

**Representative LaVar Christensen** proposes the following substitute bill:

1           **RELIGIOUS LIBERTY AND NONDISCRIMINATION PROTECTIONS**

2                                   2015 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: LaVar Christensen**

5                                   Senate Sponsor: Alvin B. Jackson

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7           **LONG TITLE**

8           **General Description:**

9                   This bill establishes the Religious Liberty Act and provides added protections and  
10                  provisions of the Utah Antidiscrimination Act and the Utah Fair Housing Act.

11           **Highlighted Provisions:**

12                  This bill:

- 13                   ▶ modifies definitions;
- 14                   ▶ establishes the Religious Liberty Act;
- 15                   ▶ adds religious liberty provisions to the Utah Antidiscrimination Act and the Utah  
16                  Fair Housing Act;
- 17                   ▶ adds protection of varying forms of sex related interests to the Utah  
18                  Antidiscrimination Act and the Utah Fair Housing Act;
- 19                   ▶ addresses an employer's right to impose reasonable employment regulations;
- 20                   ▶ distinguishes between laws governing suspect classes;
- 21                   ▶ adds religious liberty to the list of exceptions in the Governmental Immunity Act of  
22                  Utah;
- 23                   ▶ declares that the Act is in furtherance of the rights and protections provided under  
24                  the United States and Utah constitutions;
- 25                   ▶ requires government laws that substantially burden a person's religious liberty to



- 26 balance certain requirements in order to lawfully enforce such law or action;
- 27       ▶ addresses application of the Act to various state laws;
- 28       ▶ coordinates religious liberty protections with corresponding protections against
- 29 discrimination in employment and housing;
- 30       ▶ establishes that a person's lawful exercise of religious liberty under the Act is a valid
- 31 defense to claims of others;
- 32       ▶ permits a person or entity seeking relief under the Act to obtain judicial relief,
- 33 attorney fees, and costs for violations of that person's religious liberty;
- 34       ▶ ensures that religious liberty claims are not to be abused or construed as a license to
- 35 discriminate nor shall they be a basis for retaliation by others; and
- 36       ▶ makes technical amendments.

37 **Money Appropriated in this Bill:**

38       None

39 **Other Special Clauses:**

40       None

41 **Utah Code Sections Affected:**

42 AMENDS:

- 43       **34A-5-102**, as last amended by Laws of Utah 2011, Chapter 413
- 44       **34A-5-104**, as last amended by Laws of Utah 2012, Chapter 369
- 45       **34A-5-106**, as last amended by Laws of Utah 2013, Chapter 278
- 46       **34A-5-107**, as last amended by Laws of Utah 2008, Chapter 382
- 47       **57-21-2**, as last amended by Laws of Utah 2010, Chapter 379
- 48       **57-21-3**, as last amended by Laws of Utah 1993, Chapter 114
- 49       **57-21-4**, as last amended by Laws of Utah 1993, Chapter 114
- 50       **57-21-5**, as last amended by Laws of Utah 2011, Chapter 366
- 51       **57-21-6**, as last amended by Laws of Utah 1993, Chapter 114
- 52       **57-21-7**, as last amended by Laws of Utah 1993, Chapter 114
- 53       **63G-7-301**, as last amended by Laws of Utah 2014, Chapter 145
- 54       **67-19-6.3**, as last amended by Laws of Utah 2006, Chapter 139

55 ENACTS:

56       **63G-19-101**, Utah Code Annotated 1953

- 57 [63G-19-102](#), Utah Code Annotated 1953
- 58 [63G-19-103](#), Utah Code Annotated 1953
- 59 [63G-19-104](#), Utah Code Annotated 1953
- 60 [63G-19-105](#), Utah Code Annotated 1953
- 61 [63G-19-106](#), Utah Code Annotated 1953



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

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

64 **34A-5-102. Definitions -- Unincorporated entities.**

65 (1) As used in this chapter:

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

68 (b) "Bona fide occupational qualification" means a characteristic applying to an  
69 employee that:

- 70 (i) is necessary to the operation; or
- 71 (ii) is the essence of the employee's employer's business.

72 (c) "Court" means:

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

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

76 Subsection (1)(c)(i).

77 (d) "Director" means the director of the division.

78 (e) "Disability" means a physical or mental disability as defined and covered by the  
79 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

80 (f) "Division" means the Division of Antidiscrimination and Labor.

81 (g) "Employee" means any person applying with or employed by an employer.

82 (h) (i) "Employer" means:

83 (A) the state;

84 (B) any political subdivision;

85 (C) a board, commission, department, institution, school district, trust, or agent of the  
86 state or its political subdivisions; or  
87

88 (D) a person employing 15 or more employees within the state for each working day in  
89 each of 20 calendar weeks or more in the current or preceding calendar year.

90 (ii) "Employer" does not include:

91 (A) a religious organization or association;

92 (B) a religious corporation sole; [~~or~~]

93 (C) any corporation or association constituting a wholly owned subsidiary or agency of  
94 any religious organization or association or religious corporation sole[~~;~~];

95 (D) a religious educational institution or society;

96 (E) an affiliate under Section 16-6a-102 of a religious organization or association,  
97 religious corporation sole, or religious educational institution or society; or

98 (F) an entity that is recognized under applicable law as an expressive association in  
99 relation to sex related interests as defined in this chapter.

100 (i) "Employment agency" means any person:

101 (i) undertaking to procure employees or opportunities to work for any other person; or

102 (ii) holding the person out to be equipped to take an action described in Subsection

103 (1)(i)(i).

104 (j) "Joint apprenticeship committee" means any association of representatives of a  
105 labor organization and an employer providing, coordinating, or controlling an apprentice  
106 training program.

107 (k) "Labor organization" means any organization that exists for the purpose in whole or  
108 in part of:

109 (i) collective bargaining;

110 (ii) dealing with employers concerning grievances, terms or conditions of employment;

111 or

112 (iii) other mutual aid or protection in connection with employment.

113 (l) "National origin" means the place of birth, domicile, or residence of an individual or  
114 of an individual's ancestors.

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

117 (i) is also employed at that job; or

118 (ii) may be employed by the employer conducting the program during the course of the

119 program, or when the program is completed.

120 (n) "Person" means one or more individuals, partnerships, associations, corporations,  
121 legal representatives, trusts or trustees, receivers, the state and all political subdivisions and  
122 agencies of the state.

123 (o) "Presiding officer" means the same as that term is defined in Section 63G-4-103.

124 (p) "Prohibited employment practice" means a practice specified as discriminatory, and  
125 therefore unlawful, in Section 34A-5-106.

126 (q) "Retaliate" means the taking of adverse action by an employer, employment  
127 agency, labor organization, apprenticeship program, on-the-job training program, or vocational  
128 school against one of its employees, applicants, or members because the employee, applicant,  
129 or member has:

130 (i) opposed any employment practice prohibited under this chapter; ~~or~~

131 (ii) filed charges, testified, assisted, or participated in any way in any proceeding,  
132 investigation, or hearing under this chapter~~[-];~~ or

133 (iii) lawful expression or exercise of religious liberty as recognized and provided in  
134 Title 63G, Chapter 19, Religious Liberty Act.

135 (r) "Sex related interests" means, for purposes of this chapter, varying recognized  
136 forms or indications of different sexual instincts, preferences, or behavior by and between  
137 individuals.

138 ~~(r)~~ (s) "Unincorporated entity" means an entity organized or doing business in the  
139 state that is not:

140 (i) an individual;

141 (ii) a corporation; or

142 (iii) publicly traded.

143 ~~(s)~~ (t) "Vocational school" means any school or institution conducting a course of  
144 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to  
145 pursue a manual, technical, industrial, business, commercial, office, personal services, or other  
146 nonprofessional occupations.

147 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
148 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
149 be the employer of each individual who, directly or indirectly, holds an ownership interest in

150 the unincorporated entity.

151 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
152 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
153 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that  
154 the individual:

155 (i) is an active manager of the unincorporated entity;

156 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
157 entity; or

158 (iii) is not subject to supervision or control in the performance of work by:

159 (A) the unincorporated entity; or

160 (B) a person with whom the unincorporated entity contracts.

161 (c) As part of the rules made under Subsection (2)(b), the commission may define:

162 (i) "active manager";

163 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

164 (iii) "subject to supervision or control in the performance of work."

165 Section 2. Section **34A-5-104** is amended to read:

166 **34A-5-104. Powers.**

167 (1) (a) The commission has jurisdiction over the subject of employment practices and  
168 discrimination made unlawful by this chapter.

169 (b) The commission may adopt, publish, amend, and rescind rules, consistent with, and  
170 for the enforcement of this chapter.

171 (2) The division may:

172 (a) appoint and prescribe the duties of investigators and other employees and agents  
173 that it considers necessary for the enforcement of this chapter;

174 (b) receive, reject, investigate, and pass upon complaints alleging:

175 (i) discrimination in:

176 (A) employment;

177 (B) apprenticeship programs;

178 (C) on-the-job training programs; and

179 (D) vocational schools; or

180 (ii) the existence of a discriminatory or prohibited employment practice by:

- 181 (A) a person;
- 182 (B) an employer;
- 183 (C) an employment agency;
- 184 (D) a labor organization;
- 185 (E) the employees or members of an employment agency or labor organization;
- 186 (F) a joint apprenticeship committee; and
- 187 (G) vocational school;
- 188 (c) investigate and study the existence, character, causes, and extent of discrimination
- 189 in employment, apprenticeship programs, on-the-job training programs, and vocational schools
- 190 in this state by:
  - 191 (i) employers;
  - 192 (ii) employment agencies;
  - 193 (iii) labor organizations;
  - 194 (iv) joint apprenticeship committees; and
  - 195 (v) vocational schools;
  - 196 (d) formulate plans for the elimination of discrimination by educational or other
  - 197 means;
    - 198 (e) hold hearings upon complaint made against:
      - 199 (i) a person;
      - 200 (ii) an employer;
      - 201 (iii) an employment agency;
      - 202 (iv) a labor organization;
      - 203 (v) the employees or members of an employment agency or labor organization;
      - 204 (vi) a joint apprenticeship committee; or
      - 205 (vii) a vocational school;
    - 206 (f) issue publications and reports of investigations and research that:
      - 207 (i) promote good will among the various racial, religious, and ethnic groups of the
      - 208 state; and
      - 209 (ii) minimize or eliminate discrimination in employment because of race, color, sex,
      - 210 religion, national origin, age, [or] disability, or sex related interests;
      - 211 (g) prepare and transmit to the governor, at least once each year, reports describing:

- 212 (i) its proceedings, investigations, and hearings;  
213 (ii) the outcome of those hearings;  
214 (iii) decisions the division has rendered; and  
215 (iv) the other work performed by the division;
- 216 (h) recommend policies to the governor, and submit recommendation to employers,  
217 employment agencies, and labor organizations to implement those policies;
- 218 (i) recommend any legislation concerning discrimination because of race, sex, color,  
219 national origin, religion, age, [or] disability, or sex related interests to the governor that it  
220 considers necessary; and
- 221 (j) within the limits of any appropriations made for its operation, cooperate with other  
222 agencies or organizations, both public and private, in the planning and conducting of  
223 educational programs designed to eliminate discriminatory practices prohibited under this  
224 chapter.
- 225 (3) The division shall investigate alleged discriminatory practices involving officers or  
226 employees of state government if requested to do so by the Career Service Review Office.
- 227 (4) (a) In any hearing held under this chapter, the division may:
- 228 (i) subpoena witnesses and compel their attendance at the hearing;  
229 (ii) administer oaths and take the testimony of any person under oath; and  
230 (iii) compel any person to produce for examination any books, papers, or other  
231 information relating to the matters raised by the complaint.
- 232 (b) The division director or a hearing examiner appointed by the division director may  
233 conduct hearings.
- 234 (c) If a witness fails or refuses to obey a subpoena issued by the division, the division  
235 may petition the district court to enforce the subpoena.
- 236 (d) In the event a witness asserts a privilege against self-incrimination, testimony and  
237 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of  
238 Immunity.
- 239 Section 3. Section **34A-5-106** is amended to read:
- 240 **34A-5-106. Discriminatory or prohibited employment practices -- Approved**  
241 **practices.**
- 242 (1) Under this chapter, all individuals are entitled to fair access to employment



243 opportunities in the state and the laws of the state shall be reasonably and fairly applied with  
244 the greatest sensitivity and balanced recognition of the liberties and rights of all individuals  
245 under the Utah Constitution, the United States Constitution, and Utah statutes, including Title  
246 63G, Chapter 19, Religious Liberty Act.

247 (2) It is a discriminatory or prohibited employment practice to take any action  
248 described in Subsections [(+) (2)](a) through (f).

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

- 253 (A) race;
- 254 (B) color;
- 255 (C) sex;
- 256 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 257 (E) age, if the individual is 40 years of age or older;
- 258 (F) religion;
- 259 (G) national origin; [~~or~~]
- 260 (H) disability[~~;~~]; or
- 261 (I) sex related interests.

262 (ii) A person may not be considered "otherwise qualified," unless that person possesses  
263 the following required by an employer for any particular job, job classification, or position:

- 264 (A) education;
- 265 (B) training;
- 266 (C) ability, with or without reasonable accommodation;
- 267 (D) moral character;
- 268 (E) integrity;
- 269 (F) disposition to work;
- 270 (G) adherence to reasonable rules and regulations; and
- 271 (H) other job related qualifications required by an employer.

272 (iii) (A) As used in this chapter, "to discriminate in matters of compensation" means  
273 the payment of differing wages or salaries to employees having substantially equal experience,

274 responsibilities, and skill for the particular job.

275 (B) Notwithstanding Subsection [~~(1)~~] (2)(a)(iii)(A):

276 (I) nothing in this chapter prevents increases in pay as a result of longevity with the  
277 employer, if the salary increases are uniformly applied and available to all employees on a  
278 substantially proportional basis; and

279 (II) nothing in this section prohibits an employer and employee from agreeing to a rate  
280 of pay or work schedule designed to protect the employee from loss of Social Security payment  
281 or benefits if the employee is eligible for those payments.

282 (b) An employment agency may not:

283 (i) refuse to list and properly classify for employment, or refuse to refer an individual  
284 for employment, in a known available job for which the individual is otherwise qualified,  
285 because of:

286 (A) race;

287 (B) color;

288 (C) sex;

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

290 (E) religion;

291 (F) national origin;

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

293 (H) disability; or

294 (I) sex related interests; or

295 (ii) comply with a request from an employer for referral of applicants for employment  
296 if the request indicates either directly or indirectly that the employer discriminates in  
297 employment on account of:

298 (A) race;

299 (B) color;

300 (C) sex;

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

302 (E) religion;

303 (F) national origin;

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

305 (H) disability[-]; or

306 (I) sex related interests.

307 (c) A labor organization may not exclude any individual otherwise qualified from full  
308 membership rights in the labor organization, expel the individual from membership in the labor  
309 organization, or otherwise discriminate against or harass any of the labor organization's  
310 members in full employment of work opportunity, or representation, because of:

311 (i) race;

312 (ii) sex;

313 (iii) pregnancy, childbirth, or pregnancy-related conditions;

314 (iv) religion;

315 (v) national origin;

316 (vi) age, if the individual is 40 years of age or older; [~~or~~]

317 (vii) disability[-]; or

318 (viii) sex related interests.

319 (d) Unless based upon a bona fide occupational qualification, or required by and given  
320 to an agency of government for security reasons, an employer, employment agency, or labor  
321 organization may not print, or circulate, or cause to be printed or circulated, any statement,  
322 advertisement, or publication, use any form of application for employment or membership, or  
323 make any inquiry in connection with prospective employment or membership that expresses,  
324 either directly or indirectly:

325 (i) any limitation, specification, or discrimination as to:

326 (A) race;

327 (B) color;

328 (C) religion;

329 (D) sex;

330 (E) pregnancy, childbirth, or pregnancy-related conditions;

331 (F) national origin;

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

333 (H) disability; or

334 (I) sex related interests; or

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

336 Subsection [~~(1)~~] (2)(d)(i).

337 (e) A person, whether or not an employer, an employment agency, a labor organization,  
338 or the employees or members of an employer, employment agency, or labor organization, may  
339 not:

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

342 (ii) obstruct or prevent any person from complying with this chapter, or any order  
343 issued under this chapter; or

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

345 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational  
346 school, providing, coordinating, or controlling apprenticeship programs, or providing,  
347 coordinating, or controlling on-the-job-training programs, instruction, training, or retraining  
348 programs may not:

349 (A) deny to, or withhold from, any qualified person, the right to be admitted to, or  
350 participate in any apprenticeship training program, on-the-job-training program, or other  
351 occupational instruction, training or retraining program because of:

352 (I) race;

353 (II) color;

354 (III) sex;

355 (IV) pregnancy, childbirth, or pregnancy-related conditions;

356 (V) religion;

357 (VI) national origin;

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

359 (VIII) disability; or

360 (IX) sex related interests;

361 (B) discriminate against or harass any qualified person in that person's pursuit of  
362 programs described in Subsection [~~(1)~~] (2)(f)(i)(A), or to discriminate against such a person in  
363 the terms, conditions, or privileges of programs described in Subsection [~~(1)~~] (2)(f)(i)(A),  
364 because of:

365 (I) race;

366 (II) color;

367 (III) sex;

368 (IV) pregnancy, childbirth, or pregnancy-related conditions;

369 (V) religion;

370 (VI) national origin;

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

372 (VIII) disability; or

373 (IX) sex related interests;

374 (C) except as provided in Subsection [(+)] (2)(f)(ii), print, publish, or cause to be

375 printed or published, any notice or advertisement relating to employment by the employer, or

376 membership in or any classification or referral for employment by a labor organization, or

377 relating to any classification or referral for employment by an employment agency, indicating

378 any preference, limitation, specification, or discrimination based on:

379 (I) race;

380 (II) color;

381 (III) sex;

382 (IV) pregnancy, childbirth, or pregnancy-related conditions;

383 (V) religion;

384 (VI) national origin;

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

386 (VIII) disability[.]; or

387 (IX) sex related interests.

388 (ii) Notwithstanding Subsection [(+)] (2)(f)(i)(C), if the following is a bona fide

389 occupational qualification for employment, a notice or advertisement described in Subsection

390 [(+)] (2)(f)(i)(C) may indicate a preference, limitation, specification, or discrimination based

391 on:

392 (A) race;

393 (B) color;

394 (C) religion;

395 (D) sex;

396 (E) pregnancy, childbirth, or pregnancy-related conditions;

397 (F) age;

398 (G) national origin; [or]

399 (H) disability[-]; or

400 (I) sex related interests.

401 [~~(2)~~] (3) Nothing contained in Subsections [~~(1)~~] (2)(a) through [~~(1)~~] (f) shall be

402 construed to prevent:

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

406 (b) the variance of insurance premiums or coverage on account of age; or

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

409 [~~(3)~~] (4) (a) It is not a discriminatory or prohibited employment practice:

410 (i) for an employer to hire and employ employees, for an employment agency to  
411 classify or refer for employment any individual, for a labor organization to classify its  
412 membership or to classify or refer for employment any individual or for an employer, labor  
413 organization, or joint labor-management committee controlling apprenticeship or other training  
414 or retraining programs to admit or employ any individual in any such program, on the basis of  
415 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, or  
416 disability in those certain instances where religion, sex, pregnancy, childbirth, or  
417 pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin,  
418 [or] disability, or sex related interests is a bona fide occupational qualification reasonably  
419 necessary to the normal operation of that particular business or enterprise;

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

422 (A) the school, college, university, or other educational institution is, in whole or in  
423 substantial part, owned, supported, controlled, or managed by a particular religious corporation,  
424 association, or society; or

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

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

428 (A) the employer's:

429 (I) spouse;

430 (II) child; or

431 (III) son-in-law or daughter-in-law;

432 (B) any person for whom the employer is or would be liable to furnish financial

433 support if those persons were unemployed;

434 (C) any person to whom the employer during the preceding six months has furnished

435 more than one-half of total financial support regardless of whether or not the employer was or

436 is legally obligated to furnish support; or

437 (D) any person whose education or training was substantially financed by the employer

438 for a period of two years or more.

439 (b) Nothing in this chapter applies to any business or enterprise on or near an Indian

440 reservation with respect to any publicly announced employment practice of the business or

441 enterprise under which preferential treatment is given to any individual because that individual

442 is a native American Indian living on or near an Indian reservation.

443 (c) Nothing in this chapter shall be interpreted to require any employer, employment

444 agency, labor organization, vocational school, joint labor-management committee, or

445 apprenticeship program subject to this chapter to grant preferential treatment to any individual

446 or to any group because of the race, color, religion, sex, age, national origin, ~~[or]~~ disability, or

447 sex related interests of the individual or group on account of an imbalance which may exist

448 with respect to the total number or percentage of persons of any race, color, religion, sex, age,

449 national origin, ~~[or]~~ disability, or sex related interests employed by any employer, referred or

450 classified for employment by an employment agency or labor organization, admitted to

451 membership or classified by any labor organization, or admitted to or employed in, any

452 apprenticeship or other training program, in comparison with the total number or percentage of

453 persons of that race, color, religion, sex, age, national origin, ~~[or]~~ disability, or sex related

454 interests in any community or county or in the available work force in any community or

455 county.

456 ~~[(4)]~~ (5) It is not a discriminatory or prohibited practice with respect to age to observe

457 the terms of a bona fide seniority system or any bona fide employment benefit plan such as a

458 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this

459 chapter, except that no such employee benefit plan shall excuse the failure to hire an individual.

460           ~~[(5)]~~ (6) Notwithstanding Subsection ~~[(4)]~~ (5), or any other statutory provision to the  
461 contrary, a person may not be subject to involuntary termination or retirement from  
462 employment on the basis of age alone, if the individual is 40 years of age or older, except:

463           (a) under Subsection ~~[(6)]~~ (7); and

464           (b) when age is a bona fide occupational qualification.

465           ~~[(6)]~~ (7) Nothing in this section prohibits compulsory retirement of an employee who  
466 has attained at least 65 years of age, and who, for the two-year period immediately before  
467 retirement, is employed in a bona fide executive or a high policymaking position, if:

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

471           (b) the benefit described in Subsection ~~[(6)]~~ (7)(a) equals, in the aggregate, at least  
472 \$44,000.

473           (8) An employer is free to establish reasonable employment regulations that are  
474 consistent with the employer's values, including those relating to dress, grooming, use of  
475 private facilities, and unlawful or improper conduct within the scope of employment.

476           (9) Sex related interests, as defined and included in this chapter, is not a specific or  
477 additional suspect class under the law and is distinct from and is not governed by established  
478 and recognized protections for race, religion, or national origin, which are subject to heightened  
479 strict scrutiny and express constitutional protections.

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

481           **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**  
482 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

489           (d) The division may transfer a request for agency action filed with the division  
490 pursuant to this section to the federal Equal Employment Opportunity Commission in



491 accordance with the provisions of any work-share agreement that is:

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

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

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

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

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

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

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

505 and

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

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

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

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

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

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

522 of the commission.

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

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

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

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

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

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

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

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

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

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

547 (ii) the respondent may amend its answer.

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

549 (i) during or after a hearing; and

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

551 (8) (a) If, upon all the evidence at a hearing, the presiding officer finds that a  
552 respondent has not engaged in a discriminatory or prohibited employment practice, the

553 presiding officer shall issue an order dismissing the request for agency action containing the  
554 allegation of a discriminatory or prohibited employment practice.

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

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

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

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

562 (i) reinstatement;

563 (ii) back pay and benefits;

564 (iii) attorneys' fees; and

565 (iv) costs.

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

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

571 (i) Section [63G-4-301](#); and

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

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

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

577 (a) Section [63G-4-403](#); and

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

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

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

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

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

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

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

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

595 (a) race;

596 (b) color;

597 (c) sex;

598 (d) retaliation;

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

600 (f) age;

601 (g) religion;

602 (h) national origin; [or]

603 (i) disability[-]; or

604 (j) sex related interests.

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

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

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

613 Section 5. Section **57-21-2** is amended to read:

614 **57-21-2. Definitions.**

615 As used in this chapter:

616 (1) "Aggrieved person" includes any person who:

617 (a) claims to have been injured by a discriminatory housing practice; or

618 (b) believes that the person will be injured by a discriminatory housing practice that is  
619 about to occur.

620 (2) "Commission" means the Labor Commission.

621 (3) "Complainant" means an aggrieved person, including the director, who has  
622 commenced a complaint with the division.

623 (4) "Conciliation" means the attempted resolution of issues raised by a complaint of  
624 discriminatory housing practices by the investigation of the complaint through informal  
625 negotiations involving the complainant, the respondent, and the division.

626 (5) "Conciliation agreement" means a written agreement setting forth the resolution of  
627 the issues in conciliation.

628 (6) "Conciliation conference" means the attempted resolution of issues raised by a  
629 complaint or by the investigation of a complaint through informal negotiations involving the  
630 complainant, the respondent, and the division. The conciliation conference is not subject to  
631 Title 63G, Chapter 4, Administrative Procedures Act.

632 (7) "Covered multifamily dwellings" means:

633 (a) buildings consisting of four or more dwelling units if the buildings have one or  
634 more elevators; and

635 (b) ground floor units in other buildings consisting of four or more dwelling units.

636 (8) "Director" means the director of the division or a designee.

637 (9) (a) "Disability" means a physical or mental impairment that substantially limits one  
638 or more of a person's major life activities, including a person having a record of such an  
639 impairment or being regarded as having such an impairment.

640 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
641 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
642 Sec. 802.

643 (10) "Discriminate" includes segregate or separate.

644 (11) "Discriminatory housing practice" means an act that is unlawful under this  
645 chapter.

646 (12) "Division" means the Division of Antidiscrimination and Labor established under  
647 the commission.

648 (13) (a) "Dwelling" means any building or structure, or a portion of a building or  
649 structure, occupied as, or designed or intended for occupancy as, a residence of one or more  
650 families.

651 (b) "Dwelling" also includes vacant land that is offered for sale or lease for the  
652 construction or location of a dwelling as described in Subsection (13)(a).

653 (14) (a) "Familial status" means one or more individuals who have not attained the age  
654 of 18 years being domiciled with:

655 (i) a parent or another person having legal custody of the individual or individuals; or

656 (ii) the designee of the parent or other person having custody, with the written  
657 permission of the parent or other person.

658 (b) The protections afforded against discrimination on the basis of familial status shall  
659 apply to any person who:

660 (i) is pregnant;

661 (ii) is in the process of securing legal custody of any individual who has not attained  
662 the age of 18 years; or

663 (iii) is a single individual.

664 (15) "National origin" means the place of birth of an individual or of any lineal  
665 ancestors.

666 (16) "Person" includes one or more individuals, corporations, limited liability  
667 companies, partnerships, associations, labor organizations, legal representatives, mutual  
668 companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in  
669 cases under the United States Bankruptcy Code, receivers, and fiduciaries.

670 (17) "Presiding officer" has the same meaning as provided in Section [63G-4-103](#).

671 (18) "Real estate broker" or "salesperson" means a principal broker, an associate  
672 broker, or a sales agent as those terms are defined in Section [61-2f-102](#).

673 (19) "Respondent" means a person against whom a complaint of housing  
674 discrimination has been initiated.

675 (20) "Sex" means gender and includes pregnancy, childbirth, and disabilities related to  
676 pregnancy or childbirth.

677           (21) "Sex related interests" means, for purposes of this chapter, varying recognized  
678 forms or indications of different sexual instincts, preferences, or behavior by and between  
679 individuals.

680           ~~[(21)]~~ (22) "Source of income" means the verifiable condition of being a recipient of  
681 federal, state, or local assistance, including medical assistance, or of being a tenant receiving  
682 federal, state, or local subsidies, including rental assistance or rent supplements.

683           Section 6. Section **57-21-3** is amended to read:

684           **57-21-3. Exemptions -- Sale by private individuals -- Nonprofit organizations --**  
685 **Noncommercial transactions.**

686           (1) This chapter does not apply to any single-family dwelling unit sold or rented by its  
687 owner if:

688           (a) the owner is not a partnership, association, corporation, or other business entity;

689           (b) the owner does not own any interest in four or more single-family dwelling units  
690 held for sale or lease at the same time;

691           (c) during a 24-month period, the owner does not sell two or more single-family  
692 dwelling units in which the owner was not residing or was not the most recent resident at the  
693 time of sale;

694           (d) the owner does not retain or use the facilities or services of any real estate broker or  
695 salesperson; and

696           (e) the owner does not use any discriminatory housing practice under Subsection  
697 **57-21-5**~~[(2)]~~(3) in the sale or rental of the dwelling.

698           (2) This chapter does not apply to a temporary or permanent residence facility operated  
699 by a nonprofit or charitable organization, including any dormitory operated by a public or  
700 private educational institution, if the discrimination is by sex ~~[or]~~, familial status, or sex related  
701 interests for reasons of personal modesty or privacy or in the furtherance of a religious  
702 institution's free exercise of religious rights under the First Amendment of the United States  
703 Constitution.

704           (3) This chapter, except for Subsection **57-21-5**~~[(2)]~~(3), does not apply to the rental of  
705 a room in the dwelling by an owner-occupant of a single-family dwelling to another person if  
706 the dwelling is designed for occupancy by four or fewer families, and the owner-occupant  
707 resides in one of the units.

708 (4) This chapter does not prohibit a religious organization, association, or society, or  
709 any nonprofit institution or organization operated, supervised, or controlled by or in  
710 conjunction with a religious organization, association, or society, from limiting the sale, rental,  
711 or occupancy of dwellings it owns or operates for primarily noncommercial purposes to  
712 persons of the same religion, or from giving preference to such persons, unless membership in  
713 the religion is restricted by race, color, sex, or national origin.

714 (5) This chapter does not prohibit a private club not open to the public, including  
715 fraternities and sororities associated with institutions of higher education, from limiting the  
716 rental or occupancy of lodgings to members or from giving preference to its members, but only  
717 if it owns or operates the lodgings as an incident to its primary purpose and not for a  
718 commercial purpose.

719 (6) This chapter does not prohibit distinctions based on inability to fulfill the terms and  
720 conditions, including financial obligations, of a lease, rental agreement, contract of purchase or  
721 sale, mortgage, trust deed, or other financing agreement.

722 (7) This chapter does not prohibit any nonprofit educational institution from:

723 (a) requiring its single students to live in housing approved, operated, or owned by the  
724 institution;

725 (b) segregating housing that the institution approves, operates, or owns on the basis of  
726 sex or familial status or both for reasons of personal modesty or privacy, or in the furtherance  
727 of a religious institution's free exercise of religious rights under the First Amendment of the  
728 United States Constitution; or

729 (c) otherwise assisting others in making sex-segregated housing available to students as  
730 may be permitted by regulations implementing the federal Fair Housing Amendments Act of  
731 1988 and Title IX of the Education Amendments of 1972.

732 (8) This chapter does not prohibit any reasonable local, state, or federal restrictions  
733 regarding the maximum number of occupants permitted to occupy a dwelling.

734 (9) The provisions pertaining to familial status do not apply to the existence,  
735 development, sale, rental, advertisement, or financing of any apartment complex,  
736 condominium, or other housing development designated as housing for older persons, as  
737 defined by Title VIII of the Civil Rights Act of 1968, as amended.

738 Section 7. Section **57-21-4** is amended to read:



739 **57-21-4. Conduct and requirements excluded -- Defenses.**740 (1) Except as provided in Subsection ~~57-21-5~~(4)(5), this chapter does not:741 (a) preclude or deny lawful expression or exercise of religious liberty as recognized  
742 and protected under Title 63G, Chapter 19, Religious Liberty Act;743 ~~[(a)]~~ (b) require any person to exercise a higher degree of care toward a person who has  
744 a disability than toward a person who does not have a disability;745 ~~[(b)]~~ (c) relieve any person of obligations generally imposed on all persons regardless  
746 of disability in a written lease, rental agreement, contract of purchase or sale, mortgage, trust  
747 deed, or other financing agreement; or748 ~~[(c)]~~ (d) prohibit any program, service, facility, or privilege intended to habilitate,  
749 rehabilitate, or accommodate a person with a disability.750 (2) It is a defense to a complaint or action brought under this chapter that the  
751 complainant has a disability that, in the circumstances and even with reasonable  
752 accommodation, poses a serious threat to the health or safety of the complainant or others. The  
753 burden of proving this defense is upon the respondent.754 (3) Sex related interests, as defined and included in this chapter, is not a specific or  
755 additional suspect class under the law and is distinct from and is not governed by established  
756 and recognized protections for race, religion, or national origin, which are subject to heightened  
757 strict scrutiny and express constitutional protections.758 Section 8. Section ~~57-21-5~~ is amended to read:759 **57-21-5. Discriminatory practices enumerated.**760 (1) Under this chapter, all individuals are entitled to fair access to housing under the  
761 laws of this state, and the laws of this state regarding access to housing shall be reasonably and  
762 fairly applied with the greatest sensitivity and balanced recognition of the liberties and rights of  
763 all individuals under the Utah Constitution, the United States Constitution, and Utah statutes,  
764 including Title 63G, Chapter 19, Religious Liberty Act.765 (2) It is a discriminatory housing practice to do any of the following because of a  
766 person's race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~  
767 disability, or sex related interests:768 (a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the  
769 sale or rental, or otherwise deny or make unavailable any dwelling from any person;

770 (b) discriminate against any person in the terms, conditions, or privileges of the sale or  
771 rental of any dwelling or in providing facilities or services in connection with the dwelling; or

772 (c) represent to any person that any dwelling is not available for inspection, sale, or  
773 rental when in fact the dwelling is available.

774 [~~(2)~~] (3) It is a discriminatory housing practice to make a representation orally or in  
775 writing or make, print, circulate, publish, post, or cause to be made, printed, circulated,  
776 published, or posted any notice, statement, or advertisement, or to use any application form for  
777 the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation,  
778 or discrimination based on race, color, religion, sex, national origin, familial status, source of  
779 income, [~~or~~] disability, or sex related interests or expresses any intent to make any such  
780 preference, limitation, or discrimination.

781 [~~(3)~~] (4) It is a discriminatory housing practice to induce or attempt to induce, for  
782 profit, any person to buy, sell, or rent any dwelling by making representations about the entry  
783 or prospective entry into the neighborhood of persons of a particular race, color, religion, sex,  
784 national origin, familial status, source of income, [~~or~~] disability, or sex related interests.

785 [~~(4)~~] (5) A discriminatory housing practice includes:

786 (a) a refusal to permit, at the expense of the person with a disability, reasonable  
787 modifications of existing premises occupied or to be occupied by the person if the  
788 modifications are necessary to afford that person full enjoyment of the premises, except that in  
789 the case of a rental, the landlord, where it is reasonable to do so, may condition permission for  
790 a modification on the renter agreeing to restore the interior of the premises, when reasonable, to  
791 the condition that existed before the modification, reasonable wear and tear excepted;

792 (b) a refusal to make reasonable accommodations in rules, policies, practices, or  
793 services when the accommodations may be necessary to afford the person equal opportunity to  
794 use and enjoy a dwelling; and

795 (c) in connection with the design and construction of covered multifamily dwellings for  
796 first occupancy after March 13, 1991, a failure to design and construct those dwellings in a  
797 manner that:

798 (i) the dwellings have at least one building entrance on an accessible route, unless it is  
799 impracticable to have one because of the terrain or unusual characteristics of the site; and

800 (ii) with respect to dwellings with a building entrance on an accessible route:

801 (A) the public use and common use portions of the dwelling are readily accessible to  
802 and usable by a person with a disability;

803 (B) all the doors designed to allow passage into and within the dwellings are  
804 sufficiently wide to allow passage by a person with a disability who is in a wheelchair; and

805 (C) all premises within these dwellings contain the following features of adaptive  
806 design:

807 (I) an accessible route into and through the dwelling;

808 (II) light switches, electrical outlets, thermostats, and other environmental controls in  
809 accessible locations;

810 (III) reinforcements in the bathroom walls to allow later installation of grab bars; and

811 (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver  
812 about and use the space.

813 [~~(5)~~] (6) This section also applies to discriminatory housing practices because of race,  
814 color, religion, sex, national origin, familial status, source of income, [~~or~~] disability, or sex  
815 related interests based upon a person's association with another person.

816 Section 9. Section **57-21-6** is amended to read:

817 **57-21-6. Discriminatory housing practices regarding residential real**  
818 **estate-related transactions -- Discriminatory housing practices regarding the provisions**  
819 **of brokerage services.**

820 (1) It is a discriminatory housing practice for any person whose business includes  
821 engaging in residential real estate-related transactions to discriminate against any person in  
822 making available such a transaction, or in the terms or conditions of the transaction, because of  
823 race, color, religion, sex, disability, familial status, source of income, [~~or~~] national origin, or  
824 sex related interests. Residential real estate-related transactions include:

825 (a) making or purchasing loans or providing other financial assistance:

826 (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

827 (ii) secured by residential real estate; or

828 (b) selling, brokering, or appraising residential real property.

829 (2) It is a discriminatory housing practice to deny any person access to, or membership  
830 or participation in, any multiple-listing service, real estate brokers' organization, or other  
831 service, organization, or facility relating to the business of selling or renting dwellings or to

832 discriminate against any person in the terms or conditions of access, membership, or  
833 participation in the organization, service, or facility because of race, color, religion, sex,  
834 disability, familial status, source of income, [~~or~~] national origin, or sex related interests.

835 (3) This section also applies to discriminatory housing practices because of race, color,  
836 religion, sex, national origin, familial status, source of income, [~~or~~] disability, or sex related  
837 interests based upon a person's association with another person.

838 Section 10. Section **57-21-7** is amended to read:

839 **57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions --**

840 **Obstruction of division investigation -- Reprisals.**

841 (1) It is a discriminatory housing practice to do any of the following:

842 (a) coerce, intimidate, threaten, or interfere with any person:

843 (i) in the exercise or enjoyment of any right granted or protected under this chapter;

844 (ii) because that person exercised any right granted or protected under this chapter; or

845 (iii) because that person aided or encouraged any other person in the exercise or

846 enjoyment of any right granted or protected under this chapter;

847 (b) aid, abet, incite, compel, or coerce a person to engage in any of the practices

848 prohibited by this chapter;

849 (c) attempt to aid, abet, incite, compel, or coerce a person to engage in any of the

850 practices prohibited by this chapter;

851 (d) obstruct or prevent any person from complying with this chapter, or any order

852 issued under this chapter;

853 (e) resist, prevent, impede, or interfere with the director or any division employees or

854 representatives in the performance of duty under this chapter; or

855 (f) engage in any reprisal against any person because that person:

856 (i) opposed a practice prohibited under this chapter; or

857 (ii) filed a complaint, testified, assisted, or participated in any manner in any

858 investigation, proceeding, or hearing under this chapter.

859 (2) This section also applies to discriminatory housing practices because of race, color,

860 religion, sex, national origin, familial status, source of income, [~~or~~] disability, or sex related

861 interests based upon a person's association with another person.

862 Section 11. Section **63G-7-301** is amended to read:

863 **63G-7-301. Waivers of immunity -- Exceptions.**

864 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual  
865 obligation.

866 (b) Actions arising out of contractual rights or obligations are not subject to the  
867 requirements of Sections [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

868 (c) The Division of Water Resources is not liable for failure to deliver water from a  
869 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development  
870 Act, if the failure to deliver the contractual amount of water is due to drought, other natural  
871 condition, or safety condition that causes a deficiency in the amount of available water.

872 (2) Immunity from suit of each governmental entity is waived:

873 (a) as to any action brought to recover, obtain possession of, or quiet title to real or  
874 personal property;

875 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
876 property, to determine any adverse claim on real or personal property, or to obtain an  
877 adjudication about any mortgage or other lien that the governmental entity may have or claim  
878 on real or personal property;

879 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
880 merchandise, or other property while it is in the possession of any governmental entity or  
881 employee, if the property was seized for the purpose of forfeiture under any provision of state  
882 law;

883 (d) subject to Subsection [63G-7-302](#)(1), as to any action brought under the authority of  
884 Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the  
885 governmental entity when the governmental entity has taken or damaged private property for  
886 public uses without just compensation;

887 (e) subject to Subsection [63G-7-302](#)(2), as to any action brought to recover attorney  
888 fees under Sections [63G-2-405](#) and [63G-2-802](#);

889 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
890 Act; ~~or~~

891 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
892 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
893 Land Use Act~~[-]~~; or

894 (h) as to any action brought to obtain relief from governmental action under Title 63G,  
895 Chapter 19, Religious Liberty Act.

896 (3) (a) Except as provided in Subsection (3)(b), immunity from suit of each  
897 governmental entity is waived as to any injury caused by:

898 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
899 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

900 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
901 or other public improvement.

902 (b) Immunity from suit of each governmental entity is not waived if the injury arises  
903 out of, in connection with, or results from:

904 (i) a latent dangerous or latent defective condition of any highway, road, street, alley,  
905 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

906 (ii) a latent dangerous or latent defective condition of any public building, structure,  
907 dam, reservoir, or other public improvement.

908 (4) Immunity from suit of each governmental entity is waived as to any injury  
909 proximately caused by a negligent act or omission of an employee committed within the scope  
910 of employment.

911 (5) Immunity from suit of each governmental entity is not waived under Subsections  
912 (3) and (4) if the injury arises out of, in connection with, or results from:

913 (a) the exercise or performance, or the failure to exercise or perform, a discretionary  
914 function, whether or not the discretion is abused;

915 (b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional  
916 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of  
917 mental anguish, or violation of civil rights;

918 (c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to  
919 issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar  
920 authorization;

921 (d) a failure to make an inspection or by making an inadequate or negligent inspection;

922 (e) the institution or prosecution of any judicial or administrative proceeding, even if  
923 malicious or without probable cause;

924 (f) a misrepresentation by an employee whether or not it is negligent or intentional;

- 925 (g) riots, unlawful assemblies, public demonstrations, mob violence, and civil  
926 disturbances;
- 927 (h) the collection of and assessment of taxes;
- 928 (i) the activities of the Utah National Guard;
- 929 (j) the incarceration of any person in any state prison, county or city jail, or other place  
930 of legal confinement;
- 931 (k) any natural condition on publicly owned or controlled lands;
- 932 (l) any condition existing in connection with an abandoned mine or mining operation;
- 933 (m) any activity authorized by the School and Institutional Trust Lands Administration  
934 or the Division of Forestry, Fire, and State Lands;
- 935 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,  
936 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,  
937 if:
- 938 (i) the trail is designated under a general plan adopted by a municipality under Section  
939 [10-9a-401](#) or by a county under Section [17-27a-401](#);
- 940 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public  
941 use as evidenced by a written agreement between the owner or operator of the trail  
942 right-of-way, or of the right-of-way where the trail is located, and the municipality or county  
943 where the trail is located; and
- 944 (iii) the written agreement:
- 945 (A) contains a plan for operation and maintenance of the trail; and
- 946 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way  
947 where the trail is located has, at minimum, the same level of immunity from suit as the  
948 governmental entity in connection with or resulting from the use of the trail.
- 949 (o) research or implementation of cloud management or seeding for the clearing of fog;
- 950 (p) the management of flood waters, earthquakes, or natural disasters;
- 951 (q) the construction, repair, or operation of flood or storm systems;
- 952 (r) the operation of an emergency vehicle, while being driven in accordance with the  
953 requirements of Section [41-6a-212](#);
- 954 (s) the activities of:
- 955 (i) providing emergency medical assistance;

- 956 (ii) fighting fire;
- 957 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 958 (iv) emergency evacuations;
- 959 (v) transporting or removing injured persons to a place where emergency medical
- 960 assistance can be rendered or where the person can be transported by a licensed ambulance
- 961 service; or
- 962 (vi) intervening during dam emergencies;
- 963 (t) the exercise or performance, or the failure to exercise or perform, any function
- 964 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 965 (u) unauthorized access to government records, data, or electronic information systems
- 966 by any person or entity; or
- 967 (v) injury related to the activity of wildlife, as defined in Section 23-13-2, that arises
- 968 during the use of a public or private road.

969 Section 12. Section 63G-19-101 is enacted to read:

970 **CHAPTER 19. RELIGIOUS LIBERTY ACT**

971 **63G-19-101. Title.**

972 This chapter is known as the "Religious Liberty Act."

973 Section 13. Section 63G-19-102 is enacted to read:

974 **63G-19-102. Definitions.**

975 As used in this chapter:

976 (1) "Civil capacities" means the inherent and inalienable constitutional and statutory  
977 rights and freedoms of persons and the lawful and protected activities, associations, and  
978 exercise of those rights and freedoms in relation to others.

979 (2) "Goods" means:

980 (a) property; or

981 (b) economic or business interests or activities.

982 (3) "Person" means:

983 (a) an individual;

984 (b) a closely held business or entity;

985 (c) a religious institution;

986 (d) a religious institution's wholly or partially owned subsidiary or affiliate;



987 (e) a representative of a religious institution;  
988 (f) an entity that is recognized under applicable law as an expressive association; or  
989 (g) an independent education institution or association that holds and expresses sincere  
990 and honest religious or moral principles and values that are essential to its existence and  
991 operation.

992 (4) "Religious liberty" means the free expression and exercise of religion and rights of  
993 conscience, as recognized and established in the Utah Constitution since statehood, including  
994 acts or refusals to act that are substantially motivated by sincerely held religious beliefs, duties,  
995 principles, practices, or other such honest convictions.

996 (5) "Substantial burden on religious liberty" means a government law, statute,  
997 ordinance, or regulation or a private action or demand, that:

998 (a) infringes upon or violates religious liberty;

999 (b) has the effect of compelling, restraining, or coercing a person to act, significantly  
1000 modify behavior, or restrain from acting in a way that is contrary to the person's religious  
1001 liberty; or

1002 (c) significantly injures or threatens a person's goods or civil capacities because of the  
1003 person's religious liberty.

1004 Section 14. Section **63G-19-103** is enacted to read:

1005 **63G-19-103. Recognition and protection of religious liberty -- Compelling interest.**

1006 (1) The rights and protections of religious liberty afforded by this chapter are in  
1007 furtherance of those provided under the constitutions of this state and the United States. As  
1008 expressly provided in the constitution of this state, perfect toleration of religious sentiment is  
1009 guaranteed under Utah Constitution, Article III, Section 1, rights of conscience shall also never  
1010 be infringed as expressly provided under Utah Constitution, Article I, Section 4, and all citizens  
1011 of this state shall enjoy equally all civil, political, and religious rights and privileges as  
1012 provided in Utah Constitution, Article IV, Section 1. There is a substantial public and  
1013 government interest in protecting order and morality.

1014 (2) The lawful and proper expression and exercise of religious liberty and rights of  
1015 conscience recognized and protected in the constitutions of the state and the United States and  
1016 this chapter do not constitute nor shall they result in wrongful discrimination under Title 34A,  
1017 Chapter 5, Utah Antidiscrimination Act, and Title 57, Chapter 21, Utah Fair Housing Act.

1018 Section 15. Section **63G-19-104** is enacted to read:

1019 **63G-19-104. Prohibitions on actions -- Compelling interest and individual**  
1020 **protections.**

1021 Except in the most limited circumstances, no law, statute, ordinance, regulation, or  
1022 action by the state or a political subdivision of the state, including public education, or other  
1023 private action or demand, may substantially burden a person's religious liberty, even if the  
1024 burden results from a rule of general applicability, unless it is demonstrated by clear and  
1025 convincing evidence that the application of the burden to the person is:

1026 (1) in furtherance of a compelling state interest or compelling justification required to  
1027 protect public health and safety or greater public good; and

1028 (2) there are no less restrictive means available to properly achieve and satisfy the  
1029 narrow state interest as applied to the individual circumstances of the persons otherwise  
1030 protected under this chapter.

1031 Section 16. Section **63G-19-105** is enacted to read:

1032 **63G-19-105. Application of chapter to certain provisions.**

1033 (1) Sex related interests, as defined and included in Title 34A, Chapter 5, Utah  
1034 Antidiscrimination Act, and Title 57, Chapter 21, Utah Fair Housing Act, is not a specific or  
1035 additional suspect class under the law and is distinct from and are not governed by established  
1036 and recognized protections for race, religion, or national origin, which are subject to heightened  
1037 strict scrutiny and express constitutional protections.

1038 (2) The state fully and independently reserves and affirms all rights and powers of state  
1039 sovereignty, including the state's rights and powers regarding all domestic relations laws, and  
1040 as provided in Section [63G-16-101](#), and as are adopted by the Legislature and the citizens of  
1041 this state.

1042 (3) This chapter is and shall be applied (3) consistent with conscientious objection  
1043 protections also afforded to persons, including a health care facility or health care provider  
1044 under Section [76-7-306](#) to refuse to participate, admit, or treat for abortion based on religious  
1045 or moral grounds.

1046 (4) This chapter applies to all state laws and rules, and any county, city, or town  
1047 ordinances or rules, and the implementation of those laws, whether statutory or otherwise, and  
1048 whether adopted before or after May 12, 2015.

1049 (5) Government may not deny, revoke, or suspend a person's professional or  
1050 occupational license, certificate, or registration for exercising the person's religious liberty or  
1051 taking such action as:

1052 (a) declining to provide or participate in any service that violates the person's religious  
1053 liberty;

1054 (b) refusing to affirm a statement or oath that is contrary to the person's exercise of  
1055 religious liberty; or

1056 (c) expressing sincerely held religious beliefs in any context.

1057 (6) Nothing in this chapter shall be construed to prohibit the granting of government  
1058 funding, benefits, or exemptions, to the extent permissible under the Establishment Clause of  
1059 the United States Constitution or Utah Constitution, Article I, Section 4.

1060 (7) Nothing in this chapter authorizes any person to engage in sexual misconduct or  
1061 criminal conduct.

1062 (8) Nothing in this chapter shall be construed to affirmatively authorize any  
1063 government burden on religious liberty.

1064 (9) Exercise of religious liberty under this chapter is not grounds for retaliation by  
1065 others.

1066 Section 17. Section **63G-19-106** is enacted to read:

1067 **63G-19-106. Judicial relief.**

1068 (1) The lawful and proper exercise of religious liberty is:

1069 (a) a recognized exemption to otherwise generally applicable laws and a valid defense  
1070 to claims by others; and

1071 (b) a proper basis for legal and equitable relief, claims, remedies, and actions when  
1072 necessary to enforce such protections as provided in this chapter.

1073 (2) A person whose religious liberty is substantially burdened in violation of this  
1074 chapter may obtain appropriate relief in a judicial proceeding, including recovery of reasonable  
1075 attorney fees and costs.

1076 Section 18. Section **67-19-6.3** is amended to read:

1077 **67-19-6.3. Equal employment opportunity plan.**

1078 (1) In conjunction with the director's duties under Section **67-19-6**, and  
1079 notwithstanding the general prohibition in Subsection **34A-5-106**~~(3)~~(4)(c), the executive

1080 director shall prepare an equal employment opportunity plan for state employment consistent  
1081 with the guidelines provided in federal equal employment opportunity laws and in related  
1082 federal regulations.

1083 (2) The equal employment opportunity plan required by this section applies only to  
1084 state career service employees described in Section 67-19-15.

1085 (3) The Legislature shall review the equal employment opportunity plan required by  
1086 this section before it may be implemented.

1087 (4) Nothing in this section requires the establishment of hiring quotas or preferential  
1088 treatment of any identifiable group.