

HB0359S01 compared with HB0359

~~{deleted text}~~ shows text that was in HB0359 but was deleted in HB0359S01.

inserted text shows text that was not in HB0359 but was inserted into HB0359S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Mark A. Wheatley proposes the following substitute bill:

WORKPLACE DISCRIMINATION

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark A. Wheatley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to workplace discrimination.

Highlighted Provisions:

This bill:

- ▶ modifies the remedies available in an administrative action based on prohibited employment practices;
- ▶ provides for civil actions seeking relief from discriminatory or prohibited employment practices;
- ▶ bars further agency action if a civil action is commenced;
- ▶ removes language related to exclusive remedy ~~{ and the affect of a commencement of an action under federal law }~~; and
- ▶ makes technical and conforming changes.

HB0359S01 compared with HB0359

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-5-107, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **34A-5-107** is amended to read:

34A-5-107. Procedure for aggrieved person to file claim -- Investigations -- Adjudicative proceedings -- Settlement -- Reconsideration -- Determination -- Civil action.

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

(b) [~~Every~~] A request for agency action shall be verified under oath or affirmation.

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

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

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

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

(3) (a) Before a hearing is set or held as part of [~~any~~] an adjudicative proceeding, the division shall promptly assign an investigator to attempt a settlement between the parties by

HB0359S01 compared with HB0359

conference, conciliation, or persuasion.

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

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

(i) shall conduct [~~every~~] an investigation in fairness to [~~all~~] the parties and agencies involved; and

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

(d) An aggrieved party may withdraw the request for agency action [~~prior to~~] before the issuance of a final order.

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

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

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

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

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

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

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

HB0359S01 compared with HB0359

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

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

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

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

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

(7) (a) [~~Prior to~~] Before commencement of an evidentiary hearing:

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

(ii) the respondent may amend its answer.

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

(i) during or after a hearing; and

(ii) only with permission of the presiding officer.

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

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

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

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

HB0359S01 compared with HB0359

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

(i) reinstatement;

(ii) back pay and benefits;

(iii) compensatory ~~and punitive~~ damages in an amount not to exceed that available under 42 U.S.C. Sec. 1981a;

[~~(iii)~~ attorneys'] (iv) attorney fees; and

[~~(iv)~~] (v) costs.

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

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

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

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

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

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

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

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

(13) The commission shall have authority to make rules concerning procedures under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

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

HB0359S01 compared with HB0359

representatives of the state or the commission.

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

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

~~[(a) race;]~~

~~[(b) color;]~~

~~[(c) sex;]~~

~~[(d) retaliation;]~~

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

~~[(f) age;]~~

~~[(g) religion;]~~

~~[(h) national origin; or]~~

~~[(i) disability.]~~

(15) (a) A person claiming to be aggrieved by a prohibited employment practice may request a state right to sue letter from the division after the person files with the division a request for agency action under Subsection (1), but no later than the day on which the commission issues a final order under this section.

(b) A person who obtains a state right to sue letter under Subsection (15)(a) may file a civil action in state district court by no later than 90 days after the day on which the state right to sue letter is issued by the division.

(c) The commencement of a civil action under this Subsection (15) seeking relief from a prohibited employment practice bars the commencement or continuation of any proceeding before the division or commission in connection with the same claim of a prohibited employment practice under this chapter.

(d) If a court finds discriminatory or prohibited employment practices, the court may order relief to the complaining party, including:

(i) reinstatement;

(ii) back pay and benefits;

(iii) compensatory and punitive damages in an amount not to exceed that available under 42 U.S.C. Sec. 1981a;

HB0359S01 compared with HB0359

(iv) attorney fees; and

(v) costs.

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

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

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

~~{ (15) (a) A person claiming to be aggrieved by a prohibited employment practice may file a civil action in state district court within 90 days after the day on which a determination and order is issued under Subsection (4) or (5). }~~

~~{ (b) If the court finds discriminatory or prohibited employment practices, the court may order relief to the complaining party, including:~~

~~—— (i) reinstatement;~~

~~—— (ii) back pay and benefits;~~

~~—— (iii) compensatory and punitive damages in an amount not to exceed that available under 42 U.S.C. Sec. 1981a;~~

~~—— (iv) attorney fees; and~~

~~—— (v) costs.~~

Legislative Review Note

~~—— as of 2-14-14 2:56 PM~~

~~————— Office of Legislative Research and General Counsel }~~