

HB0322S01 compared with HB0322

~~text~~ shows text that was in HB0322 but was deleted in HB0322S01.

text shows text that was not in HB0322 but was inserted into HB0322S01.

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 LaVar Christensen proposes the following substitute bill:

RELIGIOUS LIBERTY ~~RECOGNITION AND PROTECTION~~ ACT AND NONDISCRIMINATION PROTECTIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: ~~_____~~ Alvin B. Jackson

LONG TITLE

General Description:

This bill establishes the Religious Liberty ~~Recognition~~ Act and ~~Protection~~ Act; provides added protections and ~~modifies~~ provisions of the Utah Antidiscrimination Act and the Utah Fair Housing Act.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ establishes the Religious Liberty ~~Recognition and Protection~~ Act;
- ▶ adds religious liberty provisions to the Utah Antidiscrimination Act and the Utah Fair Housing Act;

HB0322S01 compared with HB0322

- ▶ ~~{exempts the act from the provisions of}~~ adds protection of varying forms of sex related interests to the Utah Antidiscrimination Act and the Utah Fair Housing Act;
- ▶ addresses an employer's right to impose reasonable employment regulations;
- ▶ distinguishes between laws governing suspect classes;
- ▶ adds religious liberty to the list of exceptions in the Governmental Immunity Act of Utah;
- ▶ declares that the ~~{act}~~ Act is in furtherance of the rights and protections provided under the United States and Utah constitutions;
- ~~{~~ → ~~establishes that perfect toleration of religious sentiment is guaranteed and that rights of conscience shall never be infringed, as provided in the Utah Constitution;~~
- ~~}~~ ▶ requires government ~~{and private individuals that impose a law or action}~~ laws that substantially ~~{burdens another's}~~ burden a person's religious liberty to balance certain requirements in order to lawfully enforce ~~{or recognize the}~~ such law or action;
- ▶ ~~{defines the act's relation to housing and employment regulations}~~ addresses application of the Act to various state laws;
- ▶ coordinates religious liberty protections with corresponding protections against discrimination in employment and housing;
- ▶ establishes that a person's lawful exercise of religious liberty under the ~~{act}~~ Act is a ~~{recognized}~~ valid defense to claims of ~~{discrimination}~~ others; ~~{and}~~
- ▶ permits a person or entity seeking relief under the ~~{act}~~ Act to obtain judicial relief, attorney fees, and costs ~~{against the government or other individuals or entities}~~ for violations of that person's religious liberty;
- ▶ ensures that religious liberty claims are not to be abused or construed as a license to discriminate nor shall they be a basis for retaliation by others; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

HB0322S01 compared with HB0322

AMENDS:

34A-5-102, as last amended by Laws of Utah 2011, Chapter 413

34A-5-104, as last amended by Laws of Utah 2012, Chapter 369

34A-5-106, as last amended by Laws of Utah 2013, Chapter 278

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

57-21-2, as last amended by Laws of Utah 2010, Chapter 379

57-21-3, as last amended by Laws of Utah 1993, Chapter 114

57-21-4, as last amended by Laws of Utah 1993, Chapter 114

57-21-5, as last amended by Laws of Utah 2011, Chapter 366

57-21-6, as last amended by Laws of Utah 1993, Chapter 114

57-21-7, as last amended by Laws of Utah 1993, Chapter 114

63G-7-301, as last amended by Laws of Utah 2014, Chapter 145

67-19-6.3, as last amended by Laws of Utah 2006, Chapter 139

ENACTS:

63G-19-101, Utah Code Annotated 1953

63G-19-102, Utah Code Annotated 1953

63G-19-103, Utah Code Annotated 1953

63G-19-104, Utah Code Annotated 1953

63G-19-105, Utah Code Annotated 1953

63G-19-106, Utah Code Annotated 1953

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

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

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

(1) As used in this chapter:

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

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

(i) is necessary to the operation; or

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

HB0322S01 compared with HB0322

(c) "Court" means:

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

(ii) if this court is not in session at that time, a judge of the court described in Subsection (1)(c)(i).

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

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

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

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

(h) (i) "Employer" means:

(A) the state;

(B) any political subdivision;

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

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

(ii) "Employer" does not include:

(A) a religious organization or association;

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

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

(D) a religious educational institution or society;

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

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

(i) "Employment agency" means any person:

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

(ii) holding the person out to be equipped to take an action described in Subsection (1)(i)(i).

HB0322S01 compared with HB0322

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

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

(i) collective bargaining;

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

or

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

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

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

(i) is also employed at that job; or

(ii) may be employed by the employer conducting the program during the course of the program, or when the program is completed.

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

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

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

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

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

(ii) filed charges, testified, assisted, or participated in any way in any proceeding, investigation, or hearing under this chapter;

~~(r)~~ ~~(i); or~~

(iii) lawful expression or exercise of religious liberty as recognized and provided in

HB0322S01 compared with HB0322

Title 63G, Chapter 19, Religious Liberty Act.

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

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

- (i) an individual;
- (ii) a corporation; or
- (iii) publicly traded.

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

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

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

- (i) is an active manager of the unincorporated entity;
 - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
 - (iii) is not subject to supervision or control in the performance of work by:
 - (A) the unincorporated entity; or
 - (B) a person with whom the unincorporated entity contracts.
- (c) As part of the rules made under Subsection (2)(b), the commission may define:
- (i) "active manager";
 - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
 - (iii) "subject to supervision or control in the performance of work."

HB0322S01 compared with HB0322

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

34A-5-104. Powers.

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

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

(2) The division may:

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

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

(i) discrimination in:

(A) employment;

(B) apprenticeship programs;

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

(D) vocational schools; or

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

(A) a person;

(B) an employer;

(C) an employment agency;

(D) a labor organization;

(E) the employees or members of an employment agency or labor organization;

(F) a joint apprenticeship committee; and

(G) vocational school;

(c) investigate and study the existence, character, causes, and extent of discrimination in employment, apprenticeship programs, on-the-job training programs, and vocational schools in this state by:

(i) employers;

(ii) employment agencies;

(iii) labor organizations;

(iv) joint apprenticeship committees; and

(v) vocational schools;

HB0322S01 compared with HB0322

(d) formulate plans for the elimination of discrimination by educational or other means;

(e) hold hearings upon complaint made against:

(i) a person;

(ii) an employer;

(iii) an employment agency;

(iv) a labor organization;

(v) the employees or members of an employment agency or labor organization;

(vi) a joint apprenticeship committee; or

(vii) a vocational school;

(f) issue publications and reports of investigations and research that:

(i) promote good will among the various racial, religious, and ethnic groups of the state; and

(ii) minimize or eliminate discrimination in employment because of race, color, sex, religion, national origin, age, ~~[or]~~ disability, or sex related interests;

(g) prepare and transmit to the governor, at least once each year, reports describing:

(i) its proceedings, investigations, and hearings;

(ii) the outcome of those hearings;

(iii) decisions the division has rendered; and

(iv) the other work performed by the division;

(h) recommend policies to the governor, and submit recommendation to employers, employment agencies, and labor organizations to implement those policies;

(i) recommend any legislation concerning discrimination because of race, sex, color, national origin, religion, age, ~~[or]~~ disability, or sex related interests to the governor that it considers necessary; and

(j) within the limits of any appropriations made for its operation, cooperate with other agencies or organizations, both public and private, in the planning and conducting of educational programs designed to eliminate discriminatory practices prohibited under this chapter.

(3) The division shall investigate alleged discriminatory practices involving officers or employees of state government if requested to do so by the Career Service Review Office.

HB0322S01 compared with HB0322

(4) (a) In any hearing held under this chapter, the division may:

- (i) subpoena witnesses and compel their attendance at the hearing;
- (ii) administer oaths and take the testimony of any person under oath; and
- (iii) compel any person to produce for examination any books, papers, or other

information relating to the matters raised by the complaint.

(b) The division director or a hearing examiner appointed by the division director may conduct hearings.

(c) If a witness fails or refuses to obey a subpoena issued by the division, the division may petition the district court to enforce the subpoena.

(d) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

Section ~~{+}~~3. Section **34A-5-106** is amended to read:

34A-5-106. Discriminatory or prohibited employment practices -- Approved practices.

(1) ~~{All}~~Under this chapter, all individuals are entitled to fair access to employment opportunities in the state~~{. Such opportunities are vital to the health}~~ and ~~{well being of all people. The}~~the laws of the state shall be reasonably and fairly applied ~~{in}~~with the greatest sensitivity and balanced recognition of the liberties and ~~{protection of all affected interests and as provided in}~~rights of all individuals under the Utah Constitution, the United States Constitution, and Utah statutes, including Title 63G, Chapter 19, Religious Liberty ~~{Recognition and Protection }Act~~~~{, including recognized principles of freedom of contract and employment-at-will considerations, when applicable}~~.

(2) It is a discriminatory or prohibited employment practice to take any action described in Subsections ~~{+}~~ (2)(a) through (f).

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

- (A) race;
- (B) color;

HB0322S01 compared with HB0322

- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) age, if the individual is 40 years of age or older;
- (F) religion;
- (G) national origin; ~~[or]~~
- (H) disability~~[-]; or~~
- (I) sex related interests.

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

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

(iii) (A) As used in this chapter, "to discriminate in matters of compensation" means the payment of differing wages or salaries to employees having substantially equal experience, responsibilities, and skill for the particular job.

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

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

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

(b) An employment agency may not:

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

HB0322S01 compared with HB0322

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) religion;
- (F) national origin;
- (G) age, if the individual is 40 years of age or older; ~~[or]~~
- (H) disability; or

(I) sex related interests; or

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

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) religion;
- (F) national origin;
- (G) age, if the individual is 40 years of age or older; ~~[or]~~
- (H) disability~~[-]~~; or

(I) sex related interests.

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

- (i) race;
- (ii) sex;
- (iii) pregnancy, childbirth, or pregnancy-related conditions;
- (iv) religion;
- (v) national origin;
- (vi) age, if the individual is 40 years of age or older; ~~[or]~~

HB0322S01 compared with HB0322

- (vii) disability~~[-]; or~~
- (viii) sex related interests.

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

- (i) any limitation, specification, or discrimination as to:
 - (A) race;
 - (B) color;
 - (C) religion;
 - (D) sex;
 - (E) pregnancy, childbirth, or pregnancy-related conditions;
 - (F) national origin;
 - (G) age, if the individual is 40 years of age or older; ~~[or]~~
 - (H) disability; or
 - (I) sex related interests; or

(ii) the intent to make any limitation, specification, or discrimination described in Subsection ~~[(1)]~~ (2)(d)(i).

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

- (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a discriminatory or prohibited employment practice;
 - (ii) obstruct or prevent any person from complying with this chapter, or any order issued under this chapter; or
 - (iii) attempt, either directly or indirectly, to commit any act prohibited in this section.
- (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational school, providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on-the-job-training programs, instruction, training, or retraining

HB0322S01 compared with HB0322

programs may not:

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

- (I) race;
- (II) color;
- (III) sex;
- (IV) pregnancy, childbirth, or pregnancy-related conditions;
- (V) religion;
- (VI) national origin;
- (VII) age, if the individual is 40 years of age or older; ~~or~~
- (VIII) disability; or
- (IX) sex related interests;

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

- (I) race;
- (II) color;
- (III) sex;
- (IV) pregnancy, childbirth, or pregnancy-related conditions;
- (V) religion;
- (VI) national origin;
- (VII) age, if the individual is 40 years of age or older; ~~or~~
- (VIII) disability; or
- (IX) sex related interests;

(C) except as provided in Subsection ~~(1)~~ (2)(f)(ii), print, publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer, or membership in or any classification or referral for employment by a labor organization, or relating to any classification or referral for employment by an employment agency, indicating any preference, limitation, specification, or discrimination based on:

HB0322S01 compared with HB0322

- (I) race;
- (II) color;
- (III) sex;
- (IV) pregnancy, childbirth, or pregnancy-related conditions;
- (V) religion;
- (VI) national origin;
- (VII) age, if the individual is 40 years of age or older; ~~or~~
- (VIII) disability~~[-]; or~~
- (IX) sex related interests.

(ii) Notwithstanding Subsection ~~[(+)]~~ (2)(f)(i)(C), if the following is a bona fide occupational qualification for employment, a notice or advertisement described in Subsection ~~[(+)]~~ (2)(f)(i)(C) may indicate a preference, limitation, specification, or discrimination based on:

- (A) race;
- (B) color;
- (C) religion;
- (D) sex;
- (E) pregnancy, childbirth, or pregnancy-related conditions;
- (F) age;
- (G) national origin; ~~or~~
- (H) disability~~[-]; or~~
- (I) sex related interests.

~~[(2)]~~ (3) Nothing contained in Subsections ~~[(+)]~~ (2)(a) through ~~[(+)]~~ (f) shall be construed to prevent:

- (a) the termination of employment of an individual who, with or without reasonable accommodation, is physically, mentally, or emotionally unable to perform the duties required by that individual's employment;
- (b) the variance of insurance premiums or coverage on account of age; or
- (c) a restriction on the activities of individuals licensed by the liquor authority with respect to persons under 21 years of age.

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

HB0322S01 compared with HB0322

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

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

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

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

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

(A) the employer's:

(I) spouse;

(II) child; or

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

(B) any person for whom the employer is or would be liable to furnish financial support if those persons were unemployed;

(C) any person to whom the employer during the preceding six months has furnished more than one-half of total financial support regardless of whether or not the employer was or is legally obligated to furnish support; or

(D) any person whose education or training was substantially financed by the employer for a period of two years or more.

(b) Nothing in this chapter applies to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or

HB0322S01 compared with HB0322

enterprise under which preferential treatment is given to any individual because that individual is a native American Indian living on or near an Indian reservation.

(c) Nothing in this chapter shall be interpreted to require any employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, age, national origin, ~~[or]~~ disability, or sex related interests of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, age, national origin, ~~[or]~~ disability, or sex related interests employed by any employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, age, national origin, ~~[or]~~ disability, or sex related interests in any community or county or in the available work force in any community or county.

~~[(4)]~~ (5) It is not a discriminatory or prohibited practice with respect to age to observe the terms of a bona fide seniority system or any bona fide employment benefit plan such as a retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire an individual.

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

- (a) under Subsection ~~[(6)]~~ (7); and
- (b) when age is a bona fide occupational qualification.

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

- (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit from the employee's employer's pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans; and
- (b) the benefit described in Subsection ~~[(6)]~~ (7)(a) equals, in the aggregate, at least

HB0322S01 compared with HB0322

\$44,000.

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

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

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

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

(1) (a) Any 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 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 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 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 adjudicative proceeding, the division shall promptly assign an investigator to attempt a settlement between the parties by 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.

HB0322S01 compared with HB0322

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

(i) shall conduct every investigation in fairness to all 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 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:

(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

HB0322S01 compared with HB0322

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 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 order issued under Subsection (5).

(7) (a) Prior to 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' 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

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

(i) reinstatement;

(ii) back pay and benefits;

(iii) attorneys' fees; and

HB0322S01 compared with HB0322

(iv) 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 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 determination may be provided to all 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 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;

HB0322S01 compared with HB0322

- (b) color;
- (c) sex;
- (d) retaliation;
- (e) pregnancy, childbirth, or pregnancy-related conditions;
- (f) age;
- (g) religion;
- (h) national origin; ~~[or]~~
- (i) disability~~[-]; or~~
- (j) sex related interests.

(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).

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

57-21-2. Definitions.

As used in this chapter:

- (1) "Aggrieved person" includes any person who:
 - (a) claims to have been injured by a discriminatory housing practice; or
 - (b) believes that the person will be injured by a discriminatory housing practice that is about to occur.
- (2) "Commission" means the Labor Commission.
- (3) "Complainant" means an aggrieved person, including the director, who has commenced a complaint with the division.
- (4) "Conciliation" means the attempted resolution of issues raised by a complaint of discriminatory housing practices by the investigation of the complaint through informal negotiations involving the complainant, the respondent, and the division.
- (5) "Conciliation agreement" means a written agreement setting forth the resolution of

HB0322S01 compared with HB0322

the issues in conciliation.

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

(7) "Covered multifamily dwellings" means:

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

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

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

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

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

(10) "Discriminate" includes segregate or separate.

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

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

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

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

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

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

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

HB0322S01 compared with HB0322

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

(i) is pregnant;

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

(iii) is a single individual.

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

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

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

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

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

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

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

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

Section ~~(2)~~6. Section **57-21-3** is amended to read:

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

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

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

HB0322S01 compared with HB0322

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

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

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

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

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

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

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

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

(6) This chapter does not prohibit distinctions based on inability to fulfill the terms and

HB0322S01 compared with HB0322

conditions, including financial obligations, of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement.

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

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

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

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

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

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

Section ~~3~~7. Section **57-21-4** is amended to read:

57-21-4. Conduct and requirements excluded -- Defenses.

(1) Except as provided in Subsection 57-21-5~~(4)~~(5), this chapter does not:

~~(a) require any person to exercise a higher degree of care toward a person who has a disability than toward a person who does not have a disability;~~

~~(b) relieve any person of obligations generally imposed on all persons regardless of disability in a written lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement; [or]~~

~~(c) prohibit any program, service, facility, or privilege intended to habilitate, rehabilitate, or accommodate a person with a disability[.]; or~~

~~(~~d~~a) preclude or deny lawful expression or exercise~~{ of rights }~~ of religious liberty~~{ and conscience }~~ as recognized and protected under Title 63G, Chapter 19, Religious Liberty ~~{ Recognition and Protection Act. }~~~~

HB0322S01 compared with HB0322

~~Act;~~

~~[(a)] (b) require any person to exercise a higher degree of care toward a person who has a disability than toward a person who does not have a disability;~~

~~[(b)] (c) relieve any person of obligations generally imposed on all persons regardless of disability in a written lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement; or~~

~~[(c)] (d) prohibit any program, service, facility, or privilege intended to habilitate, rehabilitate, or accommodate a person with a disability.~~

(2) It is a defense to a complaint or action brought under this chapter that the complainant has a disability that, in the circumstances and even with reasonable accommodation, poses a serious threat to the health or safety of the complainant or others. The burden of proving this defense is upon the respondent.

~~(3) Sex related interests, as defined and included in this chapter, is not a specific or additional suspect class under the law and is distinct from and is not governed by established and recognized protections for race, religion, or national origin, which are subject to heightened strict scrutiny and express constitutional protections.~~

Section ~~{4}~~8. Section 57-21-5 is amended to read:

57-21-5. Discriminatory practices enumerated~~{--Protected persons enumerated}~~.

(1) ~~{AH}~~Under this chapter, all individuals are entitled to fair access to housing under ~~the laws of this {chapter. All protections}~~state, and ~~{requirements}~~the laws of this state regarding access to housing shall be reasonably and fairly applied with the greatest sensitivity and balanced recognition of the liberties and rights of all individuals under the Utah Constitution, the United States Constitution, and Utah statutes, including Title 63G, Chapter 19, Religious Liberty~~{ Recognition and Protection}~~ Act.

(2) It is a discriminatory housing practice to do any of the following because of a person's race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~ disability, or sex related interests:

(a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental, or otherwise deny or make unavailable any dwelling from any person;

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

HB0322S01 compared with HB0322

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

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

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

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

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

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

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

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

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

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

HB0322S01 compared with HB0322

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

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

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

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

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

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

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

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

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

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

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

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

(ii) secured by residential real estate; or

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

(2) It is a discriminatory housing practice to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against any person in the terms or conditions of access, membership, or participation in the organization, service, or facility because of race, color, religion, sex,

HB0322S01 compared with HB0322

disability, familial status, source of income, ~~[or]~~ national origin, or sex related interests.

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

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

57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions -- Obstruction of division investigation -- Reprisals.

- (1) It is a discriminatory housing practice to do any of the following:
 - (a) coerce, intimidate, threaten, or interfere with any person:
 - (i) in the exercise or enjoyment of any right granted or protected under this chapter;
 - (ii) because that person exercised any right granted or protected under this chapter; or
 - (iii) because that person aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this chapter;
 - (b) aid, abet, incite, compel, or coerce a person to engage in any of the practices prohibited by this chapter;
 - (c) attempt to aid, abet, incite, compel, or coerce a person to engage in any of the practices prohibited by this chapter;
 - (d) obstruct or prevent any person from complying with this chapter, or any order issued under this chapter;
 - (e) resist, prevent, impede, or interfere with the director or any division employees or representatives in the performance of duty under this chapter; or
 - (f) engage in any reprisal against any person because that person:
 - (i) opposed a practice prohibited under this chapter; or
 - (ii) filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter.

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

Section ~~{5}~~11. Section **63G-7-301** is amended to read:

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

- (1) (a) Immunity from suit of each governmental entity is waived as to any contractual

HB0322S01 compared with HB0322

obligation.

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

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

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

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

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

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

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

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

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

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

(h) as to any action brought to obtain relief from governmental action under Title 63G, Chapter 19, Religious Liberty ~~{Recognition and Protection}~~ Act.

HB0322S01 compared with HB0322

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

HB0322S01 compared with HB0322

- (h) the collection of and assessment of taxes;
- (i) the activities of the Utah National Guard;
- (j) the incarceration of any person in any state prison, county or city jail, or other place of legal confinement;
- (k) any natural condition on publicly owned or controlled lands;
- (l) any condition existing in connection with an abandoned mine or mining operation;
- (m) any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;
- (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river, if:
 - (i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;
 - (ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between the owner or operator of the trail right-of-way, or of the right-of-way where the trail is located, and the municipality or county where the trail is located; and
 - (iii) the written agreement:
 - (A) contains a plan for operation and maintenance of the trail; and
 - (B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail.
 - (o) research or implementation of cloud management or seeding for the clearing of fog;
 - (p) the management of flood waters, earthquakes, or natural disasters;
 - (q) the construction, repair, or operation of flood or storm systems;
 - (r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
 - (s) the activities of:
 - (i) providing emergency medical assistance;
 - (ii) fighting fire;
 - (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

HB0322S01 compared with HB0322

(iv) emergency evacuations;

(v) transporting or removing injured persons to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or

(vi) intervening during dam emergencies;

(t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

(u) unauthorized access to government records, data, or electronic information systems by any person or entity; or

(v) injury related to the activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road.

Section ~~{6}~~12. Section **63G-19-101** is enacted to read:

CHAPTER 19. RELIGIOUS LIBERTY ~~{RECOGNITION AND PROTECTION}~~ACT

63G-19-101. Title.

This chapter is known as the "Religious Liberty ~~{Recognition and Protection}~~Act."

Section ~~{7}~~13. Section **63G-19-102** is enacted to read:

63G-19-102. Definitions.

As used in this chapter:

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

(2) "Goods" means:

(a) property; or

(b) economic or business interests or activities.

(3) "Person" means:

(a) an individual;

(b) a closely held business or entity;

(c) a religious institution;

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

(e) a representative of a religious institution;~~{ or }~~

(f) an entity that is recognized under applicable law as an expressive association~~{~~

HB0322S01 compared with HB0322

~~(f; or~~

(g) an independent education institution or association that holds and expresses sincere and honest religious or moral principles and values that are essential to its existence and operation.

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

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

(a) infringes ~~{on}~~ upon or violates religious liberty ~~{,};~~

(b) has the effect of compelling, restraining, or coercing a person to act, ~~{or requires a person to act or}~~ significantly modify behavior, or restrain from acting in a way that is contrary to ~~{sincerely held religious principles and beliefs and rights of conscience};~~

~~(b) compels, restrains, or burdens a person in that person's goods or civil capacities in a way that infringes on a}~~ the person's religious liberty; or

(c) ~~{restricts or denies a}~~ significantly injures or threatens a person's goods or civil capacities because of the person's religious ~~{speech and the free expression of religious and moral beliefs, duties, or practices};~~

~~Section 8}~~ liberty.

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

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

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

(2) The lawful and proper expression and exercise of religious liberty and rights of

HB0322S01 compared with HB0322

conscience recognized and protected in the constitutions of the state and the United States and this chapter do not constitute nor shall they result in wrongful discrimination under Title 34A, Chapter 5, Utah Antidiscrimination Act, and Title 57, Chapter 21, Utah Fair Housing Act.

Section ~~{9}~~15. Section **63G-19-104** is enacted to read:

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

~~{(1)}~~ Except in the most limited circumstances, no law, statute, ordinance, regulation, or action by the state or a political subdivision of the state, including public education, or other private action or demand, may substantially burden a person's religious liberty ~~{ unless the state, political subdivision, or individual or entity imposing the burden demonstrates},~~ even if the burden results from a rule of general applicability, unless it is demonstrated by clear and convincing evidence that ~~+~~:

~~—— (a) }~~ the application of the burden to the person is:

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

~~(ii) }~~ strictly necessary to fulfill a constitutionally recognized and paramount interest of public health and safety; and

~~—— (b) 2~~ there are no less restrictive means available to properly achieve and satisfy the narrow ~~{public interest.~~

~~—— (2) The exercise of religious liberty and recognized protections under this chapter shall not be substantially burdened contrary to}~~ state interest as applied to the individual circumstances of the persons otherwise protected under this chapter.

Section ~~{10}~~16. Section **63G-19-105** is enacted to read:

63G-19-105. Application of ~~{act}~~chapter to certain provisions.

~~{All individuals are entitled to fair access to employment}~~ (1) Sex related interests, as defined and {housing under} included in Title 34A, Chapter 5, Utah Antidiscrimination Act, and Title 57, Chapter 21, Utah Fair Housing Act, is not a specific or additional suspect class under the law and is distinct from and are not governed by established and recognized protections for race, religion, or national origin, which are subject to ~~{the fair and balanced application of rights}~~ heightened strict scrutiny and express constitutional protections.

(2) The state fully and independently reserves and affirms all rights and powers of state

HB0322S01 compared with HB0322

sovereignty, including the state's rights and powers regarding all domestic relations laws, and as provided in Section 63G-16-101, and as are adopted by the Legislature and the citizens of this state.

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

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

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

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

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

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

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

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

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

(9) Exercise of religious liberty ~~and rights of conscience held by others as recognized and protected in this chapter.~~

~~Section 11}~~ under this chapter is not grounds for retaliation by others.

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

63G-19-106. Judicial relief.

(1) ~~{Subject to the provisions of Section 63G-19-103, the}~~ The lawful and proper

HB0322S01 compared with HB0322

exercise of religious liberty is:

(a) a recognized exemption to otherwise generally applicable laws and a valid defense to claims ~~{of discrimination}~~ by others; and

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

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

Section ~~{12}~~18. Section **67-19-6.3** is amended to read:

67-19-6.3. Equal employment opportunity plan.

(1) In conjunction with the director's duties under Section 67-19-6, and notwithstanding the general prohibition in Subsection 34A-5-106~~{(3)}~~(4)(c), the executive director shall prepare an equal employment opportunity plan for state employment consistent with the guidelines provided in federal equal employment opportunity laws and in related federal regulations.

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

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

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

~~{~~

Legislative Review Note

~~as of 2-11-15 9:06 AM~~

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