~] Appeals Board shall  
339 be made a party; and

340 (ii) the commission shall be made a party.

341 (c) A party claiming to be aggrieved may seek judicial review only if the party exhausts  
342 the party’s remedies before the commission as provided by this section.

343 (d) At the request of the court of appeals, the commission shall certify and file with the  
344 court all documents and papers and a transcript of all testimony taken in the matter together  
345 with the decision of the [~~commissioner or~~] Appeals Board.

346 (9) (a) The commission shall make rules, in accordance with Title 63G, Chapter 3,  
347 Utah Administrative Rulemaking Act, to facilitate timely completion of administrative actions  
348 under this part.

349 (b) The commission shall monitor the time from filing of an application for a hearing  
350 to issuance of a final order of the commission for cases brought under this part.

351 (c) The commission shall annually report to the Business and Labor Interim  
352 Committee:

353 (i) the number of cases for which an application for hearing is filed under this part in  
354 the previous calendar year;

355 (ii) the number of cases described in Subsection (9)(c)(i) for which the decision of the  
356 administrative law judge was not issued within the 60-day period required by Subsection (2);

357 (iii) the number of cases described in Subsection (9)(c)(i) that are appealed to the  
358 Appeals Board for which the decision of the Appeals Board was not issued within the 90-day  
359 period required by Subsection (5);

360 (iv) the number of cases described in Subsection (9)(c)(i) for which a final order of the  
361 commission is issued within 18 months of the day on which the application for hearing is filed;

362 (v) the number of cases for which a final order of the commission is not issued within  
363 18 months of the day on which the application for a hearing is filed; and

364 (vi) the reasons the cases described in Subsection (9)(c)(v) were not resolved within 18  
365 months of the day on which the application for a hearing is filed.

366 Section 9. Section **34A-2-802** is amended to read:

367 **34A-2-802. Rules of evidence and procedure before commission -- Admissible**  
368 **evidence.**

369 (1) The commission, [~~the commissioner,~~] an administrative law judge, or the Appeals  
370 Board, is not bound by the usual common law or statutory rules of evidence, or by any  
371 technical or formal rules or procedure, other than as provided in this section or as adopted by  
372 the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The  
373 commission may make its investigation in such manner as in its judgment is best calculated to  
374 ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.

375 (2) The commission may receive as evidence and use as proof of any fact in dispute all  
376 evidence considered material and relevant including the following:

- 377 (a) depositions and sworn testimony presented in open hearings;  
378 (b) reports of attending or examining physicians, or of pathologists;  
379 (c) reports of investigators appointed by the commission;  
380 (d) reports of employers, including copies of time sheets, book accounts, or other  
381 records; or  
382 (e) hospital records in the case of an injured or diseased employee.

383 Section 10. Section **34A-5-107** is amended to read:

384 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**  
385 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

- 395 (i) between the division and the Equal Employment Opportunity Commission; and  
396 (ii) in effect on the day on which the request for agency action is transferred.

397 (2) Any employer, labor organization, joint apprenticeship committee, or vocational  
398 school who has an employee or member who refuses or threatens to refuse to comply with this  
399 chapter may file with the division a request for agency action asking the division for assistance

400 to obtain the employee's or member's compliance by conciliation or other remedial action.

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

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

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

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

408 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

444 (6) In any adjudicative proceeding to review the director's or the director's designee's  
445 determination that a prohibited employment practice has occurred, the division shall present the  
446 factual and legal basis of the determination or order issued under Subsection (5).

447 (7) (a) Prior to commencement of an evidentiary hearing:

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

450 (ii) the respondent may amend its answer.

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

452 (i) during or after a hearing; and

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

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

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

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

462 issue an order requiring the respondent to:

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

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

465 (i) reinstatement;

466 (ii) back pay and benefits;

467 (iii) attorneys' fees; and

468 (iv) costs.

469 (10) Conciliation between the parties is to be urged and facilitated at all stages of the

470 adjudicative process.

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

472 review before the [~~commissioner or~~] Appeals Board of the order issued by the presiding officer

473 in accordance with:

474 (i) Section 63G-4-301; and

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

476 (b) If there is no timely request for review, the order issued by the presiding officer

477 becomes the final order of the commission.

478 (12) An order of the commission under Subsection (11)(a) is subject to judicial review

479 as provided in:

480 (a) Section 63G-4-403; and

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

482 (13) The commission shall have authority to make rules concerning procedures under

483 this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

484 (14) The commission and its staff may not divulge or make public any information

485 gained from any investigation, settlement negotiation, or proceeding before the commission

486 except as provided in Subsections (14)(a) through (d).

487 (a) Information used by the director or the director's designee in making any

488 determination may be provided to all interested parties for the purpose of preparation for and

489 participation in proceedings before the commission.

490 (b) General statistical information may be disclosed provided the identities of the

491 individuals or parties are not disclosed.

492 (c) Information may be disclosed for inspection by the attorney general or other legal



493 representatives of the state or the commission.

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

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

498 (a) race;

499 (b) color;

500 (c) sex;

501 (d) retaliation;

502 (e) pregnancy, childbirth, or pregnancy-related conditions;

503 (f) age;

504 (g) religion;

505 (h) national origin; or

506 (i) disability.

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

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

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

515 Section 11. Section **34A-6-304** is amended to read:

516 **34A-6-304. Procedure for review of order entered by administrative law judge --**  
517 **Continuing jurisdiction of commission.**

518 (1) (a) Administrative law judges assigned by the director of the Division of  
519 Adjudication shall hear and determine any proceeding assigned to them by the Division of  
520 Adjudication.

521 (b) The administrative law judge shall enter the administrative law judge's findings of  
522 fact, conclusions of law, and order not later than 30 days after final receipt of all matters  
523 concerned in the hearing.

524 (c) The findings of fact, conclusions of law, and order of the administrative law judge  
525 shall become the final order of the commission unless objections are made in accordance with  
526 Subsection (2).

527 (2) (a) Any party of interest who is dissatisfied with the order entered by an  
528 administrative law judge may obtain a review by appealing the decision in accordance with  
529 Section 63G-4-301 and Chapter 1, Part 3, Adjudicative Proceedings.

530 (b) The ~~commissioner or~~ Appeals Board shall make its decision in accordance with  
531 Section 34A-1-303.

532 (c) The decision of the commission is final unless judicial review is requested in  
533 accordance with Chapter 1, Part 3, Adjudicative Proceedings.

534 (d) To the extent that new facts are provided, the commission has continuing  
535 jurisdiction to amend, reverse, or enhance prior orders.

536 Section 12. **Effective date.**

537 This bill takes effect on July 1, 2013.

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**Legislative Review Note**  
**as of 1-31-13 7:13 PM**

**Office of Legislative Research and General Counsel**