

1 **EMPLOYMENT AND HOUSING ANTIDISCRIMINATION**

2 **AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen H. Urquhart**

6 House Sponsor: _____

7 Cosponsor: Jim Dabakis

8

9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Utah Antidiscrimination Act and the Utah Fair Housing Act to
12 address discrimination, including discrimination on the basis of sexual orientation and
13 gender identity.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ modifies definition provisions related to employment and housing discrimination,
- 17 including defining "gender identity" and "sexual orientation";
- 18 ▶ modifies powers of division;
- 19 ▶ includes sexual orientation and gender identity as a consideration in appointments to
- 20 the Antidiscrimination and Labor Advisory Council;
- 21 ▶ includes sexual orientation and gender identity as prohibited bases for
- 22 discrimination in employment;
- 23 ▶ addresses dress and grooming standards and shared facilities;
- 24 ▶ addresses exclusive remedy;
- 25 ▶ modifies exemptions to the Utah Fair Housing Act;
- 26 ▶ includes sexual orientation and gender identity as prohibited bases for



27 discriminatory housing practices; and
28 ▶ makes technical and conforming amendments.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35 **34A-5-102**, as last amended by Laws of Utah 2011, Chapter 413
- 36 **34A-5-104**, as last amended by Laws of Utah 2012, Chapter 369
- 37 **34A-5-105**, as last amended by Laws of Utah 2010, Chapter 286
- 38 **34A-5-106**, as last amended by Laws of Utah 2012, Chapter 101
- 39 **34A-5-107**, as last amended by Laws of Utah 2008, Chapter 382
- 40 **57-21-2**, as last amended by Laws of Utah 2010, Chapter 379
- 41 **57-21-3**, as last amended by Laws of Utah 1993, Chapter 114
- 42 **57-21-5**, as last amended by Laws of Utah 2011, Chapter 366
- 43 **57-21-6**, as last amended by Laws of Utah 1993, Chapter 114
- 44 **57-21-7**, as last amended by Laws of Utah 1993, Chapter 114

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

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

48 **34A-5-102. Definitions -- Unincorporated entities.**

49 (1) As used in this chapter:

50 (a) "Affiliate" is as defined in Section 16-6a-102.

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

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

55 (i) is necessary to the operation of the employer's business; or

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

57 ~~(c)~~ (d) "Court" means:

58 (i) the district court in the judicial district of the state in which the asserted unfair
59 employment practice [~~occurred~~] occurs; or

60 (ii) if [~~this~~] the district court is not in session at that time, a judge of the court described
61 in Subsection (1)[~~(c)~~](d)(i).

62 [~~(d)~~] (e) "Director" means the director of the division.

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

65 [~~(f)~~] (g) "Division" means the Division of Antidiscrimination and Labor.

66 [~~(g)~~] (h) "Employee" means [~~any~~] a person applying with or employed by an employer.

67 [~~(h)~~] (i) (i) "Employer" means:

68 (A) the state;

69 (B) [~~any~~] a political subdivision;

70 (C) a board, commission, department, institution, school district, trust, or agent of the
71 state or [~~its~~] a political [~~subdivisions~~] subdivision of the state; or

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

74 (ii) "Employer" does not include:

75 (A) a religious organization or association;

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

77 (C) [~~any~~] a corporation or association constituting an affiliate, a wholly owned
78 subsidiary, or an agency of any religious organization or association or religious corporation
79 sole[~~;~~]; or

80 (D) an organization engaged in public or private expression if employing an individual
81 would affect in a significant way the organization's ability to advocate public or private
82 viewpoints protected by the freedom of expressive association described in decisions of the
83 United States Supreme Court or the Utah Supreme Court.

84 [~~(i)~~] (j) "Employment agency" means [~~any~~] a person:

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

86 (ii) holding the person out to be equipped to take an action described in Subsection
87 (1)[~~(i)~~](j)(i).

88 (k) "Gender identity" means an individual's internal sense of gender, without regard to

89 the individual's designated sex at birth. Evidence of gender identity may include an
 90 individual's self-identification, as well as the individual's gender-related appearance,
 91 mannerisms, and other gender-related characteristics.

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

95 [(k)] (m) "Labor organization" means [any] an organization that exists for the purpose
 96 in whole or in part of:

97 (i) collective bargaining;

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

99 or

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

101 [(h)] (n) "National origin" means the place of birth, domicile, or residence of an
 102 individual or of an individual's ancestors.

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

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

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

108 [(n)] (p) "Person" means:

109 (i) one or more individuals, partnerships, associations, corporations, legal
 110 representatives, trusts or trustees, or receivers[;];

111 (ii) the state; and [~~all political subdivisions and agencies~~]

112 (iii) a political subdivision or agency of the state.

113 [(o)] (q) "Presiding officer" means the same as that term is defined in Section
 114 63G-4-103.

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

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

120 or member [~~has~~]:

121 (i) [~~opposed any~~] opposes an employment practice prohibited under this chapter; or

122 (ii) [~~filed charges, testified, assisted, or participated~~] files charges, testifies, assists, or
123 participates in any way in [~~any~~] a proceeding, investigation, or hearing under this chapter.

124 (t) "Sexual orientation" means an individual's actual or perceived orientation as
125 heterosexual, homosexual, or bisexual.

126 [~~(r)~~] (u) "Unincorporated entity" means an entity organized or doing business in the
127 state that is not:

128 (i) an individual;

129 (ii) a corporation; or

130 (iii) publicly traded.

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

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

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

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

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

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

147 (A) the unincorporated entity; or

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

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

150 (i) "active manager";

151 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
152 (iii) "subject to supervision or control in the performance of work."

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

154 **34A-5-104. Powers.**

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

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

159 (2) The division may:

160 (a) appoint and prescribe the duties of [~~investigators and other employees and agents~~
161 ~~that it~~] an investigator, other employee, or agent of the commission that the commission
162 considers necessary for the enforcement of this chapter;

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

164 (i) discrimination in:

165 (A) employment;

166 (B) an apprenticeship [~~programs~~] program;

167 (C) an on-the-job training [~~programs; and~~] program; or

168 (D) a vocational [~~schools~~] school; or

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

170 (A) a person;

171 (B) an employer;

172 (C) an employment agency;

173 (D) a labor organization;

174 (E) [~~the employees or members~~] an employee or member of an employment agency or
175 labor organization;

176 (F) a joint apprenticeship committee; and

177 (G) a vocational school;

178 (c) investigate and study the existence, character, causes, and extent of discrimination

179 [~~it~~];

180 (i) in one or more of the following in this state:

181 (A) employment[;];

- 182 (B) apprenticeship programs[;];
- 183 (C) on-the-job training programs[;]; and
- 184 (D) vocational schools [~~in this state~~]; and
- 185 (ii) by:
- 186 [(+)] (A) employers;
- 187 [(+)] (B) employment agencies;
- 188 [(+)] (C) labor organizations;
- 189 [(+)] (D) joint apprenticeship committees; and
- 190 [(+)] (E) vocational schools;
- 191 (d) formulate one or more plans for the elimination of discrimination by educational or
- 192 other means;
- 193 (e) hold [~~hearings upon~~] a hearing on a complaint made against:
- 194 (i) a person;
- 195 (ii) an employer;
- 196 (iii) an employment agency;
- 197 (iv) a labor organization;
- 198 (v) [~~the employees or members~~] an employee or member of an employment agency or
- 199 labor organization;
- 200 (vi) a joint apprenticeship committee; or
- 201 (vii) a vocational school;
- 202 (f) issue one or more publications and reports of investigations and research that:
- 203 (i) promote good will among the various racial, religious, and ethnic groups of the
- 204 state; and
- 205 (ii) minimize or eliminate discrimination in employment because of race, color, sex,
- 206 religion, national origin, age, [~~or~~] disability, sexual orientation, or gender identity;
- 207 (g) prepare and transmit to the governor, at least once each year, reports describing:
- 208 (i) [~~its~~] the division's proceedings, investigations, and hearings;
- 209 (ii) the outcome of those hearings;
- 210 (iii) decisions the division [~~has rendered~~] renders; and
- 211 (iv) the other work performed by the division;
- 212 (h) recommend policies to the governor, and submit recommendation to employers,

213 employment agencies, and labor organizations to implement those policies;

214 (i) recommend ~~[any]~~ legislation to the governor that the division considers necessary
215 concerning discrimination because of:

216 (A) race~~[-];~~;

217 (B) sex~~[-];~~;

218 (C) color~~[-];~~;

219 (D) national origin~~[-];~~;

220 (E) religion~~[-];~~;

221 (F) age~~[-,or];~~;

222 (G) disability [~~to the governor that it considers necessary; and~~];

223 (H) sexual orientation; or

224 (I) gender identity; and

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

229 (3) The division shall investigate an alleged discriminatory ~~[practices]~~ practice
230 involving ~~[officers or employees]~~ an officer or employee of state government if requested to do
231 so by the Career Service Review Office.

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

233 (i) subpoena witnesses and compel their attendance at the hearing;

234 (ii) administer oaths and take the testimony of ~~[any]~~ a person under oath; and

235 (iii) compel ~~[any]~~ a person to produce for examination ~~[any books, papers]~~ a book,
236 paper, or other information relating to the matters raised by the complaint.

237 (b) The division director or a hearing examiner appointed by the division director may
238 conduct ~~[hearings]~~ a hearing.

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

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

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

245 **34A-5-105. Antidiscrimination and Labor Advisory Council -- Membership --**
 246 **Appointment -- Term -- Powers and duties -- Chair.**

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

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

249 (i) three employer representatives;

250 (ii) three employee representatives;

251 (iii) two representatives of persons who seek to rent or purchase [~~dwellings~~] a

252 dwelling, as defined in Section 57-21-2;

253 (iv) two representatives of persons who:

254 (A) sell or rent dwellings; and

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

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

257 (b) the commissioner or the commissioner's designee as a nonvoting member of the

258 council.

259 (2) In making [~~the appointments~~] an appointment under Subsection (1), the
 260 commissioner shall consider representation of the following [~~protected classes~~] classifications:

261 (a) race;

262 (b) color;

263 (c) national origin;

264 (d) [~~gender~~] sex;

265 (e) religion;

266 (f) age;

267 (g) persons with disabilities;

268 (h) sexual orientation;

269 (i) gender identity;

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

271 [~~(i)~~] (k) source of income as defined in Section 57-21-2.

272 (3) The division shall provide any necessary staff support for the council.

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

275 term.

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

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

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

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

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

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

288 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
289 63A-3-107.

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

291 (i) offer advice on issues requested by:

292 (A) the commission;

293 (B) the division; or

294 (C) the Legislature; and

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

296 (A) employment discrimination;

297 (B) housing discrimination; and

298 (C) the administration by the commission of:

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

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

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

303 (b) The council shall [~~confer~~] meet at least quarterly for the purpose of advising the
304 commission, division, and the Legislature regarding issues described in Subsection (7)(a).

305 (8) (a) The commissioner or the commissioner's designee shall serve as chair of the

306 council.

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

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

310 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**
311 **practices.**

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

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

- 318 (A) race;
- 319 (B) color;
- 320 (C) sex;
- 321 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 322 (E) age, if the individual is 40 years of age or older;
- 323 (F) religion;
- 324 (G) national origin; [~~or~~]
- 325 (H) disability[~~;~~];
- 326 (I) sexual orientation; or
- 327 (J) gender identity.

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

- 330 (A) education;
- 331 (B) training;
- 332 (C) ability, with or without reasonable accommodation;
- 333 (D) moral character;
- 334 (E) integrity;
- 335 (F) disposition to work;
- 336 (G) adherence to reasonable rules and regulations; and

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

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

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

342 ~~[(F)]~~ (A) nothing in this chapter prevents ~~[increases]~~ an increase in pay as a result of
343 longevity with the employer, if the salary ~~[increases are]~~ increase is uniformly applied and
344 available to all employees on a substantially proportional basis; and

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

348 (b) An employment agency may not:

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

352 (A) race;

353 (B) color;

354 (C) sex;

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

356 (E) religion;

357 (F) national origin;

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

359 (H) disability; ~~[or]~~

360 (I) sexual orientation; or

361 (J) gender identity; or

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

365 (A) race;

366 (B) color;

367 (C) sex;

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

369 (E) religion;

370 (F) national origin;

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

372 (H) disability~~[-];~~

373 (I) sexual orientation; or

374 (J) gender identity.

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

376 (A) exclude [any] an individual otherwise qualified from full membership rights in the
377 labor organization[-];

378 (B) expel the individual from membership in the labor organization[-]; or

379 (C) otherwise discriminate against or harass [any of the labor organization's members]
380 a member of the labor organization in full employment of work opportunity[-] or
381 representation[-, because of:].

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

384 ~~[(i)]~~ (A) race;

385 ~~[(ii)]~~ (B) sex;

386 ~~[(iii)]~~ (C) pregnancy, childbirth, or pregnancy-related conditions;

387 ~~[(iv)]~~ (D) religion;

388 ~~[(v)]~~ (E) national origin;

389 ~~[(vi)]~~ (F) age, if the individual is 40 years of age or older; ~~[or]~~

390 ~~[(vii)]~~ (G) disability[-];

391 (H) sexual orientation; or

392 (I) gender identity.

393 (d) (i) Unless based upon a bona fide occupational qualification, or required by and
394 given to an agency of government for a security ~~[reasons]~~ reason, an employer, employment
395 agency, or labor organization may not do the following if the statement, advertisement,
396 publication, form, or inquiry violates Subsection (1)(d)(ii):

397 (A) print, ~~[or]~~ circulate, or cause to be printed or circulated, [any] a statement,
398 advertisement, or publication[-];

399 (B) use ~~[any]~~ a form of application for employment or membership~~;~~ or

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

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

402 inquiry that expresses, either directly or indirectly~~[(i) any]~~ a limitation, specification, or

403 discrimination, or the intent to make a limitation, specification, or discrimination as to:

404 (A) race;

405 (B) color;

406 (C) religion;

407 (D) sex;

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

409 (F) national origin;

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

411 (H) disability;

412 ~~[(ii) the intent to make any limitation, specification, or discrimination described in~~

413 ~~Subsection (1)(d)(i):]~~

414 (I) sexual orientation; or

415 (J) gender identity.

416 (e) A person, whether or not an employer, an employment agency, a labor organization,

417 or ~~[the employees or members]~~ an employee or member of an employer, employment agency,

418 or labor organization, may not:

419 (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a

420 discriminatory or prohibited employment practice;

421 (ii) obstruct or prevent ~~[any]~~ a person from complying with this chapter, or ~~[any]~~ an

422 order issued under this chapter; or

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

424 section.

425 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational

426 school, providing, coordinating, or controlling an apprenticeship ~~[programs]~~ program, or

427 providing, coordinating, or controlling an on-the-job training ~~[programs]~~ program, instruction,

428 training, or retraining ~~[programs]~~ program may not:

429 (A) deny to, or withhold from, ~~[any]~~ a qualified person, the right to be admitted to, or

430 participate in ~~[any]~~ an apprenticeship training program, on-the-job-training program, or other
431 occupational instruction, training, or retraining program because of:

- 432 (I) race;
- 433 (II) color;
- 434 (III) sex;
- 435 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 436 (V) religion;
- 437 (VI) national origin;
- 438 (VII) age, if the individual is 40 years of age or older; ~~[or]~~
- 439 (VIII) disability;
- 440 (IX) sexual orientation; or
- 441 (X) gender identity;

442 (B) discriminate against or harass ~~[any]~~ a qualified person in that person's pursuit of
443 ~~[programs]~~ a program described in Subsection (1)(f)(i)(A) ~~[, or to]~~ because of:

- 444 (I) race;
- 445 (II) color;
- 446 (III) sex;
- 447 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 448 (V) religion;
- 449 (VI) national origin;
- 450 (VII) age, if the individual is 40 years of age or older;
- 451 (VIII) disability;
- 452 (IX) sexual orientation; or
- 453 (X) gender identity;

454 (C) discriminate against ~~[such]~~ a qualified person in the terms, conditions, or privileges
455 of ~~[programs]~~ a program described in Subsection (1)(f)(i)(A), because of:

- 456 (I) race;
- 457 (II) color;
- 458 (III) sex;
- 459 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 460 (V) religion;

461 (VI) national origin;

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

463 (VIII) disability; [or]

464 (IX) sexual orientation; or

465 (X) gender identity; or

466 [~~C~~] (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be

467 printed or published, [~~any~~] a notice or advertisement relating to employment by the employer,

468 or membership in or [~~any~~] a classification or referral for employment by a labor organization,

469 or relating to [~~any~~] a classification or referral for employment by an employment agency,

470 indicating [~~any~~] a preference, limitation, specification, or discrimination based on:

471 (I) race;

472 (II) color;

473 (III) sex;

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

475 (V) religion;

476 (VI) national origin;

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

478 (VIII) disability[-];

479 (IX) sexual orientation; or

480 (X) gender identity.

481 (ii) Notwithstanding Subsection (1)(f)(i)[~~C~~](D), if the following is a bona fide

482 occupational qualification for employment, a notice or advertisement described in Subsection

483 (1)(f)(i)[~~C~~](D) may indicate a preference, limitation, specification, or discrimination based

484 on:

485 (A) race;

486 (B) color;

487 (C) religion;

488 (D) sex;

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

490 (F) age;

491 (G) national origin; [or]

492 (H) disability[-];

493 (I) sexual orientation; or

494 (J) gender identity.

495 (2) [~~Nothing contained in~~] Subsections (1)(a) through (1)(f) [~~shall~~] may not be

496 construed to prevent:

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

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

501 (c) a restriction on the activities [~~of individuals licensed by the liquor authority with~~
502 ~~respect to persons~~] a person licensed in accordance with Title 32B, Alcoholic Beverage Control
503 Act, with respect to an individual who is under 21 years of age.

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

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

516 (ii) for a school, college, university, or other educational institution to hire and employ
517 [~~employees~~] an employee of a particular religion if:

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

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

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

524 (A) the employer's:

525 (I) spouse;

526 (II) child; or

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

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

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

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

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

539 (c) Nothing in this chapter ~~[shall]~~ may be interpreted to require ~~[any]~~ an employer,
540 employment agency, labor organization, vocational school, joint labor-management committee,
541 or apprenticeship program subject to this chapter to grant preferential treatment to ~~[any]~~ a
542 individual or to ~~[any]~~ a group because of the race, color, religion, sex, age, national origin, ~~[or]~~
543 disability, sexual orientation, or gender identity of the individual or group on account of an
544 imbalance ~~[which]~~ that may exist with respect to the total number or percentage of persons of
545 ~~[any]~~ a race, color, religion, sex, age, national origin, ~~[or]~~ disability, sexual orientation, or
546 gender identity employed by ~~[any]~~ an employer, referred or classified for employment by an
547 employment agency or labor organization, admitted to membership or classified by ~~[any]~~ a
548 labor organization, or admitted to or employed in, any apprenticeship or other training
549 program, in comparison with the total number or percentage of persons of that race, color,
550 religion, sex, age, national origin, ~~[or]~~ disability, sexual orientation, or gender identity in any
551 community or county or in the available work force in any community or county.

552 (4) It is not a discriminatory or prohibited practice with respect to age to observe the
553 terms of a bona fide seniority system or any bona fide employment benefit plan such as a

554 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this
555 chapter, except that ~~[no such]~~ an employee benefit plan ~~[shall]~~ may not excuse the failure to
556 hire an individual.

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

560 (a) under Subsection (6); and

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

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

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

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

569 (7) (a) This chapter may not be interpreted to prohibit an employer from requiring an
570 employee, during the employee's hours at work, to adhere to reasonable dress or grooming
571 standards not prohibited by other provisions of federal, state, or local law, if the employer
572 permits any employee who has undergone gender transition before the time of application for
573 employment, and any employee who notifies the employer that the employee has undergone or
574 is undergoing gender transition after the time of application for employment, to adhere to the
575 same dress or grooming standards for the gender to which the employee has transitioned or is
576 transitioning.

577 (b) For the purposes of this Subsection (7), if an employer has reason to believe that an
578 applicant's or employee's gender identity is not sincerely held, the employer may require the
579 applicant or employee to provide evidence of that gender identity. A person may prove the
580 person's gender identity by providing evidence, including medical history, care or treatment of
581 the gender identity, consistent and uniform assertion of the gender identity, or any other
582 evidence that the gender identity is sincerely held or not being asserted for an improper
583 purpose.

584 (8) (a) This chapter may not be interpreted to prohibit an employer from requiring an

585 employee, during the employee's hours at work, to use restrooms, shower facilities, or dressing
 586 facilities that are consistent with the employee's gender identity.

587 (b) It is a discriminatory and prohibited employment practice to deny an employee
 588 access to restrooms, shower facilities, or dressing facilities that are consistent with the
 589 employee's gender identity, as established with the employer at the later of:

590 (i) the time of the application for employment; or

591 (ii) after notification to the employer that the employee has undergone or is undergoing
 592 gender transition.

593 (c) For the purposes of this Subsection (8), if an employer has reason to believe that an
 594 applicant's or employee's gender identity is not sincerely held, the employer may require the
 595 applicant or employee to provide evidence of that gender identity. A person may prove the
 596 person's gender identity by providing evidence, including medical history, care or treatment of
 597 the gender identity, consistent and uniform assertion of the gender identity, or any other
 598 evidence that the gender identity is sincerely held or not being asserted for an improper
 599 purpose.

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

601 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
 602 **Adjudicative proceedings -- Conciliation -- Reconsideration -- Determination.**

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

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

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

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

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

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

614 (2) [~~Any~~] An employer, labor organization, joint apprenticeship committee, or
 615 vocational school who has an employee or member who refuses or threatens to refuse to

616 comply with this chapter may file with the division a request for agency action asking the
617 division for assistance to obtain the employee's or member's compliance by conciliation or
618 other remedial action.

619 (3) (a) Before a hearing is set or held as part of any adjudicative proceeding, the
620 division shall promptly assign an investigator to attempt a settlement between the parties by
621 conference, conciliation, or persuasion.

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

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

625 (i) shall conduct every investigation in fairness to all parties and agencies involved;
626 and

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

629 (d) An aggrieved party may withdraw the request for agency action prior to the
630 issuance of a final order.

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

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

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

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

644 (5) (a) If the initial attempts at settlement are unsuccessful and the investigator
645 uncovers sufficient evidence during the investigation to support the allegations of a
646 discriminatory or prohibited employment practice set out in the request for agency action, the

647 investigator shall formally report these findings to the director or the director's designee.

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

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

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

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

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

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

662 (6) In [~~any~~] an adjudicative proceeding to review the director's or the director's
663 designee's determination that a prohibited employment practice has occurred, the division shall
664 present the factual and legal basis of the determination or order issued under Subsection (5).

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

666 (i) the party filing the request for agency action may reasonably and fairly amend any
667 allegation; and

668 (ii) the respondent may amend its answer.

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

670 (i) during or after a hearing; and

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

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

676 (b) The presiding officer may order that the respondent be reimbursed by the
677 complaining party for the respondent's [~~attorneys'~~] attorney fees and costs.

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

681 (a) cease [~~any~~] a discriminatory or prohibited employment practice; and

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

683 (i) reinstatement;

684 (ii) back pay and benefits;

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

686 (iv) costs.

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

689 (11) (a) Either party may file with the Division of Adjudication a written request for
690 review before the commissioner or Appeals Board of the order issued by the presiding officer
691 in accordance with:

692 (i) Section 63G-4-301; and

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

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

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

698 (a) Section 63G-4-403; and

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

700 (13) The commission [~~shall have authority to~~] may make rules concerning procedures
701 under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
702 Act.

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

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

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

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

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

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

717 (a) race;

718 (b) color;

719 (c) sex;

720 (d) retaliation;

721 (e) pregnancy, childbirth, or pregnancy-related conditions;

722 (f) age;

723 (g) religion;

724 (h) national origin; ~~or~~

725 (i) disability~~[-]~~;

726 (j) sexual orientation; or

727 (k) gender identity.

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

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

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

737 Section 6. Section **57-21-2** is amended to read:

738 **57-21-2. Definitions.**

739 As used in this chapter:

740 (1) "Affiliate" is as defined in Section 16-6a-102.

741 [(+)] (2) "Aggrieved person" includes [~~any~~] a person who:

742 (a) claims to have been injured by a discriminatory housing practice; or

743 (b) believes that the person will be injured by a discriminatory housing practice that is
744 about to occur.

745 [(2)] (3) "Commission" means the Labor Commission.

746 [(3)] (4) "Complainant" means an aggrieved person, including the director, who has
747 commenced a complaint with the division.

748 [(4)] (5) "Conciliation" means the attempted resolution of [~~issues~~] an issue raised [~~by~~]
749 in a complaint of discriminatory housing practices by the investigation of the complaint
750 through informal negotiations involving the complainant, the respondent, and the division.

751 [(5)] (6) "Conciliation agreement" means a written agreement setting forth the
752 resolution of the issues in conciliation.

753 [(6)] (7) "Conciliation conference" means the attempted resolution of [~~issues~~] an issue
754 raised [~~by~~] in a complaint [~~or~~] by the investigation of a complaint through informal
755 negotiations involving the complainant, the respondent, and the division. The conciliation
756 conference is not subject to Title 63G, Chapter 4, Administrative Procedures Act.

757 [(7)] (8) "Covered multifamily [~~dwellings~~] dwelling" means:

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

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

761 [(8)] (9) "Director" means the director of the division or a designee.

762 [(9)] (10) (a) "Disability" means a physical or mental impairment that substantially
763 limits one or more of a person's major life activities, including a person having a record of such
764 an impairment or being regarded as having such an impairment.

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

768 [(10)] (11) "Discriminate" includes segregate or separate.

769 [(+)] (12) "Discriminatory housing practice" means an act that is unlawful under this
770 chapter.

771 ~~[(12)]~~ (13) "Division" means the Division of Antidiscrimination and Labor established
772 under the commission.

773 ~~[(13)-(a)]~~ (14) "Dwelling" means ~~[any]~~:

774 (a) a building or structure, or a portion of a building or structure, occupied as, ~~[or]~~
775 designed as, or intended for occupancy as, a residence of one or more families~~[-]; or~~

776 (b) ~~["Dwelling" also includes]~~ vacant land that is offered for sale or lease for the
777 construction or location of a dwelling as described in Subsection ~~[(13)]~~ (14)(a).

778 ~~[(14)]~~ (15) (a) "Familial status" means one or more individuals who have not attained
779 the age of 18 years being domiciled with:

780 (i) a parent or another person having legal custody of the ~~[individual]~~ one or more
781 individuals; or

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

784 (b) The protections afforded against discrimination on the basis of familial status ~~[shall~~
785 ~~apply to any]~~ applies to a person who:

786 (i) is pregnant;

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

789 (iii) is a single individual.

790 (16) "Gender identity" means an individual's internal sense of gender, without regard to
791 the individual's designated sex at birth. Evidence of gender identity may include an
792 individual's self-identification, as well as the individual's gender-related appearance,
793 mannerisms, and other gender-related characteristics.

794 ~~[(15)]~~ (17) "National origin" means the place of birth of an individual or of any lineal
795 ancestors.

796 ~~[(16)]~~ (18) "Person" includes one or more:

797 (a) individuals~~[-];~~

798 (b) corporations~~[-];~~

799 (c) limited liability companies~~[-];~~

800 (d) partnerships~~[-];~~

801 (e) associations~~[-];~~

- 802 (f) labor organizations[;];
- 803 (g) legal representatives[;];
- 804 (h) mutual companies[;];
- 805 (i) joint-stock companies[;];
- 806 (j) trusts[;];
- 807 (k) unincorporated organizations[;];
- 808 (l) trustees[;];
- 809 (m) trustees in cases under the United States Bankruptcy Code[;];
- 810 (n) receivers[;]; and
- 811 (o) fiduciaries.

812 [~~17~~] (19) "Presiding officer" has the same meaning as provided in Section
 813 63G-4-103.

814 [~~18~~] (20) "Real estate broker" or "salesperson" means a principal broker, an associate
 815 broker, or a sales agent as those terms are defined in Section 61-2f-102.

816 [~~19~~] (21) "Respondent" means a person against whom a complaint of housing
 817 discrimination has been initiated.

818 [~~20~~] (22) "Sex" means gender and includes pregnancy, childbirth, and disabilities
 819 related to pregnancy or childbirth.

820 (23) "Sexual orientation" means an individual's actual or perceived orientation as
 821 heterosexual, homosexual, or bisexual.

822 [~~21~~] (24) "Source of income" means the verifiable condition of being a recipient of
 823 federal, state, or local assistance, including medical assistance, or of being a tenant receiving
 824 federal, state, or local subsidies, including rental assistance or rent supplements.

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

826 **57-21-3. Exemptions.**

827 (1) This chapter does not apply to [~~any~~] a single-family dwelling unit sold or rented by
 828 its owner if:

- 829 (a) the owner is not a partnership, association, corporation, or other business entity;
- 830 (b) the owner does not own [~~any~~] an interest in four or more single-family dwelling
 831 units held for sale or lease at the same time;
- 832 (c) during a 24-month period, the owner does not sell two or more single-family

833 dwelling units in which the owner was not residing or was not the most recent resident at the
834 time of sale;

835 (d) the owner does not retain or use the facilities or services of ~~[any]~~ a real estate
836 broker or salesperson; and

837 (e) the owner does not use ~~[any]~~ a discriminatory housing practice under Subsection
838 57-21-5(2) in the sale or rental of the dwelling.

839 (2) This chapter does not apply to a temporary or permanent residence facility,
840 approved, operated, or owned by a nonprofit ~~[or]~~ organization, a charitable organization, or a
841 person in conjunction with a religious organization, association, society, or its affiliates,
842 ~~including [any dormitory operated]~~ a residence facility approved, operated, or owned by a
843 public or private educational institution, if the discrimination is by sex, sexual orientation,
844 gender identity, or familial status;

845 (a) for reasons of personal modesty or privacy; or

846 (b) in the furtherance of a religious institution's free exercise of religious rights under
847 the First Amendment of the ~~[United States]~~ Constitution of the United States or the Utah
848 Constitution.

849 (3) This chapter, except for Subsection 57-21-5(2), does not apply to the rental of a
850 room in ~~[the]~~ a single family dwelling by an owner-occupant of ~~[a]~~ the single-family dwelling
851 to another person if:

852 (a) the dwelling is designed for occupancy by four or fewer families~~[-];~~; and

853 (b) the owner-occupant resides in one of the units.

854 (4) ~~[This]~~ Unless membership in a religion is restricted by race, color, sex, or national
855 origin, this chapter does not prohibit a religious organization, association, or society, or ~~[any]~~ a
856 nonprofit institution or organization operated, supervised, or controlled by or in conjunction
857 with a religious organization, association, or society, from:

858 (a) limiting the sale, rental, or occupancy of ~~[dwellings]~~ a dwelling it owns or operates
859 for primarily noncommercial purposes to persons of the same religion~~[-];~~ or ~~[from]~~

860 (b) giving preference to ~~[such]~~ persons~~[-, unless membership in the religion is restricted~~
861 ~~by race, color, sex, or national origin]~~ of the same religion.

862 (5) ~~[This]~~ (a) If the conditions of Subsection (5)(b) are met, this chapter does not
863 prohibit a private club not open to the public, including ~~[fraternities and sororities]~~ a fraternity

864 or sorority associated with [~~institutions~~] an institution of higher education, from:

865 (i) limiting the rental or occupancy of lodgings to members; or [~~from~~]

866 (ii) giving preference to its members[~~, but~~].

867 (b) This Subsection (5) applies only if [~~it~~] a private club owns or operates the lodgings

868 as an incident to its primary purpose and not for a commercial purpose.

869 (6) This chapter does not prohibit distinctions based on inability to fulfill the terms and
870 conditions, including financial obligations, of:

871 (a) a lease[;];

872 (b) a rental agreement[;];

873 (c) a contract of purchase or sale[;];

874 (d) a mortgage[;];

875 (e) a trust deed[~~, or other~~]; or

876 (f) another financing agreement.

877 (7) This chapter does not prohibit [~~any~~] a nonprofit educational institution from:

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

880 (b) segregating housing that the nonprofit educational institution approves, operates, or
881 owns on the basis of sex or familial status or both;

882 (i) for reasons of personal modesty or privacy[;]; or

883 (ii) in the furtherance of a religious institution's free exercise of religious rights under
884 the First Amendment of the [~~United States~~] Constitution of the United States; or

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

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

891 (9) [~~The provisions pertaining~~] A provision of this chapter that pertains to familial
892 status [~~do~~] does not apply to the existence, development, sale, rental, advertisement, or
893 financing of [~~any~~] an apartment complex, condominium, or other housing development
894 designated as housing for older persons, as defined by Title VIII of the Civil Rights Act of

895 1968, as amended.

896 Section 8. Section **57-21-5** is amended to read:

897 **57-21-5. Discriminatory practices enumerated.**

898 (1) It is a discriminatory housing practice to do any of the following because of a
899 person's race, color, religion, sex, national origin, familial status, source of income, [or]
900 disability, sexual orientation, or gender identity:

901 (a) (i) refuse to sell or rent after the making of a bona fide offer[;];

902 (ii) refuse to negotiate for the sale or rental[;]; or

903 (iii) otherwise deny or make unavailable [~~any~~] a dwelling from any person;

904 (b) discriminate against [~~any~~] a person in the terms, conditions, or privileges:

905 (i) of the sale or rental of [~~any~~] a dwelling; or

906 (ii) in providing facilities or services in connection with the dwelling; or

907 (c) represent to [~~any~~] a person that [~~any~~] a dwelling is not available for inspection, sale,
908 or rental when [~~in fact~~] the dwelling is available.

909 (2) It is a discriminatory housing practice:

910 (a) to:

911 (i) make a representation orally or in writing; [or]

912 (ii) make, print, circulate, publish, post, or cause to be made, printed, circulated,
913 published, or posted [~~any~~] a notice, statement, or advertisement[;]; or [to]

914 (iii) use any application form for the sale or rental of a dwelling[~~, that~~]; and

915 (b) if the action described in Subsection (2)(a) directly or indirectly expresses [~~any~~]:

916 (i) a preference, limitation, or discrimination based on race, color, religion, sex,
917 national origin, familial status, source of income, [or] disability, sexual orientation, or gender
918 identity; or [~~expresses any~~]

919 (ii) an intent to make [~~any such~~] a preference, limitation, or discrimination described in
920 Subsection (2)(b)(i).

921 (3) It is a discriminatory housing practice to induce or attempt to induce, for profit,
922 [~~any~~] a person to buy, sell, or rent [~~any~~] a dwelling by making [~~representations~~] a
923 representation about the entry or prospective entry into the neighborhood of one or more
924 persons of a particular race, color, religion, sex, national origin, familial status, source of
925 income, [or] disability, sexual orientation, or gender identity.

926 (4) A discriminatory housing practice includes:

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

933 (b) a refusal to make a reasonable [accommodations in rules, policies, practices, or
934 services when the accommodations] accommodation in a rule, policy, practice, or service if the
935 accommodation may be necessary to afford the person equal opportunity to use and enjoy a
936 dwelling; and

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

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

943 (ii) with respect to covered multifamily dwellings with a building entrance on an
944 accessible route:

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

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

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

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

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

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

956 (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver

957 about and use the space.

958 (5) This section also applies to discriminatory housing practices because of race, color,
959 religion, sex, national origin, familial status, source of income, ~~[or]~~ disability, sexual
960 orientation, or gender identity based upon a person's association with another person.

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

962 **57-21-6. Discriminatory housing practices regarding residential real**
963 **estate-related transactions -- Discriminatory housing practices regarding the provisions**
964 **of brokerage services.**

965 (1) (a) It is a discriminatory housing practice for ~~[any]~~ a person whose business
966 includes engaging in residential real estate-related transactions to discriminate against ~~[any]~~ a
967 person in making available ~~[such]~~ a residential real estate-related transaction, or in the terms or
968 conditions of the residential real estate-related transaction, because of race, color, religion, sex,
969 disability, familial status, source of income, ~~[or]~~ national origin, sexual orientation, or gender
970 identity.

971 (b) Residential real estate-related transactions include:

972 ~~[(a)]~~ (i) making or purchasing loans or providing other financial assistance:
973 ~~[(i)]~~ (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling;

974 or

975 ~~[(ii)]~~ (B) secured by residential real estate; or

976 ~~[(b)]~~ (ii) selling, brokering, or appraising residential real property.

977 (2) It is a discriminatory housing practice to, because of race, color, religion, sex,
978 disability, familial status, source of income, national origin, sexual orientation, or gender
979 identity:

980 (a) deny ~~[any]~~ a person access to, or membership or participation in, ~~[any]~~ a
981 multiple-listing service, real estate brokers' organization, or other service, organization, or
982 facility relating to the business of selling or renting dwellings; or ~~[to]~~

983 (b) discriminate against ~~[any]~~ a person in the terms or conditions of access,
984 membership, or participation in the organization, service, or facility ~~[because of race, color,~~
985 ~~religion, sex, disability, familial status, source of income, or national origin]~~.

986 (3) This section also applies to a discriminatory housing ~~[practices]~~ practice because of
987 race, color, religion, sex, national origin, familial status, source of income, ~~[or]~~ disability,

988 sexual orientation, or gender identity based upon a person's association with another person.

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

990 **57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions --**

991 **Obstruction of division investigation -- Reprisals.**

992 (1) It is a discriminatory housing practice to do any of the following:

993 (a) coerce, intimidate, threaten, or interfere with ~~[any]~~ a person:

994 (i) in the exercise or enjoyment of ~~[any]~~ a right granted or protected under this chapter;

995 (ii) because that person exercised ~~[any]~~ a right granted or protected under this chapter;

996 or

997 (iii) because that person aided or encouraged any other person in the exercise or

998 enjoyment of ~~[any]~~ a right granted or protected under this chapter;

999 (b) aid, abet, incite, compel, or coerce a person to engage in ~~[any of the practices]~~ a

1000 practice prohibited by this chapter;

1001 (c) attempt to aid, abet, incite, compel, or coerce a person to engage in ~~[any of the~~

1002 ~~practices]~~ a practice prohibited by this chapter;

1003 (d) obstruct or prevent ~~[any]~~ a person from complying with this chapter, or any order

1004 issued under this chapter;

1005 (e) resist, prevent, impede, or interfere with the director or ~~[any]~~ a division ~~[employees~~

1006 ~~or representatives]~~ employee or representative in the performance of duty under this chapter; or

1007 (f) engage in any reprisal against ~~[any]~~ a person because that person:

1008 (i) opposed a practice prohibited under this chapter; or

1009 (ii) filed a complaint, testified, assisted, or participated in any manner in ~~[any]~~ an

1010 investigation, proceeding, or hearing under this chapter.

1011 (2) This section also applies to discriminatory housing practices because of race, color,

1012 religion, sex, national origin, familial status, source of income, ~~[or]~~ disability, sexual

1013 orientation, or gender identity based upon a person's association with another person.

Legislative Review Note

as of 2-28-13 12:53 PM

Office of Legislative Research and General Counsel