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S.B. 100

ANTIDISCRIMINATION AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- modifies definition provisions related to employment and housing discrimination, including defining "gender identity" and "sexual orientation";
- modifies powers of division;
- includes sexual orientation and gender identity as prohibited bases for discrimination in employment;
- addresses dress and grooming standards and shared facilities;
- addresses exclusive remedy;
- modifies exemptions to the Utah Fair Housing Act;
- includes sexual orientation and gender identity as prohibited bases for discriminatory housing practices; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

S.B. 100

None

Utah Code Sections Affected:

AMENDS:

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

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

34A-5-106, as last amended by Laws of Utah 2013, Chapter 278

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

57-21-2, as last amended by Laws of Utah 2010, Chapter 379

57-21-3, as last amended by Laws of Utah 1993, Chapter 114

57-21-5, as last amended by Laws of Utah 2011, Chapter 366

57-21-6, as last amended by Laws of Utah 1993, Chapter 114

57-21-7, as last amended by Laws of Utah 1993, Chapter 114

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

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

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

(1) As used in this chapter:

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

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

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

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

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

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

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

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

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

[~~(e)~~] (f) "Disability" means a physical or mental disability as defined and covered by

the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

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

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

[~~(h)~~] (i) (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;

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

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

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

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

[~~(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 in whole or in part of:

(i) collective bargaining;

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

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

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

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

(i) is also employed at that job; or

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

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

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

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

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

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

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

[~~(q)~~] (s) "Retaliate" means the taking of adverse action by an employer, employment agency, labor organization, apprenticeship program, on-the-job training program, or vocational 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.

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

[~~(r)~~] (u) "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)~~] (v) "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-5-104** 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:

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

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

(i) discrimination in:

(A) employment;

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

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

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

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

(A) a person;

(B) an employer;

(C) an employment agency;

(D) a labor organization;

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

(F) a joint apprenticeship committee; and

(G) a vocational school;

(c) investigate and study the existence, character, causes, and extent of discrimination [~~in~~]:

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

(A) employment[~~,~~];

(B) apprenticeship programs[~~,~~];

(C) on-the-job training programs[~~,~~]; and

(D) vocational schools [~~in this state~~]; and

(ii) by:

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

[~~(ii)~~] (B) employment agencies;

[~~(iii)~~] (C) labor organizations;

[~~(iv)~~] (D) joint apprenticeship committees; and

[~~(v)~~] (E) vocational schools;

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

(e) hold [~~hearings upon~~] a hearing on a complaint made against:

(i) a person;

(ii) an employer;

(iii) an employment agency;

(iv) a labor organization;

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

(vi) a joint apprenticeship committee; or

(vii) a vocational school;

(f) issue one or more publications and reports of investigations and research that:

(i) promote good will among the various racial, religious, and ethnic groups of the state; and

(ii) minimize or eliminate discrimination in employment because of race, color, sex, religion, national origin, age, [~~or~~] disability, sexual orientation, or gender identity;

(g) prepare and transmit to the governor, at least once each year, reports describing:

(i) [~~its~~] the division's proceedings, investigations, and hearings;

(ii) the outcome of those hearings;

(iii) decisions the division [~~has rendered~~] renders; and

(iv) the other work performed by the division;

(h) recommend policies to the governor, and submit recommendation to employers, employment agencies, and labor organizations to implement those policies;

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

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

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

(C) color[~~,~~];

(D) national origin[~~,~~];

(E) religion[~~,~~];

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

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

(H) sexual orientation; or

(I) 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 3. 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)~~] (iv) Notwithstanding Subsection (1)(a)(iii)[~~(A)~~]:

[~~(I)~~] (A) 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)~~] (B) 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.

(ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or inquiry that expresses, either directly or indirectly[~~: (i) any~~], a limitation, specification, or discrimination, or the intent to make 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;

[~~(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~~] an 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~~] a 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; or

(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.

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

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

(8) (a) This chapter may not be interpreted to prohibit an employer from requiring an employee, during the employee's hours at work, to use restrooms, shower facilities, or dressing facilities that are consistent with the employee's gender identity.

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

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

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

(c) For the purposes of this Subsection (8), if an employer has reason to believe that an

applicant's or employee's gender identity is not sincerely held, the employer may require the applicant or employee to provide evidence of that gender identity. A person may prove the person's gender identity by providing evidence, including medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or any other evidence that the gender identity is sincerely held or not being asserted for an improper purpose.

Section 4. Section **34A-5-107** is amended to read:

34A-5-107. Procedure for aggrieved person to file claim -- Investigations -- Adjudicative proceedings -- Conciliation -- 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 practice; and

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

(c) A party may file 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 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 in accordance with Subsection (5)(b) becomes the final order of the commission.

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

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

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

(ii) the respondent may amend its answer.

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

(i) during or after a hearing; and

(ii) only with permission of the presiding officer.

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

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

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

(a) cease [~~any~~] a 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 5. Section **57-21-2** is amended to read:

57-21-2. Definitions.

As used in this chapter:

(1) "Affiliate" is as 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 consisting of four or more dwelling units if the buildings have one or more elevators; and

(b) 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~~] applies to 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" means an individual's internal sense of gender, without regard to the individual's designated sex at birth. Evidence of gender identity may include an individual's self-identification, as well as the individual's gender-related appearance, mannerisms, and other gender-related characteristics.

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

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

(a) individuals[~~,~~];

(b) corporations[~~,~~];

(c) limited liability companies[~~,~~];

(d) partnerships[~~,~~];

(e) associations[~~,~~];

(f) labor organizations[~~,~~];

(g) legal representatives[~~,~~];

(h) mutual companies[~~,~~];

(i) joint-stock companies[~~,~~];

(j) trusts[~~,~~];

(k) unincorporated organizations[~~,~~];

(l) trustees[~~,~~];

(m) trustees in cases under the United States Bankruptcy Code[~~,~~];

(n) receivers[~~,~~]; and

(o) 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 6. Section **57-21-3** is amended to read:

57-21-3. Exemptions.

(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 temporary or permanent residence facility, approved, operated, or owned by a nonprofit [~~or~~] organization, a charitable organization, or a person in conjunction with a religious organization, association, society, or its affiliates,

including [~~any dormitory operated~~] a residence facility approved, operated, or owned by a public or private educational institution, if the discrimination is by sex, sexual orientation, gender identity, or familial status:

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

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

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

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

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

(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~~].

(b) This Subsection (5) applies only if [~~it~~] a 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) a lease[~~,~~];

(b) a rental agreement[~~,~~];

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

(d) a mortgage[~~,~~];

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

(f) another 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 nonprofit educational institution;

(b) segregating housing that the nonprofit educational institution approves, operates, or owns 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 of the United States; or

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

(8) This chapter does not prohibit [~~any~~] a 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 7. Section **57-21-5** is amended to read:

57-21-5. Discriminatory practices enumerated.

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

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

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

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

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

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

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

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

(2) It is a discriminatory housing practice:

(a) to:

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

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

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

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

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

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

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

(4) A discriminatory housing practice includes:

(a) a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the 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 if 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 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 8. 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 9. 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~~] a division [~~employees or representatives~~] employee or representative in the performance of duty under this chapter; or

(f) engage in any 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.

Legislative Review Note
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