

Senator Keith Grover proposes the following substitute bill:

EQUAL OPPORTUNITY INITIATIVES

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Katy Hall

Senate Sponsor: Keith Grover

LONG TITLE

General Description:

This bill prohibits an institution of higher education, the public education system, and a governmental employer from taking certain actions and engaging in discriminatory practices.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits an institution of higher education, the public education system, and a governmental employer from:

- requiring an individual, before, during, or after admission or employment, to provide certain submissions or attend certain training that promotes differential treatment;

- using an individual's certain characteristics in decisions regarding aspects of employment or education; and

- engaging in certain practices;

- ▶ requires the Utah Board of Higher Education (board), the State Board of Education (state board), ~~and~~ the state auditor, and executive agency directors to ~~ensure~~ review and report compliance with certain requirements;

- ▶ prohibits an institution of higher education, the state board, and a governmental

4th Sub. H.B. 261



181 government interest;

182 (B) influences the employment decisions of an individual other than through the use of
 183 neutral hiring processes with regard to personal identity characteristics and in accordance with
 184 federal law;

185 (C) influences an individual's admission to, advancement in, or graduation from an
 186 institution, the public education system, or an academic program; or

187 (D) influences an individual's participation in an institution-sponsored or public
 188 education system-sponsored program.

189 (ii) "Prohibited discriminatory practice" also means engaging in or maintaining a
 190 policy, procedure, practice, program, office, initiative, or required training that:

191 (A) asserts that one personal identity characteristic is inherently superior or inferior to
 192 another personal identity characteristic;

193 (B) asserts that an individual, by virtue of the individual's personal identity
 194 characteristics, is inherently privileged, oppressed, racist, sexist, oppressive, or a victim,
 195 whether consciously or unconsciously;

196 (C) asserts that an individual should be discriminated against in violation of

196a §→ Title VI, ←§ Title VII §→, ←§

197 and Title IX, receive adverse treatment, be advanced, or receive beneficial treatment because of
 198 the individual's personal identity characteristics;

199 (D) asserts that an individual's moral character is determined by the individual's
 200 personal identity characteristics;

201 (E) asserts that an individual, by virtue of the individual's personal identity
 202 characteristics, bears responsibility for actions committed in the past by other individuals with
 203 the same personal identity characteristics;

204 (F) asserts that an individual should feel discomfort, guilt, anguish, or other
 205 psychological distress solely because of the individual's personal identity characteristics;

206 (G) asserts that meritocracy is inherently racist or sexist;

207 (H) asserts that socio-political structures are inherently a series of power relationships
 208 and struggles among racial groups;

209 (I) promotes resentment between, or resentment of, individuals by virtue of their
 210 personal identity characteristics;

211 (J) ascribes values, morals, or ethical codes, privileges, or beliefs to an individual

212 because of the individual's race, color, ethnicity, sex, sexual orientation, national origin, or
213 gender identity;

214 (K) considers an individual's personal identity characteristics in determining receipt of
215 state financial aid or other state financial assistance, including a scholarship award or tuition
216 waiver; or

217 (L) is referred to or named diversity, equity, and inclusion.

218 (iii) "Prohibited discriminatory practice" does not include policies or procedures
219 required by state or federal law, including laws relating to prohibited discrimination or
220 harassment.

221 (d) "Student success and support" means an office, division, employment position, or
222 other unit of an institution established or maintained to provide support, guidance, and
223 resources that equip all students, including all students at higher risk of not completing a
224 certificate or degree, with experiences and opportunities for success in each student's academic
225 and career goals, and without excluding individuals on the basis of an individual's personal
226 identity characteristics.

227 (e) ~~§~~→ "Title VI" means Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000d
227a et seq.

227b (f) ~~←~~§ "Title VII" means Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et
228 seq.

229 ~~§~~→ [(ff)] (g) ~~←~~§ "Title IX" means Title IX of the Education Amendments of 1972, 20 U.S.C.
229a Sec.
230 1681 et seq.

231 (2) An institution may not:

232 (a) ~~§~~→ engage in prohibited discriminatory practices;

232a (b) ~~←~~§ take, express, or assert a position or opinion on subjects described in Subsection
233 67-27-105(1)(b)(ii);

234 ~~§~~→ [(fb)] (c) ~~←~~§ establish or maintain an office, division, employment position, or other unit
234a of an

235 institution established to implement, develop, plan, or promote campus policies, procedures,
236 practices, programs, or initiatives, regarding prohibited discriminatory practices; or

237 ~~§~~→ [(te)] (d) ~~←~~§ employ or assign an employee or a third-party whose duties for an
237a institution
238 include coordinating, creating, developing, designing, implementing, organizing, planning, or
239 promoting policies, programming, training, practices, activities, and procedures relating to
240 prohibited discriminatory practices.

241 (3) An institution shall:

242 (a) ensure that all students have access to programs providing student success and

274 (iii) November 1, 2033, for reports received in years 2031, 2032, and 2033.

275 (b) On or before November 1, 2035, the Office of Legislative Research and General
276 Counsel shall provide a comprehensive report of the campus expression climate surveys to the
277 Education Interim Committee.

278 (8) Nothing in this section requires an individual to respond to a campus expression
279 climate survey.

280 (9) Nothing in this section limits or prohibits an institution's authority to establish
281 policies that:

282 (a) are necessary to comply with state or federal law, including laws relating to
283 prohibited discrimination or harassment;

284 (b) require disclosure of an employee's academic research, classroom teaching, or
285 coursework; or

286 (c) require for employment, tenure, or promotion to disclose or discuss the applicant's:

287 (i) research;

288 (ii) teaching agenda;

289 (iii) artistic creations; or

290 (iv) pedagogical approaches or experiences with students of all learning abilities.

291 (10) This section does not apply to:

292 (a) requirements necessary for athletic and accreditation compliance;

293 (b) academic research;

294 (c) academic course teaching in the classroom;

295 (d) a grant that would otherwise require:

296 (i) a department, office, division, or other unit of an institution to engage in a
297 prohibited discriminatory practice if the grant has been reviewed and approved by the
298 institution's board of trustees; or

299 (ii) an institution to engage in a prohibited discriminatory practice if the grant has been
300 reviewed and approved by the board; ~~§~~ [or] ~~§~~

301 (e) requirements necessary for an institution to establish or maintain eligibility for any
302 federal program ~~§~~ [] ; or

302a **(f) private scholarships administered by an institution. ~~§~~**

303 (11) Notwithstanding any other provision of this part, the University of Utah may take
304 any action required for the University of Utah to comply with the terms of an agreement

863 (23) (a) A legislator may request that the state auditor conduct an inquiry to determine
 864 whether a government entity, government official, or government employee has complied with
 865 a legal obligation directly imposed, by statute, on the government entity, government official,
 866 or government employee.

867 (b) The state auditor may, upon receiving a request under Subsection (23)(a), conduct
 868 the inquiry requested.

869 (c) If the state auditor conducts the inquiry described in Subsection (23)(b), the state
 870 auditor shall post the results of the inquiry on the state auditor's website.

871 (d) The state auditor may limit the inquiry described in this Subsection (23) to a simple
 872 determination, without conducting an audit, regarding whether the obligation was fulfilled.

873 (24) The state auditor shall ~~§~~→ [ensure] report ←~~§~~ compliance with Sections 67-27-105,
 873a 67-27-106,
 874 and 67-27-107 by:

875 (a) establishing a process to receive and ~~§~~→ [investigate] audit ←~~§~~ each alleged violation;
 875a and

876 (b) reporting to the Legislative Management Committee, upon request, regarding the
 877 state auditor's ~~§~~→ [enforcement] findings and recommendations ←~~§~~ under this Subsection
 877a ~~§~~→ [~~(1)~~] (24) ←~~§~~ .

878 Section 11. Section **67-27-105** is enacted to read:

879 **67-27-105. Prohibition on the use of certain submissions by governmental**
 880 **employers -- Exceptions.**

881 (1) As used in this section:

882 (a) (i) "Governmental employer" means any department, division, agency, commission,
 883 board, council, committee, authority, municipalities, counties, political subdivisions, or any
 884 other institution of the state.

885 (ii) "Governmental employer" does not mean a local education agency or institution of
 886 higher education.

887 (b) (i) "Prohibited submission" means a submission, statement, or document that
 888 requires an individual to articulate the individual's position, view, contribution, effort, or
 889 experience regarding a policy, program, or initiative that promotes differential treatment based
 890 on an individual's personal identity characteristics, as that term is defined in Section
 891 53B-1-118.

892 (ii) "Prohibited submission" includes a submission, statement, or document that relates
 893 to a policy, program, or initiative regarding:

925 prohibited submission for any action described in Subsection (2).

926 (4) If federal law requires a governmental employer to accept or require a prohibited
 927 submission, the governmental employer:

928 (a) may accept the prohibited submission only to the extent required under federal law;
 929 and

930 (b) shall limit consideration of the information contained in the prohibited submission
 931 to the extent necessary to satisfy the requirement under federal law.

932 (5) Nothing in this section limits or prohibits a governmental employer's authority to
 933 establish policies that are necessary to comply with state or federal law, including laws relating
 934 to prohibited discrimination or harassment.

935 Section 12. Section **67-27-106** is enacted to read:

936 **67-27-106. Prohibition on the use of certain training by governmental employers**

937 **-- Exceptions.**

938 (1) As used in this section:

939 (a) "Governmental employer" means the same as that term is defined in Section
 940 67-27-105.

941 (b) (i) "Prohibited training" means a mandatory instructional program and related
 942 materials that a governmental employer requires the governmental employer's current or
 943 prospective employees to attend that promote prohibited discriminatory practices as that term is
 944 defined in Section 53B-1-118.

945 (ii) "Prohibited training" includes an in-person or online seminar, discussion group,
 946 workshop, other program, or related materials.

947 (2) A governmental employer may not require prohibited training.

948 (3) Nothing in this section limits or prohibits a governmental employer's authority to
 949 establish policies that are necessary to comply with state or federal law, including laws relating
 950 to prohibited discrimination or harassment.

951 Section 13. Section **67-27-107** is enacted to read:

952 **67-27-107. Prohibited discriminatory practices -- Restrictions -- Reporting.**

953 (1) As used in this section:

954 (a) ~~§~~→ **"Executive agency director" means the executive agency director of an**
 954a **executive department agency who, at the direction of the governor, carries out state business.**

954b (b) ~~←~~§ **"Governmental employer" means the same as that term is defined in Section**
 955 67-27-105.

956 ~~§~~→ ~~(b)~~ (c) ←~~§~~ "Personal identity characteristics" means the same as that term is defined in
 956a Section
 957 53B-1-118.

958 ~~§~~→ ~~(c)~~ (d) ←~~§~~ "Prohibited discriminatory practice" means the same as that term is defined
 958a in
 959 Section 53B-1-118.

960 (2) (a) This section does not apply to a federal grant or program that would otherwise
 961 require a governmental employer to engage in a prohibited discriminatory practice if the grant
 962 or program has been reviewed and approved by the governmental employer's executive
 963 director, legislative body, or governing body, as that term is defined in Section 10-1-104.

964 (b) A governmental employer's executive director, legislative body, or governing body
 965 shall report the reviewed and approved federal grant or program under Subsection (2)(a) to the
 966 Executive Appropriations Committee.

967 (3) A governmental employer may not engage in prohibited discriminatory practices.

968 (4) Nothing in this section limits or prohibits a governmental employer from:

969 (a) as required or permitted by state law:

970 (i) establishing or maintaining an office, division, or employment position to
 971 implement, develop, plan, or promote practices relating to personal identity characteristics if
 972 the office, division, or employment position is not engaging in prohibited discriminatory
 973 practices; or

974 (ii) employing or assigning an employee or a third-party whose duties for governmental
 975 employer include coordinating, creating, developing, designing, implementing, organizing,
 976 planning, or promoting policies, programming, training, practices, activities, and procedures
 977 relating to personal identity characteristics if the employee or the third-party is not engaging in
 978 prohibited discriminatory practices; ~~§~~→ [or] ←~~§~~

979 (b) establishing policies that are necessary to comply with state or federal law,
 980 including laws relating to prohibited discrimination or harassment ~~§~~→ [;] ; or

980a (c) establishing policies that are necessary to comply with state law enacted on or before July 1,
 980b 2024.

980c (5) (a) Beginning on July 1, 2024, each executive agency director shall conduct a thorough
 980d review of existing agency programs and offices to determine if the program or office is in
 980e compliance with Subsection(3).🌀

980f **⊕(b) On or before August 1, 2025, each executive agency director shall report on the**
980g **compliance**
980h **of agency programs and offices under Subsection (5)(a) to the governor.**
980i **(c) The governor shall provide the reports under Subsection (5)(b) to:**
980j **(i) the Government Operations Interim Committee at or before the November, 2025, interim**
980k **committee meeting; and**
980l **(ii) the Legislative Management Committee upon request. ←\$**

981 Section 14. **Effective date.**

982 This bill takes effect on July 1, 2024.