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

Section 1. Section **34A-5-102.5** is amended to read:

34A-5-102.5. Supremacy over local regulations -- No special class created for other purposes.

(1) Consistent with the requirements of Subsection ~~34A-5-107~~⁽¹⁴⁾, this chapter supersedes and preempts any ordinance, regulation, standard, or other legal action by a local government entity, a state entity, or the governing body of a political subdivision that relates to the prohibition of discrimination in employment.

(2) This chapter shall not be construed to create a special or protected class for any purpose other than employment.

Section 2. Section **34A-5-107** is amended to read:

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

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

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

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

(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 a work-share agreement that is:

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

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

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

(3) (a) Before a hearing is set or held as part of ~~any~~ an adjudicative proceeding, the

59 division shall promptly assign an investigator to attempt a settlement between the parties by
60 conference, conciliation, or persuasion.

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

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

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

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

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

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

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

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

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

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

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

- 90 (ii) A determination and order issued under this Subsection (5)(b) shall:
- 91 (A) direct the respondent to cease any discriminatory or prohibited employment
92 practice; and
- 93 (B) provide relief to the aggrieved party as the director or the director's designee
94 determines is appropriate.
- 95 (c) A party may file a written request to the Division of Adjudication for an evidentiary
96 hearing to review de novo the director's or the director's designee's determination and order
97 within 30 days of the date the determination and order is issued.
- 98 (d) If the director or the director's designee receives no timely request for a hearing, the
99 determination and order issued by the director or the director's designee in accordance with
100 Subsection (5)(b) becomes the final order of the commission.
- 101 (6) In an adjudicative proceeding to review the director's or the director's designee's
102 determination that a prohibited employment practice has occurred, the division shall present the
103 factual and legal basis of the determination [~~or~~] and order issued under Subsection (5).
- 104 (7) (a) Before [~~the~~] commencement of an evidentiary hearing:
- 105 (i) the party filing the request for agency action may reasonably and fairly amend any
106 allegation; and
- 107 (ii) the respondent may amend its answer.
- 108 (b) An amendment permitted under this Subsection (7) may be made:
- 109 (i) during or after a hearing; and
- 110 (ii) only with permission of the presiding officer.
- 111 (8) (a) If, upon reviewing all the evidence at a hearing, the presiding officer finds that a
112 respondent has not engaged in a discriminatory or prohibited employment practice, the
113 presiding officer shall issue an order dismissing the request for agency action containing the
114 allegation of a discriminatory or prohibited employment practice.
- 115 (b) The presiding officer may order that the respondent be reimbursed by the
116 complaining party for the respondent's [~~attorneys'~~] attorney fees and costs.
- 117 (9) If, upon reviewing all the evidence at the hearing, the presiding officer finds that a
118 respondent has engaged in a discriminatory or prohibited employment practice, the presiding
119 officer shall issue an order requiring the respondent to:
- 120 (a) cease any discriminatory or prohibited employment practice;

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

122 (i) reinstatement;

123 (ii) back pay and benefits;

124 (iii) compensatory and punitive damages in an amount not to exceed that available

125 under 42 U.S.C. Sec. 1981a;

126 [~~(iii)~~] (iv) attorney fees; and

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

128 [~~(10) If a discriminatory practice described in Subsection (9) includes discrimination in~~

129 ~~matters of compensation, the presiding officer may provide, to the complaining party, in~~

130 ~~addition to the amount available to the complaining party under Subsection (9)(b), an~~

131 ~~additional amount equal to the amount of back pay available to the complaining party under~~

132 ~~Subsection (9)(b)(ii) unless a respondent shows that:]~~

133 [~~(a) the act or omission that gave rise to the order was in good faith; and]~~

134 [~~(b) the respondent had reasonable grounds to believe that the act or omission was not~~

135 ~~discrimination in matters of compensation under this chapter.]~~

136 [~~(11)~~] (10) Conciliation between the parties is to be urged and facilitated at all stages of

137 the adjudicative process.

138 [~~(12)~~] (11) (a) Either party may file with the Division of Adjudication a written request

139 for review before the commissioner or Appeals Board of the order issued by the presiding

140 officer in accordance with:

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

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

143 (b) If there is no timely request for review, the order issued by the presiding officer

144 becomes the final order of the commission.

145 [~~(13)~~] (12) An order of the commission under Subsection [~~(12)~~] (11)(a) is subject to

146 judicial review as provided in:

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

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

149 [~~(14)~~] (13) The commission may make rules concerning procedures under this chapter

150 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

151 [~~(15)~~] (14) The commission and its staff may not divulge or make public information

152 gained from an investigation, settlement negotiation, or proceeding before the commission
153 except as provided in Subsections ~~[(15)]~~ (14)(a) through (d).

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

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

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

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

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

165 ~~[(a) race;]~~

166 ~~[(b) color;]~~

167 ~~[(c) sex;]~~

168 ~~[(d) retaliation;]~~

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

170 ~~[(f) age;]~~

171 ~~[(g) religion;]~~

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

173 ~~[(i) disability;]~~

174 ~~[(j) sexual orientation; or]~~

175 ~~[(k) gender identity.]~~

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

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

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

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

189 (i) reinstatement;

190 (ii) back pay and benefits;

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

193 (iv) attorney fees; and

194 (v) costs.

195 ~~[(17)]~~ (16) (a) The commencement of an action under federal law for relief based upon
196 ~~[an]~~ any act prohibited by this chapter bars the commencement or continuation of an
197 adjudicative proceeding before the commission in connection with the same ~~[claim]~~ claims
198 under this chapter.

199 (b) The transfer of a request for agency action to the Equal Employment Opportunity
200 Commission in accordance with Subsection (1)(d) is considered the commencement of an
201 action under federal law for purposes of Subsection ~~[(17)]~~ (16)(a).

202 ~~[(c) Nothing in this Subsection (17) is intended to alter, amend, modify, or impair the~~
203 ~~exclusive remedy provision set forth in Subsection (16).]~~

204 Section 3. Section **34A-5-108** is amended to read:

205 **34A-5-108. Judicial enforcement of division findings.**

206 (1) The commission or the attorney general at the request of the commission shall
207 commence an action under Section **63G-4-501** for civil enforcement of a final order of the
208 commission issued under Subsection **34A-5-107**~~[(11)]~~(10) if:

209 (a) the order finds that there is reasonable cause to believe that a respondent has
210 engaged or is engaging in discriminatory or prohibited employment practices made unlawful by
211 this chapter;

212 (b) counsel to the commission or the attorney general determines after reasonable
213 inquiry that the order is well grounded in fact and is warranted by existing law;

214 (c) the respondent has not received an order of automatic stay or discharge from the
215 United States Bankruptcy Court; and

216 (d) (i) the commission has not accepted a conciliation agreement to which the
217 aggrieved party and respondent are parties; or

218 (ii) the respondent has not conciliated or complied with the final order of the
219 commission within 30 days from the date the order is issued.

220 (2) If the respondent seeks judicial review of the final order under Section [63G-4-403](#),
221 pursuant to Section [63G-4-405](#) the commission may stay seeking civil enforcement pending the
222 completion of the judicial review.

Legislative Review Note
Office of Legislative Research and General Counsel