

**ANTIDISCRIMINATION AND RELIGIOUS FREEDOM**

**AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsors: Stephen H. Urquhart and J. Stuart Adams**

House Sponsor: Brad L. Dee

---

---

**LONG TITLE**

**General Description:**

This bill modifies the Utah Antidiscrimination Act and the Utah Fair Housing Act to address discrimination and religious freedoms.

**Highlighted Provisions:**

This bill:

- ▶ modifies definition provisions related to employment and housing discrimination, including defining "employer," "gender identity," and "sexual orientation";
- ▶ includes sexual orientation and gender identity as prohibited bases for discrimination in employment;
- ▶ provides that the remedies in the Utah Antidiscrimination Act and the Utah Fair Housing Act preempt local government remedies;
- ▶ provides that protections for employment and housing do not create a special or protected class for other purposes;
- ▶ modifies powers of the Division of Antidiscrimination and Labor;
- ▶ addresses the Utah Antidiscrimination Act's application to:
  - employee dress and grooming standards;
  - sex-specific facilities; and
  - freedom of expressive association and the free exercise of religion;
- ▶ addresses employee free speech in the workplace;
- ▶ prohibits an employer from taking certain actions in response to certain employee speech outside the workplace;

- 30           ▶ modifies exemptions to the Utah Fair Housing Act;
- 31           ▶ includes sexual orientation and gender identity as prohibited bases for
- 32 discrimination in housing;
- 33           ▶ includes nonseverability clauses; and
- 34           ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

36           None

**Other Special Clauses:**

38           This bill provides revisor instructions.

**Utah Code Sections Affected:****AMENDS:**

- 41           **34A-5-102**, as last amended by Laws of Utah 2011, Chapter 413
- 42           **34A-5-104**, as last amended by Laws of Utah 2012, Chapter 369
- 43           **34A-5-106**, as last amended by Laws of Utah 2013, Chapter 278
- 44           **34A-5-107**, as last amended by Laws of Utah 2008, Chapter 382
- 45           **57-21-2**, as last amended by Laws of Utah 2010, Chapter 379
- 46           **57-21-3**, as last amended by Laws of Utah 1993, Chapter 114
- 47           **57-21-5**, as last amended by Laws of Utah 2011, Chapter 366
- 48           **57-21-6**, as last amended by Laws of Utah 1993, Chapter 114
- 49           **57-21-7**, as last amended by Laws of Utah 1993, Chapter 114
- 50           **57-21-12**, as last amended by Laws of Utah 1999, Chapter 160

**ENACTS:**

- 52           **34A-5-102.5**, Utah Code Annotated 1953
- 53           **34A-5-102.7**, Utah Code Annotated 1953
- 54           **34A-5-109**, Utah Code Annotated 1953
- 55           **34A-5-110**, Utah Code Annotated 1953
- 56           **34A-5-111**, Utah Code Annotated 1953
- 57           **34A-5-112**, Utah Code Annotated 1953

58 [57-21-2.5](#), Utah Code Annotated 1953

59 [57-21-2.7](#), Utah Code Annotated 1953

60 **Utah Code Sections Affected by Revisor Instructions:**

61 [34A-5-102.7](#), Utah Code Annotated 1953

62 [57-21-2.7](#), Utah Code Annotated 1953

63

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

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

66 **34A-5-102. Definitions -- Unincorporated entities.**

67 (1) As used in this chapter:

68 (a) "Affiliate" means the same as that term is defined in Section [16-6a-102](#).

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

71 ~~[(b)]~~ (c) "Bona fide occupational qualification" means a characteristic applying to an  
72 employee that:

73 (i) is necessary to the operation; or

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

75 ~~[(c)]~~ (d) "Court" means:

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

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

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

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

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

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

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

(A) the state;

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

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

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

(ii) "Employer" does not include:

(A) a religious organization ~~[or association]~~, a religious corporation sole, a religious association, a religious society, a religious educational institution, or a religious leader, when that individual is acting in the capacity of a religious leader;

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

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

(C) the Boy Scouts of America or its councils, chapters, or subsidiaries.

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

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

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

(k) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.

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

~~[(k)]~~ (m) "Labor organization" means ~~[any]~~ an organization that exists for the purpose

114 in whole or in part of:

115 (i) collective bargaining;

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

117 or

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

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

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

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

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

126 ~~[(n)]~~ (p) "Person" means:

127 (i) one or more individuals, partnerships, associations, corporations, legal  
128 representatives, trusts or trustees, or receivers~~;~~;

129 (ii) the state; and ~~[all political subdivisions and agencies of the state.]~~

130 (iii) a political subdivision of the state.

131 ~~[(o)]~~ (q) "Presiding officer" means the same as that term is defined in Section  
132 [63G-4-103](#).

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

135 (s) "Religious leader" means an individual who is associated with, and is an authorized  
136 representative of, a religious organization or association or a religious corporation sole,  
137 including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual  
138 advisor.

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

or member ~~[has]~~:

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

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

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

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

(i) an individual;

(ii) a corporation; or

(iii) publicly traded.

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

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

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

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

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

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

(A) the unincorporated entity; or

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

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

(i) "active manager";

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

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

Section 2. Section **34A-5-102.5** is enacted to read:

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

(1) Consistent with the requirements of Subsection [34A-5-107](#)(15), this chapter supersedes and preempts any ordinance, regulation, standard, or other legal action by a local government entity, a state entity, or the governing body of a political subdivision that relates to the prohibition of discrimination in employment.

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

Section 3. Section **34A-5-102.7** is enacted to read:

**34A-5-102.7. Nonseverability.**

This bill is the result of the Legislature's balancing of competing interests. Accordingly, if any phrase, clause, sentence, provision, or subsection enacted or amended in this chapter by this bill is held invalid in a final judgment by a court of last resort, the remainder of the enactments and amendments of this bill affecting this chapter shall be thereby rendered without effect and void.

Section 4. Section **34A-5-104** is amended to read:

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

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

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

(2) The division may:

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

201 (b) receive, reject, investigate, and pass upon complaints alleging:

202 (i) discrimination in:

203 (A) employment;

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

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

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

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

208 (A) a person;

209 (B) an employer;

210 (C) an employment agency;

211 (D) a labor organization;

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

214 (F) a joint apprenticeship committee; and

215 (G) a vocational school;

216 (c) investigate and study the existence, character, causes, and extent of discrimination  
217 in employment, apprenticeship programs, on-the-job training programs, and vocational schools  
218 in this state by:

219 (i) employers;

220 (ii) employment agencies;

221 (iii) labor organizations;

222 (iv) joint apprenticeship committees; and

223 (v) vocational schools;

224 (d) formulate plans for the elimination of discrimination by educational or other  
225 means;

- 226 (e) hold hearings upon complaint made against:  
227 (i) a person;  
228 (ii) an employer;  
229 (iii) an employment agency;  
230 (iv) a labor organization;  
231 (v) ~~[the employees or members]~~ an employee or member of an employment agency or  
232 labor organization;  
233 (vi) a joint apprenticeship committee; or  
234 (vii) a vocational school;
- 235 (f) issue publications and reports of investigations and research that:  
236 (i) promote good will among the various racial, religious, and ethnic groups of the  
237 state; and  
238 (ii) minimize or eliminate discrimination in employment because of race, color, sex,  
239 religion, national origin, age, ~~[or]~~ disability, sexual orientation, or gender identity;
- 240 (g) prepare and transmit to the governor, at least once each year, reports describing:  
241 (i) ~~[its]~~ the division's proceedings, investigations, and hearings;  
242 (ii) the outcome of those hearings;  
243 (iii) decisions the division ~~[has rendered]~~ renders; and  
244 (iv) the other work performed by the division;
- 245 (h) recommend policies to the governor, and submit recommendation to employers,  
246 employment agencies, and labor organizations to implement those policies;  
247 (i) recommend ~~[any]~~ legislation to the governor that the division considers necessary  
248 concerning discrimination because of:  
249 (i) race<sup>[;]</sup>;  
250 (ii) sex<sup>[;]</sup>;  
251 (iii) color<sup>[;]</sup>;  
252 (iv) national origin<sup>[;]</sup>;  
253 (v) religion<sup>[;]</sup>;

(vi) age~~[, or]~~;

(vii) disability ~~[to the governor that it considers necessary, and];~~

(viii) sexual orientation; or

(ix) gender identity; and

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

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

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

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

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

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

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

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

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

Section 5. 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 ~~[any]~~ an action described in Subsections (1)(a) through (f).

(a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate [any] a person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against [any] 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; [or]
- (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 the payment of differing wages or salaries to employees having substantially equal experience, responsibilities, and skill for the particular job.

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

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

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

(b) An employment agency may not:

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

(A) race;

(B) color;

(C) sex;

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

(E) religion;

(F) national origin;

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

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

(I) sexual orientation; or

(J) gender identity; or

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

(A) race;

(B) color;

(C) sex;

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

(E) religion;

(F) national origin;

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

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

(I) sexual orientation; or

(J) gender identity.

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

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

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

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

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

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

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

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

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

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

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

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

(H) sexual orientation; or

(I) gender identity.

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

(A) print, ~~[or]~~ circulate, or cause to be printed or circulated~~[-any]~~ a statement,

advertisement, or publication~~[-]~~;

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

(C) make any inquiry in connection with prospective employment or membership ~~[that expresses, either directly or indirectly: (i) any]~~.

(ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or inquiry that directly expresses a limitation, specification, or discrimination as to:

(A) race;

(B) color;

(C) religion;

(D) sex;

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

(F) national origin;

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

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

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

(I) sexual orientation; or

(J) gender identity.

(e) A person, whether or not an employer, an employment agency, a labor organization, or ~~[the employees or members]~~ an employee or member of an employer, employment agency, or labor organization, may not:

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

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

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

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

school[;] providing, coordinating, or controlling an apprenticeship [~~programs,~~] program or providing, coordinating, or controlling an on-the-job-training [~~programs~~] program, instruction, training, or retraining [~~programs~~] program may not:

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

(I) race;

(II) color;

(III) sex;

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

(V) religion;

(VI) national origin;

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

(VIII) disability;

(IX) sexual orientation; or

(X) gender identity;

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

(I) race;

(II) color;

(III) sex;

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

(V) religion;

(VI) national origin;

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

(VIII) disability;

(IX) sexual orientation; or

(X) gender identity;

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

(I) race;

(II) color;

(III) sex;

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

(V) religion;

(VI) national origin;

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

(VIII) disability; [~~or~~]

(IX) sexual orientation; or

(X) gender identity; or

[~~(C)~~] (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or published, [~~any~~] a notice or advertisement relating to employment by the employer, or membership in or [~~any~~] a classification or referral for employment by a labor organization, or relating to [~~any~~] a classification or referral for employment by an employment agency, indicating [~~any~~] a preference, limitation, specification, or discrimination based on:

(I) race;

(II) color;

(III) sex;

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

(V) religion;

(VI) national origin;

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

(VIII) disability[~~;~~];

(IX) sexual orientation; or

(X) gender identity.

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

occupational qualification for employment, a notice or advertisement described in Subsection (1)(f)(i)~~[(C)]~~[(D)] may indicate a preference, limitation, specification, or discrimination based on:

- (A) race;
- (B) color;
- (C) religion;
- (D) sex;
- (E) pregnancy, childbirth, or pregnancy-related conditions;
- (F) age;
- (G) national origin; ~~[or]~~
- (H) disability~~[-]~~;
- (I) sexual orientation; or
- (J) gender identity.

(2) ~~[Nothing contained in]~~ Subsections (1)(a) through (1)(f) ~~[shall]~~ may not be construed to prevent:

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

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

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

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

(i) for an employer to hire and employ ~~[employees]~~ an employee, for an employment agency to classify or refer for employment ~~[any]~~ an individual, for a labor organization to classify its membership or to classify or refer for employment ~~[any]~~ an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship or other training or retraining ~~[programs]~~ program to admit or employ ~~[any]~~ an

individual in ~~[any such]~~ the program~~;~~ on the basis of religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, ~~[or]~~ disability, sexual orientation, or gender identity in those certain instances ~~[where]~~ when religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin, ~~[or]~~ disability, sexual orientation, or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

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

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

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

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

(A) the employer's:

(I) spouse;

(II) child; or

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

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

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

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

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

individual is a native American Indian living on or near an Indian reservation.

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

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

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

(a) under Subsection (6); and

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

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

(a) that employee is entitled to an immediate nonforfeitable annual retirement benefit

from the employee's employer's pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans; and

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

Section 6. Section **34A-5-107** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

(A) direct the respondent to cease any discriminatory or prohibited employment

590 practice; and

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

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

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

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

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

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

605 (ii) the respondent may amend its answer.

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

607 (i) during or after a hearing; and

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

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

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

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

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

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

(i) reinstatement;

(ii) back pay and benefits;

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

(iv) costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) race;

(b) color;

(c) sex;

(d) retaliation;

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

(f) age;

(g) religion;

(h) national origin; [or]

(i) disability[?];

(j) sexual orientation; or

(k) gender identity.

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

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

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

Section 7. Section **34A-5-109** is enacted to read:

**34A-5-109. Application to employee dress and grooming standards.**

This chapter may not be interpreted to prohibit an employer from adopting reasonable dress and grooming standards not prohibited by other provisions of federal or state law, provided that the employer's dress and grooming standards afford reasonable accommodations based on gender identity to all employees.

Section 8. Section **34A-5-110** is enacted to read:

**34A-5-110. Application to sex-specific facilities.**

This chapter may not be interpreted to prohibit an employer from adopting reasonable rules and policies that designate sex-specific facilities, including restrooms, shower facilities, and dressing facilities, provided that the employer's rules and policies adopted under this section afford reasonable accommodations based on gender identity to all employees.

Section 9. Section **34A-5-111** is enacted to read:

**34A-5-111. Application to the freedom of expressive association and the free exercise of religion.**

This chapter may not be interpreted to infringe upon the freedom of expressive association or the free exercise of religion protected by the First Amendment of the United States Constitution and Article I, Sections 1, 4, and 15 of the Utah Constitution.

Section 10. Section **34A-5-112** is enacted to read:

**34A-5-112. Religious liberty protections -- Expressing beliefs and commitments in workplace -- Prohibition on employment actions against certain employee speech.**

(1) An employee may express the employee's religious or moral beliefs and commitments in the workplace in a reasonable, non-disruptive, and non-harassing way on equal terms with similar types of expression of beliefs or commitments allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business-related interests of the employer.

(2) An employer may not discharge, demote, terminate, or refuse to hire any person, or retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and

conditions of employment against any person otherwise qualified, for lawful expression or expressive activity outside of the workplace regarding the person's religious, political, or personal convictions, including convictions about marriage, family, or sexuality, unless the expression or expressive activity is in direct conflict with the essential business-related interests of the employer.

Section 11. Section **57-21-2** is amended to read:

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

As used in this chapter:

(1) "Affiliate" means the same as that term is defined in Section [16-6a-102](#).

~~(1)~~ (2) "Aggrieved person" includes ~~any~~ a person who:

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

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

~~(2)~~ (3) "Commission" means the Labor Commission.

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

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

~~(5)~~ (6) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

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

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

(a) ~~buildings~~ a building consisting of four or more dwelling units if the ~~buildings have~~ building has one or more elevators; and

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

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

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

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

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

~~[(11)]~~ (12) "Discriminatory housing practice" means an act that is unlawful under this chapter.

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

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

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

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

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

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

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

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

(i) is pregnant;

(ii) is in the process of securing legal custody of any individual who has not attained

the age of 18 years; or

(iii) is a single individual.

(16) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.

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

~~[(16)]~~ (18) "Person" includes one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under the United States Bankruptcy Code, receivers, and fiduciaries.

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

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

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

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

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

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

Section 12. Section 57-21-2.5 is enacted to read:

**57-21-2.5. Supremacy over local regulations -- No special class created for other**

purposes.

(1) This chapter supersedes and preempts any ordinance, regulation, standard, or other legal action by a local government entity, a state entity, or the governing body of a political subdivision that relates to the prohibition of discrimination in housing.

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

Section 13. Section **57-21-2.7** is enacted to read:

**57-21-2.7. Nonseverability.**

This bill is the result of the Legislature's balancing of competing interests. Accordingly, if any phrase, clause, sentence, provision, or subsection enacted or amended in this chapter by this bill is held invalid in a final judgment by a court of last resort, the remainder of the enactments and amendments of this bill affecting this chapter shall be thereby rendered without effect and void.

Section 14. Section **57-21-3** is amended to read:

**57-21-3. Exemptions -- Sale by private individuals -- Nonprofit organizations -- Noncommercial transactions.**

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

(a) the owner is not a partnership, association, corporation, or other business entity;

(b) the owner does not own ~~[any]~~ an interest in four or more single-family dwelling units held for sale or lease at the same time;

(c) during a 24-month period, the owner does not sell two or more single-family dwelling units in which the owner was not residing or was not the most recent resident at the time of sale;

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

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

(2) This chapter does not apply to a dwelling or a temporary or permanent residence facility ~~[operated by a nonprofit or charitable organization, including any dormitory operated by a public or private educational institution,]~~ if:

(a) the discrimination is by sex, sexual orientation, gender identity, or familial status for reasons of personal modesty or privacy, or in the furtherance of a religious institution's free exercise of religious rights under the First Amendment of the United States Constitution~~[-]~~ or the Utah Constitution; and

(b) the dwelling or the temporary or permanent residence facility is:

(i) operated by a nonprofit or charitable organization;

(ii) owned by, operated by, or under contract with a religious organization, a religious association, a religious educational institution, or a religious society;

(iii) owned by, operated by, or under contract with an affiliate of an entity described in Subsection (2)(b)(ii); or

(iv) owned by or operated by a person under contract with an entity described in Subsection (2)(b)(ii).

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

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

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

~~[(4) This chapter does not prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from]~~

(4) (a) (i) Unless membership in a religion is restricted by race, color, sex, or national origin, this chapter does not prohibit an entity described in Subsection (4)(a)(ii) from:

(A) limiting the sale, rental, or occupancy of ~~[dwellings it]~~ a dwelling or temporary or permanent residence facility the entity owns or operates for primarily noncommercial purposes to persons of the same religion~~[-]~~; or ~~[from giving preference to such persons, unless~~

membership in the religion is restricted by race, color, sex, or national origin.]

(B) giving preference to persons of the same religion when selling, renting, or selecting occupants for a dwelling, or a temporary or permanent residence facility, the entity owns or operates for primarily noncommercial purposes.

(ii) The following entities are entitled to the exemptions described in Subsection (4)(a)(i):

(A) a religious organization, association, or society; or

(B) a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society.

(b) (i) This chapter does not prohibit an entity described in Subsection (4)(b)(ii) from:

(A) limiting the sale, rental, or occupancy of a dwelling, or a temporary or permanent residence facility, the entity owns or operates to persons of a particular religion, sex, sexual orientation, or gender identity; or

(B) giving preference to persons of a particular religion, sex, sexual orientation, or gender identity when selling, renting, or selecting occupants for a dwelling, or a temporary or permanent residence facility, the entity owns or operates.

(ii) The following entities are entitled to the exemptions described in Subsection (4)(b)(i):

(A) an entity described in Subsection (4)(a)(ii); and

(B) a person who owns a dwelling, or a temporary or permanent residence facility, that is under contract with an entity described in Subsection (4)(a)(ii).

(5) [This] (a) If the conditions of Subsection (5)(b) are met, this chapter does not prohibit a private club not open to the public, including [fraternities and sororities] a fraternity or sorority associated with [institutions] an institution of higher education, from:

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

(ii) giving preference to its members[, but only if it].

(b) This Subsection (5) applies only if the private club owns or operates the lodgings as an incident to its primary purpose and not for a commercial purpose.

(6) This chapter does not prohibit distinctions based on inability to fulfill the terms and conditions, including financial obligations, of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement.

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

(a) requiring its single students to live in ~~[housing approved, operated, or owned by the institution]~~ a dwelling, or a temporary or permanent residence facility, that is owned by, operated by, or under contract with the nonprofit educational institution;

(b) segregating ~~[housing that the institution approves, operates, or owns]~~ a dwelling, or a temporary or permanent residence facility, that is owned by, operated by, or under contract with the nonprofit educational institution on the basis of sex or familial status or both:

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

(ii) in the furtherance of a religious institution's free exercise of religious rights under the First Amendment of the United States Constitution or the Utah Constitution; or

(c) otherwise assisting ~~[others]~~ another person in making ~~[sex-segregated housing]~~ a dwelling, or a temporary or permanent residence facility, available to students on a sex-segregated basis as may be permitted by:

(i) regulations implementing the federal Fair Housing Amendments Act of 1988 ~~[and]~~;

(ii) Title IX of the Education Amendments of 1972~~[-]~~; or

(iii) other applicable law.

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

(9) ~~[The provisions pertaining]~~ A provision of this chapter that pertains to familial status ~~[do]~~ does not apply to the existence, development, sale, rental, advertisement, or financing of ~~[any]~~ an apartment complex, condominium, or other housing development designated as housing for older persons, as defined by Title VIII of the Civil Rights Act of 1968, as amended.

Section 15. Section **57-21-5** is amended to read:

**57-21-5. Discriminatory practices enumerated -- Protected persons, classes**

898 enumerated.

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

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

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

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

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

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

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

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

910 (2) It is a discriminatory housing practice to make a representation orally or in writing  
911 or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or  
912 posted any notice, statement, or advertisement, or to use any application form for the sale or  
913 rental of a dwelling, that directly or indirectly expresses any preference, limitation, or  
914 discrimination based on race, color, religion, sex, national origin, familial status, source of  
915 income, [or] disability, sexual orientation, or gender identity, or expresses any intent to make  
916 any such preference, limitation, or discrimination.

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

922 (4) A discriminatory housing practice includes:

923 (a) a refusal to permit, at the expense of the person with a disability, reasonable  
924 modifications of existing premises occupied or to be occupied by the person if the  
925 modifications are necessary to afford that person full enjoyment of the premises, except that in

the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises, when reasonable, to the condition that existed before the modification, reasonable wear and tear excepted;

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

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

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

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

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

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

(C) all premises within ~~[these]~~ the covered multifamily dwellings contain the following features of adaptive design:

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

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

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

(IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver about and use the space.

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

Section 16. Section **57-21-6** is amended to read:

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

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

(b) Residential real estate-related transactions include:

~~[(a)]~~ (i) making or purchasing loans or providing other financial assistance:

~~[(i)]~~ (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling;

or

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

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

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

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

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

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

Section 17. Section **57-21-7** is amended to read:

**57-21-7. Prohibited conduct -- Aiding or abetting in discriminatory actions -- Obstruction of division investigation -- Reprisals.**

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

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

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

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

or

(iii) because that person aided or encouraged any other person in the exercise or enjoyment of ~~[any]~~ a right granted or protected under this chapter;

(b) aid, abet, incite, compel, or coerce a person to engage in ~~[any of the practices]~~ a practice prohibited by this chapter;

(c) attempt to aid, abet, incite, compel, or coerce a person to engage in ~~[any of the practices]~~ a practice prohibited by this chapter;

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

(e) resist, prevent, impede, or interfere with the director or ~~[any division employees or representatives]~~ a division employee or representative in the performance of duty under this chapter; or

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

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

(ii) filed a complaint, testified, assisted, or participated in any manner in ~~[any]~~ an investigation, proceeding, or hearing under this chapter.

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

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

Section 18. Section **57-21-12** is amended to read:

**57-21-12. Other rights of action.**

(1) In addition to the procedure outlined in Subsection **57-21-9**(1), a person aggrieved by a discriminatory housing practice may commence a private civil action in a court of competent jurisdiction within two years after an alleged discriminatory housing practice occurred, within two years after the termination of an alleged discriminatory housing practice, or within two years after a breach of a conciliation agreement. The division shall inform the aggrieved person in writing about this option within 30 days after the aggrieved person files a complaint under Section **57-21-9**.

(2) (a) Except as provided in Subsection (2)(b), the computation of this two-year time period does not include any time during which an administrative proceeding under this chapter was pending with respect to a complaint filed under this chapter.

(b) The tolling of the two-year time period does not apply to actions arising from a breach of a conciliation agreement.

(3) An aggrieved person may commence a private civil action even though a complaint has been filed with the division, in which case the division is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter after:

(a) the beginning of a civil action brought by a complainant or aggrieved person; or

(b) the parties have reached an agreement in settlement of claims arising from the complaint.

(4) An aggrieved person may not file a private civil action under this section if:

(a) the division has obtained a conciliation agreement, except for the purpose of enforcing the terms of the conciliation agreement; or

(b) a formal adjudicative hearing has been commenced under Section **57-21-10** regarding the same complaint.

(5) Upon written application by a person alleging a discriminatory housing practice

prohibited under this chapter in a private civil action, or by a person against whom the violations are alleged, the court may:

(a) appoint an attorney for the applicant; and

(b) authorize the commencement or continuation of a private civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

(6) Upon timely application, the division may intervene in a private civil action brought under this subsection if the division certifies that the case is of general importance.

(7) In a private civil action, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may:

(a) order the respondent to cease any discriminatory housing practice;

(b) award to the plaintiff actual damages, punitive damages, and reasonable ~~[attorneys']~~ attorney fees and costs; and

(c) grant, as the court considers appropriate, any permanent or temporary injunction, temporary restraining order, or other order as may be appropriate, including civil penalties under Section [57-21-11](#).

(8) This chapter does not preclude any private right of action by an aggrieved person based on otherwise applicable law not included in this chapter.

**Section 19. Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, modify the language in Sections [34A-5-102.7](#) and [57-21-2.7](#) from "this bill" to the bill's designated chapter number in the Laws of Utah.

## **Religious Freedom Restoration Acts**

### **Federal RFRA**

#### **(a) In general**

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

#### **(b) Exception**

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

#### **(c) Judicial relief**

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.

## **Indiana RFRA—Original Text**

Sec. 6. A state action, or an action taken by an individual based on state action, may not substantially burden a person's right to the exercise of religion, even if the burden results from a law or policy of general applicability, unless the state or political subdivision of the state demonstrates that applying the burden to the person's exercise of religion is:

- (1) essential to further a compelling governmental interest; and
- (2) the least restrictive means of furthering the compelling governmental interest.

Sec. 7. (a) A person whose exercise of religion: (1) has been substantially burdened; or (2) is likely to be substantially burdened; by a violation of section 6 of this chapter may assert the violation, or impending violation, as a claim or defense in a judicial proceeding, regardless of whether the state or a political subdivision of the state is a party to the judicial proceeding.

## **Indiana RFRA—Amendment**

This chapter does not:

(1) authorize a provider to refuse to offer or provide services, facilities, use of public accommodations, goods, employment, or housing to any member or members of the general public on the basis of race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, gender identity, or United States military service;

(2) establish a defense to a civil action or criminal prosecution for refusal by a provider to offer or provide services, facilities, use of public accommodations, goods, employment, or housing to any member or members of the general public on the basis of race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, gender identity, or United States military service; or

(3) negate any rights available under the Constitution of the State of Indiana.

## **Arkansas RFRA—Original Text**

16-123-405. A state action shall not substantially burden a person's right to exercise of religion, even if the substantial burden results from a rule of general applicability, unless it is demonstrated that applying the substantial burden to the person's exercise of religion in this particular instance:

- (1) Is essential to further a compelling governmental interest; and
- (2) Is the least restrictive means of furthering that compelling governmental interest.

16-123-407. (a) Regardless of whether the state or one of its political subdivisions is a party to the proceeding, a person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, in violation of § 16-123-405, may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding.

## **Arkansas RFRA—Amendment**

(a) A government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except that a government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is:

- (1) In furtherance of a compelling governmental interest; and
- (2) The least restrictive means of furthering that compelling governmental interest.

(b)(1) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.