

**LABOR AND MILITARY TRAINING REQUIREMENT**

**LIMITATION**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Tim Jimenez**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill prohibits, in certain employment and military contexts, certain training or other requirements that compel or require adherence to or belief in certain concepts.

**Highlighted Provisions:**

This bill:

- ▶ prohibits, for purposes of employment discrimination and for the Utah National Guard and the Utah Department of Veterans and Military Affairs, training or other requirements that compel or require adherence to or belief in certain concepts;
- ▶ clarifies that the prohibition does not prohibit certain objective discussions;
- ▶ provides for severability; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**34A-5-106**, as last amended by Laws of Utah 2016, Chapter 330

**39A-1-201**, as renumbered and amended by Laws of Utah 2022, Chapter 373



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

Section 1. Section **34A-5-106** is amended to read:

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

(1) It is a discriminatory or prohibited employment practice to take an action described in Subsections (1)(a) through [~~(g)~~] (h).

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

- (A) race;
- (B) color;
- (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;
- (H) disability;
- (I) sexual orientation; or
- (J) gender identity.

(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

59 the payment of differing wages or salaries to employees having substantially equal experience,  
60 responsibilities, and skill for the particular job.

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

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

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

68 (b) An employment agency may not:

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

72 (A) race;

73 (B) color;

74 (C) sex;

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

76 (E) religion;

77 (F) national origin;

78 (G) age, if the individual is 40 years of age or older;

79 (H) disability;

80 (I) sexual orientation; or

81 (J) gender identity; or

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

85 (A) race;

86 (B) color;

87 (C) sex;

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

89 (E) religion;

90 (F) national origin;

91 (G) age, if the individual is 40 years of age or older;

92 (H) disability;

93 (I) sexual orientation; or

94 (J) gender identity.

95 (c) (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):

96 (A) exclude an individual otherwise qualified from full membership rights in the labor  
97 organization;

98 (B) expel the individual from membership in the labor organization; or

99 (C) otherwise discriminate against or harass a member of the labor organization in full  
100 employment of work opportunity, or representation.

101 (ii) A labor organization may not take an action listed in this Subsection (1)(c) because  
102 of:

103 (A) race;

104 (B) sex;

105 (C) pregnancy, childbirth, or pregnancy-related conditions;

106 (D) religion;

107 (E) national origin;

108 (F) age, if the individual is 40 years of age or older;

109 (G) disability;

110 (H) sexual orientation; or

111 (I) gender identity.

112 (d) (i) Unless based upon a bona fide occupational qualification, or required by and  
113 given to an agency of government for a security reason, an employer, employment agency, or  
114 labor organization may not do the following if the statement, advertisement, publication, form,  
115 or inquiry violates Subsection (1)(d)(ii):

116 (A) print, circulate, or cause to be printed or circulated a statement, advertisement, or  
117 publication;

118 (B) use a form of application for employment or membership; or

119 (C) make any inquiry in connection with prospective employment or membership.

120 (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or

121 inquiry that directly expresses a limitation, specification, or discrimination as to:

- 122 (A) race;
- 123 (B) color;
- 124 (C) religion;
- 125 (D) sex;
- 126 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 127 (F) national origin;
- 128 (G) age, if the individual is 40 years of age or older;
- 129 (H) disability;
- 130 (I) sexual orientation; or
- 131 (J) gender identity.

132 (e) A person, whether or not an employer, an employment agency, a labor organization,  
133 or an employee or member of an employer, employment agency, or labor organization, may  
134 not:

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

137 (ii) obstruct or prevent a person from complying with this chapter, or any order issued  
138 under this chapter; or

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

140 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational  
141 school providing, coordinating, or controlling an apprenticeship program or providing,  
142 coordinating, or controlling an on-the-job-training program, instruction, training, or retraining  
143 program may not:

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

- 147 (I) race;
- 148 (II) color;
- 149 (III) sex;
- 150 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 151 (V) religion;

- 152 (VI) national origin;
- 153 (VII) age, if the individual is 40 years of age or older;
- 154 (VIII) disability;
- 155 (IX) sexual orientation; or
- 156 (X) gender identity;
- 157 (B) discriminate against or harass a qualified person in that person's pursuit of a
- 158 program described in Subsection (1)(f)(i)(A) because of:
  - 159 (I) race;
  - 160 (II) color;
  - 161 (III) sex;
  - 162 (IV) pregnancy, childbirth, or pregnancy-related conditions;
  - 163 (V) religion;
  - 164 (VI) national origin;
  - 165 (VII) age, if the individual is 40 years of age or older;
  - 166 (VIII) disability;
  - 167 (IX) sexual orientation; or
  - 168 (X) gender identity;
- 169 (C) discriminate against a qualified person in the terms, conditions, or privileges of a
- 170 program described in Subsection (1)(f)(i)(A), because of:
  - 171 (I) race;
  - 172 (II) color;
  - 173 (III) sex;
  - 174 (IV) pregnancy, childbirth, or pregnancy-related conditions;
  - 175 (V) religion;
  - 176 (VI) national origin;
  - 177 (VII) age, if the individual is 40 years of age or older;
  - 178 (VIII) disability;
  - 179 (IX) sexual orientation; or
  - 180 (X) gender identity; or
- 181 (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or
- 182 published, a notice or advertisement relating to employment by the employer, or membership in

183 or a classification or referral for employment by a labor organization, or relating to a  
184 classification or referral for employment by an employment agency, indicating a preference,  
185 limitation, specification, or discrimination based on:

- 186 (I) race;
- 187 (II) color;
- 188 (III) sex;
- 189 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 190 (V) religion;
- 191 (VI) national origin;
- 192 (VII) age, if the individual is 40 years of age or older;
- 193 (VIII) disability;
- 194 (IX) sexual orientation; or
- 195 (X) gender identity.

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

- 199 (A) race;
- 200 (B) color;
- 201 (C) religion;
- 202 (D) sex;
- 203 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 204 (F) age;
- 205 (G) national origin;
- 206 (H) disability;
- 207 (I) sexual orientation; or
- 208 (J) gender identity.

209 (g) Subject to Subsection (7), an employer may not:

210 (i) refuse to provide reasonable accommodations for an employee related to pregnancy,  
211 childbirth, breastfeeding, or related conditions:

- 212 (A) if the employee requests a reasonable accommodation; and
- 213 (B) unless the employer demonstrates that the accommodation would create an undue

214 hardship on the operations of the employer;

215 (ii) require an employee to terminate employment if another reasonable  
216 accommodation can be provided for the employee's pregnancy, childbirth, breastfeeding, or  
217 related conditions unless the employer demonstrates that the accommodation would create an  
218 undue hardship on the operations of the employer; or

219 (iii) deny employment opportunities to an employee, if the denial is based on the need  
220 of the employer to make reasonable accommodations related to the pregnancy, childbirth,  
221 breastfeeding, or related conditions of an employee unless the employer demonstrates that the  
222 accommodation would create an undue hardship on the operations of the employer.

223 (h) (i) It is unlawful to subject an individual, as a condition of employment,  
224 membership, certification, licensing, credentialing, or passing an examination, to training,  
225 instruction, or any other required activity that espouses, promotes, advances, or compels the  
226 individual to believe or profess a belief in any of the following concepts and constitutes  
227 discrimination based on race, color, sex, or national origin:

228 (A) that members of one race, color, sex, or national origin are morally superior to  
229 members of another race, color, sex, or national origin;

230 (B) that an individual, by virtue of the individual's race, color, sex, or national origin, is  
231 inherently racist, sexist, or oppressive, whether consciously or unconsciously;

232 (C) that an individual's moral character or status as either privileged or oppressed is  
233 necessarily determined by the individual's race, color, sex, or national origin;

234 (D) that members of one race, color, sex, or national origin cannot or should not  
235 attempt to treat others without respect to race, color, sex, or national origin;

236 (E) that an individual, by virtue of the individual's race, color, sex, or national origin,  
237 bears responsibility for, or should be subject to discrimination or adverse treatment because of  
238 actions that other members of the same race, color, sex, or national origin committed in the  
239 past;

240 (F) that an individual, by virtue of the individual's race, color, sex, or national origin,  
241 should be subject to discrimination or adverse treatment to achieve diversity, equity, or  
242 inclusion;

243 (G) that an individual should feel discomfort, guilt, anguish, or any other form of  
244 psychological distress on account of the individual's race, color, sex, or national origin; or



245 (H) that virtues including merit, excellence, hard work, fairness, neutrality, objectivity,  
246 and racial colorblindness are racist or sexist, or the creation of members of a particular race,  
247 color, sex, or national origin to oppress members of another race, color, sex, or national origin.

248 (ii) Nothing in this Subsection (1)(h) prohibits an objective discussion of the concepts  
249 described in Subsection (1)(h)(i) as part of a course of training or instruction that does not  
250 include an endorsement of the concepts or a requirement of adherence to or belief in the  
251 concepts.

252 (iii) (A) The provisions of this Subsection (1)(h) are severable.

253 (B) If a court holds invalid any provision of this Subsection (1)(h) or the application of  
254 this Subsection (1)(h) to any individual or circumstance, the invalidity does not affect other  
255 provisions or applications of this Subsection (1)(h) that can be given effect without the  
256 invalidated provision or application.

257 (2) Subsections (1)(a) through [~~(1)(g) may not be construed to~~] (1)(h) do not prevent:

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

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

262 (c) a restriction on the activities of a person licensed in accordance with Title 32B,  
263 Alcoholic Beverage Control Act, with respect to an individual who is under 21 years of age.

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

265 (i) for an employer to hire and employ an employee, for an employment agency to  
266 classify or refer for employment an individual, for a labor organization to classify its  
267 membership or to classify or refer for employment an individual, or for an employer, labor  
268 organization, or joint labor-management committee controlling an apprenticeship or other  
269 training or retraining program to admit or employ an individual in the program on the basis of  
270 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin,  
271 disability, sexual orientation, or gender identity in those certain instances when religion, sex,  
272 pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age  
273 or older, national origin, disability, sexual orientation, or gender identity is a bona fide  
274 occupational qualification reasonably necessary to the normal operation of that particular  
275 business or enterprise;

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

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

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

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

284 (A) the employer's:

285 (I) spouse;

286 (II) child; or

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

288 (B) a person for whom the employer is or would be liable to furnish financial support if  
289 the person were unemployed;

290 (C) a person to whom the employer during the preceding six months furnishes more  
291 than one-half of total financial support regardless of whether or not the employer was or is  
292 legally obligated to furnish support; or

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

295 (b) Nothing in this chapter applies to a business or enterprise on or near an Indian  
296 reservation with respect to a publicly announced employment practice of the business or  
297 enterprise under which preferential treatment is given to an individual because that individual  
298 is a native American Indian living on or near an Indian reservation.

299 (c) Nothing in this chapter may be interpreted to require an employer, employment  
300 agency, labor organization, vocational school, joint labor-management committee, or  
301 apprenticeship program subject to this chapter to grant preferential treatment to an individual or  
302 to a group because of the race, color, religion, sex, age, national origin, disability, sexual  
303 orientation, or gender identity of the individual or group on account of an imbalance that may  
304 exist with respect to the total number or percentage of persons of a race, color, religion, sex,  
305 age, national origin, disability, sexual orientation, or gender identity employed by an employer,  
306 referred or classified for employment by an employment agency or labor organization, admitted

307 to membership or classified by a labor organization, or admitted to or employed in, any  
308 apprenticeship or other training program, in comparison with the total number or percentage of  
309 persons of that race, color, religion, sex, age, national origin, disability, sexual orientation, or  
310 gender identity in any community or county or in the available work force in any community or  
311 county.

312 (4) It is not a discriminatory or prohibited practice with respect to age to observe the  
313 terms of a bona fide seniority system or any bona fide employment benefit plan such as a  
314 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this  
315 chapter, except that an employee benefit plan may not excuse the failure to hire an individual.

316 (5) Notwithstanding Subsection (4), or another statute to the contrary, a person may not  
317 be subject to involuntary termination or retirement from employment on the basis of age alone,  
318 if the individual is 40 years of age or older, except:

319 (a) under Subsection (6); and

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

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

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

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

328 (7) (a) For purposes of Subsection (1)(g), an employer may require an employee to  
329 provide a certification from the employee's health care provider concerning the medical  
330 advisability of a reasonable accommodation.

331 (b) A certification under Subsection (7)(a) shall include:

332 (i) the date the reasonable accommodation becomes medically advisable;

333 (ii) the probable duration of the reasonable accommodation; and

334 (iii) an explanatory statement as to the medical advisability of the reasonable  
335 accommodation.

336 (c) Notwithstanding Subsections (1)(g) and (7)(a), an employer may not require an  
337 employee to obtain a certification from the employee's health care provider for more frequent

338 restroom, food, or water breaks.

339 (d) An employer is not required under Subsection (1)(g) or this Subsection (7) to  
340 permit an employee to have the employee's child at the workplace for purposes of  
341 accommodating pregnancy, childbirth, breastfeeding, or related conditions.

342 (e) An employer shall include in an employee handbook, or post in a conspicuous place  
343 in the employer's place of business, written notice concerning an employee's rights to  
344 reasonable accommodations for pregnancy, childbirth, breastfeeding, or related conditions.

345 Section 2. Section **39A-1-201** is amended to read:

346 **39A-1-201. Adjutant general -- Appointment -- Term -- Qualifications.**

347 (1) There shall be one adjutant general of the National Guard appointed by the  
348 governor.

349 (2) The adjutant general is the commanding general of the Utah National Guard and the  
350 Utah State Defense Force and holds office for a term of six years, unless terminated by  
351 resignation, disability, age, in accordance with Subsection (6), or for cause.

352 (3) The individual appointed to the office shall:

353 (a) be a citizen of Utah and meet the requirements provided in Title 32, United States  
354 Code;

355 (b) be a federally recognized commissioned officer, with the rank of colonel or higher,  
356 of the National Guard of the United States with no fewer than five years commissioned service  
357 in the Utah National Guard; and

358 (c) as determined by the governor, have sufficient knowledge and experience to  
359 command the Utah National Guard.

360 (4) Active service in the armed forces of the United States may be included in the  
361 requirement in Subsection (3)(b), if the officer was a member of the Utah National Guard when  
362 the officer entered that service.

363 (5) The adjutant general shall establish a succession plan consistent with Section  
364 [53-2a-804](#) to ensure the continuity of command.

365 (6) An officer is no longer eligible to hold the office of adjutant general after attaining  
366 the age of 64 years.

367 (7) The adjutant general shall ensure the readiness, training, discipline, and operations  
368 of the National Guard.

369 (8) (a) It is unlawful for the adjutant general or the Utah Department of Veterans and  
370 Military Affairs to subject an individual or service member, as a condition of state active duty,  
371 employment, membership, certification, licensing, credentialing, or passing an examination, to  
372 training, instruction, or any other required activity that espouses, promotes, advances, or  
373 compels the individual or service member to believe or profess a belief in any of the following  
374 concepts and constitutes discrimination based on race, color, sex, or national origin:

375 (i) that members of one race, color, sex, or national origin are morally superior to  
376 members of another race, color, sex, or national origin;

377 (ii) that an individual, by virtue of the individual's race, color, sex, or national origin, is  
378 inherently racist, sexist, or oppressive, whether consciously or unconsciously;

379 (iii) that an individual's moral character or status as either privileged or oppressed is  
380 necessarily determined by the individual's race, color, sex, or national origin;

381 (iv) that members of one race, color, sex, or national origin cannot or should not  
382 attempt to treat others without respect to race, color, sex, or national origin;

383 (v) that an individual, by virtue of the individual's race, color, sex, or national origin,  
384 bears responsibility for, or should be subject to discrimination or adverse treatment because of  
385 actions that other members of the same race, color, sex, or national origin committed in the  
386 past;

387 (vi) that an individual, by virtue of the individual's race, color, sex, or national origin,  
388 should be subject to discrimination or adverse treatment to achieve diversity, equity, or  
389 inclusion;

390 (vii) that an individual should feel discomfort, guilt, anguish, or any other form of  
391 psychological distress on account of the individual's race, color, sex, or national origin; or

392 (viii) that virtues including merit, excellence, hard work, fairness, neutrality,  
393 objectivity, and racial colorblindness are racist or sexist, or the creation of members of a  
394 particular race, color, sex, or national origin to oppress members of another race, color, sex, or  
395 national origin.

396 (b) Nothing in this Subsection (8) prohibits an objective discussion of the concepts  
397 described in Subsection (8)(a) as part of a course of training or instruction that does not include  
398 an endorsement of the concepts or a requirement of adherence to or belief in the concepts.

399 (c) (i) The provisions of this Subsection (8) are severable.

400            (ii) If a court holds invalid any provision of this Subsection (8) or the application of  
401 this Subsection (8) to any individual or circumstance, the invalidity does not affect other  
402 provisions or applications of this Subsection (8) that can be given effect without the invalidated  
403 provision or application.

404            **Section 3. Effective date.**

405            This bill takes effect on July 1, 2023.