

**ANTIDISCRIMINATION AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Larry B. Wiley**

Senate Sponsor: Luz Robles

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Antidiscrimination Act to address discrimination on the basis of weight or height.

**Highlighted Provisions:**

This bill:

- ▶ addresses definitions;
- ▶ addresses powers of the division related to discrimination on the basis of weight or height;
- ▶ includes weight or height as a class from which the commissioner may appoint members of the Antidiscrimination and Labor Advisory Council;
- ▶ prohibits weight or height as the basis for discriminatory or prohibited employment practices;
- ▶ addresses accommodations, including granting rulemaking authority to the commission;
- ▶ addresses exclusive remedy under the statute; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **34A-5-102**, as last amended by Laws of Utah 2011, Chapter 413

31 **34A-5-104**, as last amended by Laws of Utah 2012, Chapter 369

32 **34A-5-105**, as last amended by Laws of Utah 2010, Chapter 286

33 **34A-5-106**, as last amended by Laws of Utah 2012, Chapter 101

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



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

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

38 **34A-5-102. Definitions -- Unincorporated entities.**

39 (1) As used in this chapter:

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

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

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

46 (c) "Court" means:

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

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

50 Subsection (1)(c)(i).

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

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

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

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

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

57 (A) the state;

58 (B) any political subdivision;

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

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

63 (ii) "Employer" does not include:

64 (A) a religious organization or association;

65 (B) a religious corporation sole; or

66 (C) any corporation or association constituting a wholly owned subsidiary or agency of  
67 any religious organization or association or religious corporation sole.

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

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

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

71 (1)(i)(i).

72 (j) (i) "Height" means a numerical measurement of total body height, an expression of  
73 a person's height in relation to weight, or a person's unique physical composition of height  
74 through body size, shape, and proportions.

75 (ii) "Height" includes an impression of a person as tall or short regardless of numerical  
76 measurement. The length of a person's limbs in proportion to the person's body may create an  
77 impression that the person is short, tall, or atypically proportioned, independent of  
78 measurements of height.

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

82 [(k)] (l) "Labor organization" means any organization that exists for the purpose in  
83 whole or in part of:

84 (i) collective bargaining;

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

86 or

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

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

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

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

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

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

98           ~~(o)~~ (p) "Presiding officer" means the same as that term is defined in Section  
99 63G-4-103.

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

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

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

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

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

111           (i) an individual;

112           (ii) a corporation; or

113           (iii) publicly traded.

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

118           (u) (i) "Weight" is a numerical measurement of total body weight, the ratio of a  
119 person's weight in relation to height, or a person's unique physical composition of weight  
120 through body size, shape, and proportions.

121 (ii) "Weight" includes an impression of a person as fat or thin regardless of the  
 122 numerical measurement. A person's body size, shape, proportions, and composition may make  
 123 them appear fat or thin regardless of numerical weight.

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

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

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

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

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

136 (A) the unincorporated entity; or

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

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

139 (i) "active manager";

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

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

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

143 **34A-5-104. Powers.**

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

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

148 (2) The division may:

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

151 (b) receive, reject, investigate, and pass upon [~~complaints~~] a complaint alleging:

- 152 (i) discrimination in:
- 153 (A) employment;
- 154 (B) an apprenticeship [~~programs~~] program;
- 155 (C) an on-the-job training [~~programs~~] program; and
- 156 (D) a vocational [~~schools~~] school; or
- 157 (ii) the existence of a discriminatory or prohibited employment practice by:
- 158 (A) a person;
- 159 (B) an employer;
- 160 (C) an employment agency;
- 161 (D) a labor organization;
- 162 (E) the employees or members of an employment agency or labor organization;
- 163 (F) a joint apprenticeship committee; and
- 164 (G) a vocational school;
- 165 (c) investigate and study the existence, character, causes, and extent of discrimination
- 166 in employment, apprenticeship programs, on-the-job training programs, and vocational schools
- 167 in this state by:
- 168 (i) employers;
- 169 (ii) employment agencies;
- 170 (iii) labor organizations;
- 171 (iv) joint apprenticeship committees; and
- 172 (v) vocational schools;
- 173 (d) formulate plans for the elimination of discrimination by educational or other
- 174 means;
- 175 (e) hold [~~hearings upon~~] a hearing on a complaint made against:
- 176 (i) a person;
- 177 (ii) an employer;
- 178 (iii) an employment agency;
- 179 (iv) a labor organization;
- 180 (v) the employees or members of an employment agency or labor organization;
- 181 (vi) a joint apprenticeship committee; or
- 182 (vii) a vocational school;

- 183 (f) issue publications and reports of investigations and research that:
- 184 (i) promote good will among the various racial, religious, and ethnic groups of the  
185 state; and
- 186 (ii) minimize or eliminate discrimination in employment because of race, color, sex,  
187 religion, national origin, age, ~~[or]~~ disability, weight, or height;
- 188 (g) prepare and transmit to the governor, at least once each year, reports describing:
- 189 (i) ~~[its]~~ the division's proceedings, investigations, and hearings;
- 190 (ii) the outcome of those hearings;
- 191 (iii) decisions the division has rendered; and
- 192 (iv) the other work performed by the division;
- 193 (h) recommend policies to the governor, and submit recommendation to employers,  
194 employment agencies, and labor organizations to implement those policies;
- 195 (i) recommend any legislation concerning discrimination because of race, sex, color,  
196 national origin, religion, age, ~~[or]~~ disability, weight, or height to the governor that it considers  
197 necessary; and
- 198 (j) within the limits of any appropriations made for its operation, cooperate with other  
199 agencies or organizations, both public and private, in the planning and conducting of  
200 educational programs designed to eliminate discriminatory practices prohibited under this  
201 chapter.
- 202 (3) The division shall investigate an alleged discriminatory ~~[practices]~~ practice  
203 involving ~~[officers or employees]~~ an officer or employee of state government if requested to do  
204 so by the Career Service Review Office.
- 205 (4) (a) In any hearing held under this chapter, the division may:
- 206 (i) subpoena witnesses and compel their attendance at the hearing;
- 207 (ii) administer oaths and take the testimony of any person under oath; and
- 208 (iii) compel any person to produce for examination any books, papers, or other  
209 information relating to the matters raised by the complaint.
- 210 (b) The division director or a hearing examiner appointed by the division director may  
211 conduct ~~[hearings]~~ a hearing.
- 212 (c) If a witness fails or refuses to obey a subpoena issued by the division, the division  
213 may petition the district court to enforce the subpoena.

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

217 Section 3. Section **34A-5-105** is amended to read:

218 **34A-5-105. Antidiscrimination and Labor Advisory Council -- Membership --**  
219 **Appointment -- Term -- Powers and duties -- Chair.**

220 (1) There is created an Antidiscrimination and Labor Advisory Council consisting of:

221 (a) 13 voting members appointed by the commissioner as follows:

222 (i) three employer representatives;

223 (ii) three employee representatives;

224 (iii) two representatives of persons who seek to rent or purchase dwellings as defined  
225 in Section 57-21-2;

226 (iv) two representatives of persons who:

227 (A) sell or rent dwellings; and

228 (B) are subject to Title 57, Chapter 21, Utah Fair Housing Act; and

229 (v) three representatives of the general public; and

230 (b) the commissioner or the commissioner's designee as a nonvoting member of the  
231 council.

232 (2) In making the appointments under Subsection (1), the commissioner shall consider  
233 representation of the following protected classes:

234 (a) race;

235 (b) color;

236 (c) national origin;

237 (d) gender;

238 (e) religion;

239 (f) age;

240 (g) persons with disabilities;

241 (h) familial status as defined in Section 57-21-2; ~~[and]~~

242 (i) source of income as defined in Section 57-21-2[-];

243 (j) weight; and

244 (k) height.



245 (3) The division shall provide ~~[any]~~ necessary staff support for the council.

246 (4) (a) Except as required by Subsection (4)(b), as terms of current council members  
247 expire, the commissioner shall appoint each new member or reappointed member to a four-year  
248 term.

249 (b) Notwithstanding the requirements of Subsection (4)(a), the commissioner shall, at  
250 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
251 council members are staggered so that approximately half of the council is appointed every two  
252 years.

253 (5) (a) When a vacancy occurs in the membership for any reason, the commissioner  
254 shall appoint a replacement ~~[shall be appointed]~~ for the unexpired term.

255 (b) The commissioner shall terminate the term of a council member who ceases to be  
256 representative as designated by the original appointment.

257 (6) A member may not receive compensation or benefits for the member's service, but  
258 may receive per diem and travel expenses in accordance with:

259 (a) Section 63A-3-106;

260 (b) Section 63A-3-107; and

261 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
262 63A-3-107.

263 (7) (a) The advisory council shall:

264 (i) offer advice on issues requested by:

265 (A) the commission;

266 (B) the division; or

267 (C) the Legislature; and

268 (ii) make recommendations to the commission and division regarding issues related to:

269 (A) employment discrimination;

270 (B) housing discrimination; and

271 (C) the administration by the commission of:

272 (I) the provisions of Title 34, Labor in General, that are administered by the  
273 commission;

274 (II) ~~[Title 34A, Chapter 5, Utah Antidiscrimination Act]~~ this chapter; and

275 (III) Title 57, Chapter 21, Utah Fair Housing Act.

276 (b) The council shall confer at least quarterly for the purpose of advising the  
277 commission, division, and the Legislature regarding issues described in Subsection (7)(a).

278 (8) (a) The commissioner or the commissioner's designee shall serve as chair of the  
279 council.

280 (b) The chair [~~is charged with the responsibility of calling~~] shall call the necessary  
281 meetings.

282 Section 4. Section **34A-5-106** is amended to read:

283 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**  
284 **practices.**

285 (1) It is a discriminatory or prohibited employment practice to take [~~any~~] an action  
286 described in Subsections (1)(a) through (f).

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

- 291 (A) race;
- 292 (B) color;
- 293 (C) sex;
- 294 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 295 (E) age, if the individual is 40 years of age or older;
- 296 (F) religion;
- 297 (G) national origin; [~~or~~]
- 298 (H) disability[~~;~~];
- 299 (I) weight; or
- 300 (J) height.

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

- 303 (A) education;
- 304 (B) training;
- 305 (C) ability, with or without reasonable accommodation;
- 306 (D) moral character;

307 (E) integrity;

308 (F) disposition to work;

309 (G) adherence to reasonable rules and regulations; and

310 (H) other job related qualifications required by an employer.

311 (iii) (A) As used in this chapter, "to discriminate in matters of compensation" means

312 the payment of differing wages or salaries to employees having substantially equal experience,

313 responsibilities, and skill for the particular job.

314 (B) Notwithstanding Subsection (1)(a)(iii)(A):

315 (I) nothing in this chapter prevents increases in pay as a result of longevity with the

316 employer, if the salary increases are uniformly applied and available to all employees on a

317 substantially proportional basis; and

318 (II) nothing in this section prohibits an employer and employee from agreeing to a rate

319 of pay or work schedule designed to protect the employee from loss of Social Security payment

320 or benefits if the employee is eligible for those payments.

321 (b) An employment agency may not:

322 (i) refuse to list and properly classify for employment, or refuse to refer an individual

323 for employment, in a known available job for which the individual is otherwise qualified,

324 because of:

325 (A) race;

326 (B) color;

327 (C) sex;

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

329 (E) religion;

330 (F) national origin;

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

332 (H) disability; [or]

333 (I) weight; or

334 (J) height; or

335 (ii) comply with a request from an employer for referral of applicants for employment

336 if the request indicates either directly or indirectly that the employer discriminates in

337 employment on account of:

- 338 (A) race;
- 339 (B) color;
- 340 (C) sex;
- 341 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 342 (E) religion;
- 343 (F) national origin;
- 344 (G) age, if the individual is 40 years of age or older; [~~or~~]
- 345 (H) disability[-];
- 346 (I) weight; or
- 347 (J) height.

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

- 352 (i) race;
- 353 (ii) sex;
- 354 (iii) pregnancy, childbirth, or pregnancy-related conditions;
- 355 (iv) religion;
- 356 (v) national origin;
- 357 (vi) age, if the individual is 40 years of age or older; [~~or~~]
- 358 (vii) disability[-];
- 359 (viii) weight; or
- 360 (ix) height.

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

- 367 (i) any limitation, specification, or discrimination as to:
- 368 (A) race;

- 369 (B) color;
- 370 (C) religion;
- 371 (D) sex;
- 372 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 373 (F) national origin;
- 374 (G) age, if the individual is 40 years of age or older; [~~or~~]

375 (H) disability;

376 (I) weight; or

377 (J) height; or

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

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

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

385 (ii) obstruct or prevent [~~any~~] a person from complying with this chapter, or [~~any~~] an  
386 order issued under this chapter; or

387 (iii) attempt, either directly or indirectly, to commit [~~any~~] an act prohibited in this  
388 section.

389 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational  
390 school, providing, coordinating, or controlling apprenticeship programs, or providing,  
391 coordinating, or controlling on-the-job-training programs, instruction, training, or retraining  
392 programs may not:

393 (A) deny to, or withhold from, [~~any~~] a qualified person, the right to be admitted to, or  
394 participate in [~~any~~] an apprenticeship training program, on-the-job-training program, or other  
395 occupational instruction, training or retraining program because of:

396 (I) race;

397 (II) color;

398 (III) sex;

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

400 (V) religion;  
401 (VI) national origin;  
402 (VII) age, if the individual is 40 years of age or older; [or]  
403 (VIII) disability;  
404 (IX) weight; or  
405 (X) height; or  
406 (B) discriminate against or harass [any] a qualified person in that person's pursuit of  
407 programs described in Subsection (1)(f)(i)(A), or to discriminate against such a person in the  
408 terms, conditions, or privileges of programs described in Subsection (1)(f)(i)(A), because of:  
409 (I) race;  
410 (II) color;  
411 (III) sex;  
412 (IV) pregnancy, childbirth, or pregnancy-related conditions;  
413 (V) religion;  
414 (VI) national origin;  
415 (VII) age, if the individual is 40 years of age or older; [or]  
416 (VIII) disability; [or]  
417 (IX) weight; or  
418 (X) height; or  
419 (C) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or  
420 published, [any] a notice or advertisement relating to employment by the employer, or  
421 membership in or [any] a classification or referral for employment by a labor organization, or  
422 relating to [any] a classification or referral for employment by an employment agency,  
423 indicating [any] a preference, limitation, specification, or discrimination based on:  
424 (I) race;  
425 (II) color;  
426 (III) sex;  
427 (IV) pregnancy, childbirth, or pregnancy-related conditions;  
428 (V) religion;  
429 (VI) national origin;  
430 (VII) age, if the individual is 40 years of age or older; [or]

431 (VIII) disability[-];

432 (IX) weight; or

433 (X) height.

434 (ii) Notwithstanding Subsection (1)(f)(i)(C), if the following is a bona fide  
435 occupational qualification for employment, a notice or advertisement described in Subsection  
436 (1)(f)(i)(C) may indicate a preference, limitation, specification, or discrimination based on:

437 (A) race;

438 (B) color;

439 (C) religion;

440 (D) sex;

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

442 (F) age;

443 (G) national origin; [~~or~~]

444 (H) disability[-];

445 (I) weight; or

446 (J) height.

447 (2) Nothing contained in Subsections (1)(a) through (1)(f) shall be construed to  
448 prevent:

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

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

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

455 (3) (a) It is not a discriminatory or prohibited employment practice:

456 (i) for an employer to hire and employ employees, for an employment agency to  
457 classify or refer for employment any individual, for a labor organization to classify its  
458 membership or to classify or refer for employment any individual or for an employer, labor  
459 organization, or joint labor-management committee controlling apprenticeship or other training  
460 or retraining programs to admit or employ any individual in any such program, on the basis of  
461 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, [~~or~~]

462 disability, weight, or height, in those certain instances where religion, sex, pregnancy,  
463 childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older,  
464 national origin, [~~or~~] disability, weight, or height is a bona fide occupational qualification  
465 reasonably necessary to the normal operation of that particular business or enterprise;

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

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

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

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

474 (A) the employer's:

475 (I) spouse;

476 (II) child; or

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

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

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

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

485 (b) Nothing in this chapter applies to [~~any~~] a business or enterprise on or near an Indian  
486 reservation with respect to [~~any~~] a publicly announced employment practice of the business or  
487 enterprise under which preferential treatment is given to [~~any~~] an individual because that  
488 individual is a native American Indian living on or near an Indian reservation.

489 (c) Nothing in this chapter shall be interpreted to require [~~any~~] an employer,  
490 employment agency, labor organization, vocational school, joint labor-management committee,  
491 or apprenticeship program subject to this chapter to grant preferential treatment to [~~any~~] an  
492 individual or to [~~any~~] a group because of the race, color, religion, sex, age, national origin, [~~or~~]



493 disability, weight, or height of the individual or group on account of an imbalance [~~which~~] that  
494 may exist with respect to the total number or percentage of persons of any race, color, religion,  
495 sex, age, national origin, [~~or~~] disability, weight, or height employed by any employer, referred  
496 or classified for employment by an employment agency or labor organization, admitted to  
497 membership or classified by any labor organization, or admitted to or employed in, any  
498 apprenticeship or other training program, in comparison with the total number or percentage of  
499 persons of that race, color, religion, sex, age, national origin, [~~or~~] disability, weight, or height  
500 in any community or county or in the available work force in any community or county.

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

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

508 (a) under Subsection (6); and

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

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

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

516 (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.

517 (7) (a) An employer shall undertake readily achievable modifications in the workplace  
518 to accommodate a person's weight or height, including accessible furnishings, workplace  
519 layout, and equipment. An employer shall give consideration to an employee seeking  
520 accommodation based on weight or height, unless the employer can demonstrate that another  
521 effective means exists or that the person's expressed choice is not required. An employer shall  
522 ensure that common areas, such as employee lounges, cafeterias, health units, and exercise  
523 facilities, are accessible to people of all sizes.

524 (b) The commission may define the terms used in this Subsection (7) including "readily  
525 achievable modifications" by rule made in accordance with Title 63G, Chapter 3, Utah  
526 Administrative Rulemaking Act.

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

528 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**  
529 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

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

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

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

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

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

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

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

554 (ii) may not attempt a settlement between the parties if it is clear that no discriminatory

555 or prohibited employment practice has occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

593 (i) the party filing the request for agency action may reasonably and fairly amend [~~any~~]  
594 an allegation; and

595 (ii) the respondent may amend its answer.

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

597 (i) during or after a hearing; and

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

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

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

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

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

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

610 (i) reinstatement;

611 (ii) back pay and benefits;

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

613 (iv) costs.

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

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

617 review before the commissioner or Appeals Board of the order issued by the presiding officer  
618 in accordance with:

- 619 (i) Section 63G-4-301; and
- 620 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

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

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

- 625 (a) Section 63G-4-403; and
- 626 (b) Chapter 1, Part 3, Adjudicative Proceedings.

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

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

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

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

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

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

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

- 643 (a) race;
- 644 (b) color;
- 645 (c) sex;
- 646 (d) retaliation;
- 647 (e) pregnancy, childbirth, or pregnancy-related conditions;

- 648 (f) age;
- 649 (g) religion;
- 650 (h) national origin; [or]
- 651 (i) disability[=];
- 652 (j) weight; or
- 653 (k) height.

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

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

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

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**Legislative Review Note**  
as of 2-11-13 4:23 PM

**Office of Legislative Research and General Counsel**