TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 59
COMMISSION ON HUMAN RIGHTS

67-5901. PURPOSE OF CHAPTER. The general purposes of this chapter are:

(1) To provide for execution within the state of the policies embodied in the federal Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended, and Titles I and III of the Americans with Disabilities Act.

(2) To secure for all individuals within the state freedom from discrimination because of race, color, religion, sex or national origin or disability in connection with employment, public accommodations, and real property transactions, discrimination because of race, color, religion, sex or national origin in connection with education, discrimination because of age in connection with employment, and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the state.

[67-5901, added 1969, ch. 459, sec. 1, p. 1277; am. 1982, ch. 83, sec. 1, p. 151; am. 1988, ch. 225, sec. 1, p. 433; am. 1994, ch. 268, sec. 1, p. 826; am. 2005, ch. 278, sec. 1, p. 870.]

67-5902. DEFINITIONS. In this chapter, unless the context otherwise requires:

(1) "Commission" means the commission on human rights created by this chapter;

(2) "Commissioner" means a member of the commission;

(3) "Discriminatory practice" means a practice designated as discriminatory under the terms of this chapter;

(4) "National origin" includes the national origin of an ancestor;

(5) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, any other legal or commercial entity, the state, or any governmental entity or agency;

(6) "Employer" means a person, wherever situated, who hires five (5) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year whose services are to be partially or wholly performed in the state of Idaho, except for domestic servants hired to work in and about the person's household. The term also means:

(a) A person who as contractor or subcontractor is furnishing material or performing work for the state;

(b) Any agency of or any governmental entity within the state; and

(c) Any agent of such employer.

(7) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person;

(8) "Labor organization" includes:

(a) An organization of any kind, an agency or employee representation committee, group, association, or plan in which employees participate

and which exists for the purpose, in whole or in part, of dealing with employers concerning grievance, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(b) A conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization; or

(c) An agent of a labor organization.

(9) "Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public;

(10) "Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, or university and a business, nursing, professional, secretarial, technical, or vocational school and includes an agent of an educational institution;

(11) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal or any interest therein;

(12) "Real estate transaction" includes the sale, exchange, rental or lease of real property;

(13) "Housing accommodation" includes any improved or unimproved real property, or part thereof, which is used or occupied, or as the home or residence of one (1) or more individuals;

(14) "Real estate broker or salesman" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these;

(15) "Disability" means a physical or mental condition of a person, whether congenital or acquired, which constitutes a substantial limitation to that person and is demonstrable by medically accepted clinical or laboratory diagnostic techniques. A person with a disability is one who (a) has such a disability, or (b) has a record of such a disability, or (c) is regarded as having such a disability;

(16) "Reasonable accommodation" means an adjustment which does not (a) unduly disrupt or interfere with the employer's normal operations, (b) threaten the health or safety of the person with the disability or others, (c) contradict a business necessity of the employer, or (d) impose undue hardship on the employer based on the size of the employer's business, the type of business, the financial resources, and the estimated cost and extent of the adjustment;

(17) "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include (a) the nature and cost of the action needed under this chapter, (b) the overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and

resources, or the impact otherwise of the action upon the operation of the facility, (c) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities, and (d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

[67-5902, added 1969, ch. 459, sec. 2, p. 1277; am. 1976, ch. 342, sec. 1, p. 1140; am. 1982, ch. 83, sec. 2, p. 152; am. 1988, ch. 225, sec. 2, p. 433; am. 1991, ch. 335, sec. 1, p. 868; am. 1994, ch. 268, sec. 2, p. 826; am. 2005, ch. 278, sec. 2, p. 870.]

67-5903. CREATION OF COMMISSION ON HUMAN RIGHTS -- MEMBERS -- APPOINTMENT. There is hereby created in the office of the governor the Idaho commission on human rights to consist of nine (9) members, all of whom shall be appointed by the governor, with the advice and consent of the senate, each for a term of three (3) years. The commission shall be comprised as follows: one (1) member shall be representative of industry; one (1) member shall be representative of labor; and seven (7) members shall be appointed at large. Members shall be appointed to obtain, to the extent possible, broad representation of the diversity of individuals who comprise the population of the state of Idaho.

[67-5903, added 1969, ch. 459, sec. 3, p. 1277; am. 1974, ch. 22, sec. 40, p. 592; am. 1976, ch. 342, sec. 2, p. 1142; am. 2005, ch. 278, sec. 3, p. 872.]

67-5904. ORGANIZATION OF COMMISSION -- COMPENSATION OF MEMBERS. The commission shall annually select a president and vice president. Members shall each be compensated as provided by section 59-509(h), Idaho Code.

[67-5904, added 1969, ch. 459, sec. 4, p. 1277; am. 1974, ch. 22, sec. 41, p. 592; am. S.L. 1975, ch. 176, sec. 1, p. 469; am. 1980, ch. 247, sec. 91, p. 654; am. 1992, ch. 120, sec. 1, p. 398.; am. 2010, ch. 248, sec. 1, p. 636.]

67-5905. ADMINISTRATIVE SUPPORT -- APPOINTMENT OF COMMISSION STAFF -- DUTIES OF ADMINISTRATOR. The director of the department of labor shall provide administrative support to the commission. The director shall appoint an administrator to the commission to serve at the director's pleasure. Any decision by the director regarding the appointment and tenure of the administrator shall be made with the advice and consent of the commission. The administrator shall attend all meetings of the commission, serve as its executive and administrative officer, have charge of its office and records, and, under the general supervision of the commission, be responsible for the administration of this act and the general policies and regulations adopted by the commission. Other subordinate staff necessary to accomplish the commission's mission shall be employees of the department of labor subject to the provisions of chapter 53, title 67, Idaho Code.

[67-5905, added 1969, ch. 459, sec. 5, p. 1277; am. 1974, ch. 22, sec. 42, p. 592; am. 2010, ch. 248, sec. 2, p. 637.]

67-5906. POWERS AND DUTIES OF COMMISSION. The Idaho commission on human rights shall have the following powers and duties:

(1) To investigate complaints of alleged violation of this act and act upon its findings pursuant to the provisions contained in this chapter;

(2) To make bylaws for its own government and procedure not inconsistent with the laws of this state;

(3) To maintain an office in Ada county and other offices within the state as it may deem necessary;

(4) To meet and exercise its powers at any place within the state;

(5) To appear in court and before other administrative bodies;

(6) To cooperate or contract with individuals and state, local and other agencies, both public and private, including agencies of the federal government and of other states;

(7) To accept public grants or private gifts, bequests, or other payments;

(8) To receive and act on complaints;

(9) To furnish technical assistance requested by persons subject to this act to further compliance with the act or an order issued thereunder;

(10) To make studies appropriate to effectuate the purposes and policies of this act and to make the results thereof available to the public;

(11) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this act.

(12) In accordance with chapter 52, title 67, Idaho Code, to adopt, promulgate, amend and rescind rules to effectuate the purposes and policies of this act, including rules requiring the posting or inclusion in advertising material of notices prepared or approved by the commission.

[67-5906, added 1969, ch. 459, sec. 6, p. 1277; am. 1976, ch. 342, sec. 3, p. 1142; am. 1980, ch. 97, sec. 1, p. 214; am. 2001, ch. 183, sec. 36, p. 641.]

67-5907. COMPLAINTS -- PROCEDURE ON COMPLAINT. (1) Any person who believes he or she has been subject to unlawful discrimination, or a member of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination within one (1) year of the alleged unlawful discrimination.

(2) Upon receipt of such a complaint, the commission or its delegated investigator shall endeavor to resolve the matter by informal means prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. The commission or its delegated investigator shall conduct such investigation as may be necessary to resolve the issues raised by the facts set forth in the complaint.

(3) If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding, and shall notify the complainant and the respondent of its action.

(4) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. No offer or counter offer of conciliation nor the terms of any conciliation agreement may be made public without the written consent of all the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil

or criminal. If the case is disposed of by such informal means in a manner satisfactory to the commission, the commission shall dismiss the proceeding, and shall notify the complainant and the respondent.

(5) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination if relief is not immediately granted, or if conciliation efforts under subsection (4) have not succeeded, the commission may file a civil action seeking appropriate legal and equitable relief.

(6) A complainant may request dismissal of an administrative complaint at any time. Dismissals requested before three hundred sixty-five (365) calendar days from the date of filing of the administrative complaint may be granted at the discretion of the administrator who will attempt to contact all parties who have appeared in the proceeding and consider their interests. After three hundred sixty-five (365) calendar days, if the complaint has not been dismissed pursuant to subsection (3) of this section or the parties have not entered into a settlement or conciliation agreement pursuant to subsection (2) or (4) of this section or other administrative dismissal has not occurred, the commission shall, upon request of the complainant, dismiss the complaint and notify the parties.

[67-5907, added 1980, ch. 97, sec. 2, p. 215; am. 1998, ch. 155, sec. 1, p. 530.; am. 2010, ch. 248, sec. 3, p. 637.]

67-5907A. COMPLIANCE WITH THE IDAHO TORT CLAIMS ACT. Compliance with section 67-5907(1), Idaho Code, satisfies the notice requirements of sections 6-905 and 6-906, Idaho Code, as to the allegations of the administrative complaint arising under chapter 59, title 67, Idaho Code.

[67-5907A, added 1998, ch. 155, sec. 2, p. 531.]

67-5908. PROCEDURE IN DISTRICT COURT. (1) Any action filed by the commission shall be heard by the district court unless either party shall move for a jury trial. Except as otherwise provided herein, the court shall hear the case and grant relief as in other civil actions. Any such action shall be brought in the name of the commission for the use of the person alleging discrimination or a described class, and the commission shall furnish counsel for the prosecution thereof. Any person aggrieved by the alleged discrimination may intervene in such an action.

(2) A complaint must be filed with the commission as a condition precedent to litigation. A complainant may file a civil action in district court within ninety (90) days of issuance of the notice of administrative dismissal pursuant to section 67-5907(6), Idaho Code.

(3) In a civil action filed by the commission or filed directly by the person alleging unlawful discrimination, if the court finds that unlawful discrimination has occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:

(a) An order to cease and desist from the unlawful practice specified in the order;

(b) An order to employ, reinstate, promote or grant other employment benefits to a victim of unlawful employment discrimination;

(c) An order for actual damages including lost wages and benefits, provided that such back pay liability shall not accrue from a date more than

two (2) years prior to the filing of the complaint with the commission or the district court, whichever occurs first;

(d) An order to accept or reinstate such a person in a union;

(e) An order for punitive damages, not to exceed one thousand dollars ($1,000) for each willful violation of this chapter.

(4) Any civil action filed by the commission under this section shall commence not more than one (1) year after a complaint of discrimination under oath is filed with the commission.

(5) In any civil action under this chapter, the burden of proof shall be on the person seeking relief.

[67-5908, added 1980, ch. 97, sec. 3, p. 216; am. 1998, ch. 155, sec. 3, p. 532.]

67-5909. ACTS PROHIBITED. It shall be a prohibited act to discriminate against a person because of, or on a basis of, race, color, religion, sex or national origin, in any of the following subsections. It shall be a prohibited act to discriminate against a person because of, or on the basis of, age in subsections (1), (2), (3) and (4) of this section. It shall be a prohibited act to discriminate against a person because of, or on the basis of, disability in subsections (1), (2), (3) and (4) of this section, provided that the prohibition against discrimination because of disability shall not apply if the particular disability, even with a reasonable accommodation, prevents the performance of the work required in that job, and in subsections (6), (8), (9), (10) and (11) of this section. The prohibition to discriminate shall also apply to those individuals without disabilities who are associated with a person with a disability.

(1) For an employer to fail or refuse to hire, to discharge, or to otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment or to reduce the wage of any employee in order to comply with this chapter;

(2) For an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against an individual or to classify or refer an individual for employment;

(3) For a labor organization:

(a) To exclude or to expel from membership, or to otherwise discriminate against, a member or applicant for membership,

(b) To limit, segregate or classify membership, or to fail or refuse to refer for employment an individual in any way,

1. Which would deprive an individual of employment opportunities, or

2. Which would limit employment opportunities or adversely affect the status of an employee or of an applicant for employment, or

(c) To cause or attempt to cause an employer to violate this chapter.

(4) For an employer labor organization or employment agency to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by an employment agency, indicating a preference, limitation, specification or discrimination; but a notice or advertisement may indicate a preference limitation, specification, or discrimination when such is a bona fide occupational qualification for employment;

(5) For a person:

(a) To deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation, or

(b) To print, circulate, post, or mail or otherwise cause to be published a statement, advertisement or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable.

(6) For a person who owns, leases or operates a place of public accommodation:

(a) To deny an individual on the basis of disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation;

(b) To impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered;

(c) To fail to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages or accommodations;

(d) To fail to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden;

(e) To fail to remove architectural barriers and communication barriers that are structural in nature, in existing facilities and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through retrofitting of vehicles), where such removal is readily achievable; or

(f) Where an entity can demonstrate that the removal of a barrier under paragraph (e) of this subsection is not readily achievable, to fail to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

(7) For an educational institution:

(a) To exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, and privileges of the institution, or

(b) To make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or to make or

keep a record, of an applicant for admission, except as permitted by the regulations of the commission,

(c) To print or publish or cause to be printed or published a catalogue or other notice or advertisement indicating a preference, limitation, specification, discrimination of an applicant for admission, or

(d) To announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members.

(8) For an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman:

(a) To refuse to engage in a real estate transaction with a person,

(b) To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith,

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person,

(d) To refuse to negotiate a real estate transaction with a person,

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property,

(f) To print, circulate, post or mail or cause to be so published a statement, advertisement or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto,

(g) To offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith, or

(h) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if the modifications may be necessary to afford such person full enjoyment of the premises. Provided, that in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior, exterior, or both, of the premises, to the condition that existed before the modification, reasonable wear and tear excepted. The provision for restoration shall be included in any lease or rental agreement.

(9) For a person to whom application is made for financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, or a representative of such a person:

(a) To discriminate against the applicant,

(b) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicates directly or indirectly, an intent to make a limitation, specification, or discrimination.

(10) To insert in a written instrument relating to real property a provision which purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof;

(11) For a person for the purpose of inducing a real estate transaction from which he may benefit financially:

(a) To represent that a change has occurred or will or may occur in the composition of the owners or occupants in the block, neighborhood, or area in which the real property is located, or

(b) To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

[67-5909, added 1969, ch. 459, sec. 9, p. 1277; am. 1982, ch. 83, sec. 3, p. 153; am. 1988, ch. 225, sec. 3, p. 435; am. 1994, ch. 268, sec. 3, p. 828; am. 2005, ch. 278, sec. 4, p. 872.]

67-5909A. ACTS PROHIBITED -- PUBLIC EMPLOYMENT -- PUBLIC EDUCATION. (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment or public education.

(2) The provisions of this section shall apply only to action taken after the effective date of this section.

(3) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment or public education.

(4) Nothing in this section shall be interpreted as invalidating any court order or consent decree that is in force as of the effective date of this section.

(5) For the purposes of this section, "state" shall include but not necessarily be limited to the state itself, any city, county, city and county, public university or community college, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(6) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of this chapter; provided, however, that any remedies available for violations of this section regarding public contracts shall be determined as otherwise provided by state law.

(7) Nothing in this section shall be interpreted as prohibiting action that must be taken to establish or maintain eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

(8) If any part or parts of this section are found to be in conflict with the United States Constitution, the section shall be implemented to the maximum extent that the United States Constitution permits. Any provision held invalid shall be severable from the remaining portions of this section.

[67-5909A, added 2020, ch. 331, sec. 1, p. 963.]

67-5909B. COMPULSORY GENDER LANGUAGE PROHIBITED -- PRIVATE CAUSE OF ACTION -- RULEMAKING. (1) As used in this section:

(a) "Government employee" means a person employed by the state of Idaho, or by any county, municipality, public university or community

college, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(b) "Public school" means any publicly funded school teaching kindergarten through grade 12 students that is operated and controlled by any public school district organized under the laws of this state, including specially chartered school districts.

(c) "Sex" means the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.

(d) "Student" means an individual who is enrolled on a full-time or part-time basis at a public school or public institution of higher education.

(2) A government employee, regardless of the scope of such employee's official duties, shall not be subject to adverse employment action for declining to:

(a) Identify such employee's pronouns while acting within the scope of employment; or

(b) Address a person using a name other than the person's legal name or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with the person's sex.

(3) An employee of a public school or public institution of higher education, regardless of the scope of such employee's official duties, shall not:

(a) Knowingly and intentionally address an unemancipated minor student by a name other than the student's legal name or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with the student's sex, without the written permission of the student's parent or guardian; and

(b) Be subject to adverse employment action for declining to address a student using a name other than the student's legal name, or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with a student's sex.

(4) A student of a public school or public institution of higher education shall not be subject to adverse disciplinary action by the school or institution for declining to:

(a) Identify such student's pronouns; or

(b) Address a person using a name other than the person's legal name, or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with the person's sex.

(5) Any person who is harmed by a government employer, public school, or public institution for higher education for violating the provisions of this section shall have a private cause of action for injunctive relief, monetary damages, reasonable attorney's fees and costs, and any other appropriate relief. All civil actions brought pursuant to this section must be initiated within two (2) years from the date that the violation occurs.

(6) The Idaho commission on human rights may adopt rules to administer the provisions of this section.

[67-5909B, added 2024, ch. 314, sec. 2, p. 1044.]

67-5909C. PUBLIC POSTSECONDARY EDUCATION -- DIVERSITY STATEMENTS. (1) Hiring and admissions decisions at any public postsecondary educational in-

stitution in the state of Idaho shall be made on merit. Hiring and admissions decisions shall not be conditioned on a requirement that applicants submit or ascribe to a diversity statement. No public postsecondary educational institution in the state of Idaho shall require or solicit a diversity statement as part of an admissions process, employment application process, hiring process, contract renewal process, or promotion process or as a condition of participation in any administrative or decision-making function of the institution.

(2) "Diversity statement" means any written or oral statement discussing:

(a) The applicant's or candidate's race, sex, color, ethnicity, or sexual orientation;

(b) The applicant's or candidate's views on, experience with, or contributions to diversity, equity, and inclusion; social justice; confessing one's race-based privilege; confessing one's sex-based privilege; partisan politics; or religion;

(c) The applicant's or candidate's views on or experience with the race, sex, color, ethnicity, or sexual orientation of students and coworkers; or

(d) The applicant's or candidate's views regarding any theory that advocates for the differential treatment of any individual or groups of individuals based on race, sex, color, gender, ethnicity, or sexual orientation.

(3) Nothing in this section shall be construed to:

(a) Prevent an institution requiring applicants and candidates:

(i) To disclose or discuss the content of their scholarly research or creative works;

(ii) To certify compliance with state and federal anti-discrimination law; or

(iii) To discuss pedagogical approaches; or experience with students with mental or physical disabilities; or

(b) Prevent an applicant or candidate from providing, of the applicant's or candidate's own initiative, any information described in this section.

[(67-5909C) 67-5909B, added 2024, ch. 112, sec. 1, p. 485; am. and redesig. 2025, ch. 211, sec. 35, p. 1011.]

67-5909D. FREEDOM OF INQUIRY IN HIGHER EDUCATION. (1) For the purpose of this section:

(a) "Bias reporting system" means any office, department, position, or system whose function is to:

(i) Investigate, threaten disciplinary action, or otherwise punish enrolled students for expressions of speech protected by state or federal law, including but not limited to speech pertaining to disagreements of opinion, political beliefs or affiliations, or perceived bias, prejudice, stereotypes, or intolerance; or

(ii) Solicit the reporting of incidents of student speech protected by state or federal law, including but not limited to speech pertaining to disagreements of opinion, political beliefs or affiliations, or perceived bias, prejudice, stereotypes, or intolerance.

(b)(i) "Diversity, equity, and inclusion" or "DEI" means any trainings, programs, activities, or instruction that is derived

from or that promotes the tenets or concepts of critical theory, including but not limited to the concepts of unconscious or implicit bias, microaggressions, internalized racism, cultural appropriation, structural equity, settler colonialism, group marginalization, systemic oppression, social justice, institutional or systemic racism, white fragility, racial privilege, disparate impact, intersectionality, sexual privilege, patriarchy, gender theory, queer theory, neopronouns, transgender ideology, misgendering, othering, deadnaming, heteronormativity, allyship, or any other related formulation of these tenets or concepts. This definition shall also include any program, decision-making process, or initiative established for the purpose of:

1. Influencing hiring or employment practices at the institution of higher education with respect to race, color, ethnicity, sex, disability, or religion, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal anti-discrimination laws;

2. Promoting differential treatment of, or providing special benefit to, individuals on the basis of race, color, ethnicity, sex, disability, or religion; or

3. Promoting policies or procedures designed or implemented to provide preferential treatment with respect to race, color, ethnicity, sex, disability, or religion, other than policies or procedures approved in writing by the institution of higher education's legal counsel and the attorney general of the state of Idaho for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

(ii) This excludes trainings, programs, or activities developed by an attorney or person acting under the supervision of a licensed attorney and approved in writing by the institution of higher education's general counsel and the attorney general of the state of Idaho for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

(c)(i) "Diversity, equity, or inclusion office" means any division, office, center, or other unit of an institution of higher education that is responsible for creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, services, or procedures relating to diversity, equity, and inclusion.

(ii) "Diversity, equity, and inclusion office" shall not include:

1. An office certified by the attorney general of the state of Idaho as operating with the sole and exclusive mission of ensuring legal compliance with the institution of higher education's obligations under title IX of the education amendments of 1972, the federal Americans with disabilities act, the federal age discrimination in employment act, title VI of the federal civil rights act of 1964, an applicable court order, or other applicable state or federal law;

2. An academic department defined as a unit of an institution of higher education that exists primarily for the pur-

pose of offering courses for degree credit and that does not establish policies or procedures to which other units of the institution of higher education are subject; or

3. A student organization that is registered with the institution of higher education.

(d)(i) "Diversity, equity, and inclusion officer" means an individual whose duties for the institution include coordinating, creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, or procedures relating to diversity, equity, and inclusion and who is a full-time or part-time employee of an institution of higher education or subdivision or affiliated entity thereof or an independent contractor of an institution of higher education.

(ii) "Diversity, equity, and inclusion officer" shall not include:

1. Any full-time or part-time employee who is a licensed attorney or acting under the supervision of a licensed attorney and whose sole job duties related to diversity, equity, and inclusion are to ensure compliance with the institution of higher education's obligations under title IX of the education amendments of 1972, the federal Americans with disabilities act, the federal age discrimination in employment act, title VI of the federal civil rights act of 1964, applicable court orders, or other applicable state and federal law;

2. Any faculty member while such faculty member is teaching, engaged in research, engaged in the production of creative works, engaged in the dissemination of research or creative works, or advising a registered student organization; or

3. Guest speakers or performers who do not receive any form of compensation in exchange for their presentation, performance, or appearance.

(e)(i) "Diversity training" means a training, seminar, discussion group, workshop, or other instructional program, whether provided in-person, online, or by any other means, with a purpose of advising, counseling, demonstrating, explaining, instructing, or teaching participants in a way that promotes diversity, equity, and inclusion.

(ii) "Diversity training" shall not include an academic course offered for credit and not otherwise subject to subsection (2)(f) or (g) of this section, counseling that involves a patient-client relationship, or activities of a student organization registered with an institution of higher education as long as the organization and activity do not use state funds.

(iii) "Diversity training" does not limit or prohibit an institution of higher education's authority to establish policies that are necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment.

(f) "DEI-related course" means a course of instruction taken for credit whose subject matter or pedagogical methodology is derived from or promotes any of the concepts of critical theory or DEI described in this section.

(g) "Institution of higher education" means the following entities that are accredited by the northwest commission on colleges and universities or another accrediting body recognized by the state board of education:

(i) Any public institution of higher education or subdivision or affiliated entity thereof that receives funding appropriated by the Idaho legislature; or

(ii) Any subdivision or affiliated entity of a private university, college, or community college in Idaho that receives funding appropriated by the Idaho legislature directly to the private institution.

(h) "Public institution of higher education" means any public university, public college, public career technical school, or public community college located in the state of Idaho.

(2) Except as otherwise provided in this section, no institution of higher education in the state of Idaho, or any employee, appointee, or committee acting on behalf of an institution of higher education, shall:

(a) Discriminate against or provide preferential treatment to a prospective student on account of such prospective student's race, sex, color, ethnicity, or national origin during the admissions process to determine such prospective student's acceptance into the institution or a program of study;

(b) Discriminate against or provide preferential treatment to a prospective employee on account of such prospective employee's race, sex, color, ethnicity, or national origin during the hiring process;

(c) Establish, sustain, support, or staff a diversity, equity, and inclusion office or department; or contract, employ, engage, or hire an individual to serve as a diversity, equity, and inclusion officer or consultant. Any funds that would otherwise have been expended on diversity, equity, and inclusion offices or diversity, equity, and inclusion officers in fiscal year 2026 may be reallocated, at the discretion of the governing board of the institution of higher education, to merit scholarships designed to reduce tuition for in-state students;

(d) Either directly or indirectly, organize, administer, conduct, promote, or sponsor diversity training;

(e) Establish, sustain, support, or staff any bias reporting system;

(f) Establish curricula or designate courses at the institution in a manner that requires or otherwise compels a student to enroll in a DEI-related course in order to satisfy the requirements of any academic degree program, including general education, major, minor, or certificate requirements, except as provided in subsection (3) of this section; or

(g) Require, solicit, or incentivize faculty to apply or participate in DEI practices or include DEI-related content in any course as a condition of approval, designation, or listing as part of any academic degree program, including general education, major, minor, or certificate requirements, or as a condition of consideration in any faculty member's performance assessment, promotion, tenure, salary adjustment, or any other incentive, except as provided in subsection (3) of this section.

(3) Every institution of higher education in the state of Idaho shall provide a procedure to allow the governing board of the institution of higher education to exempt, upon written request to the board, any academic degree program requirements of any major, minor, certificate, or department the ti-

tle of which clearly establishes its course of study as primarily focused on racial, ethnic, or gender studies from the prohibitions of subsection (2)(f) and (g) of this section, provided that a student may not be required or otherwise compelled to enroll in any such program, department, or course in order to satisfy the requirements of any other academic degree program, including general education requirements, or any other major, minor, or certificate requirements.

(4)(a) Every public institution of higher education shall, on or before January 15 of each year, submit an annual report to the attorney general and the education committees of both the house of representatives and the senate signed by the president of the institution of higher education certifying that the institution is in compliance with this section.

(b) In 2026, this report shall include a list of:

(i) All offices, programs, and initiatives that have existed within the institution within the preceding two (2) years that would have constituted a violation of the provisions of subsection (2) of this section if this section was in effect at such time, along with the actions taken by the institution to ensure compliance with the provisions of this section;

(ii) Officers, employees, and contractors that have been employed by or contracted with the institution within the preceding two (2) years whose employment would have constituted a violation of this section if this section was in effect at such time, along with the actions taken by the institution to ensure compliance with the provisions of this section; and

(iii) Trainings, activities, or courses of instruction required by the institution within the preceding two (2) years that would have constituted a violation of this section if this section was in effect at such time, along with the actions taken by the institution to ensure compliance with the provisions of this section.

(5) The provisions of this section shall be enforced by the attorney general as follows:

(a) Any person may notify the attorney general of a violation or potential violation of this section by an institution of higher education. The attorney general shall investigate the alleged violation and, if the attorney general determines that an institution of higher education has violated any provision of this section, the attorney general shall send written notice to the institution of higher education with a detailed description of the violation. The attorney general may file suit for a writ of mandamus or any appropriate injunctive relief compelling the institution of higher education to comply with the provisions of this section; and

(b) The attorney general may seek civil penalties for any violations of this section up to ten percent (10%) of the amount of the institution of higher education's operating expenses for the offending division, office, center, or unit within the institution of higher education where the violation occurred for the state fiscal year preceding that in which the violation occurred or fifty thousand dollars ($50,000), whichever is greater.

(6)(a) Any student enrolled in a degree program at an institution of higher education shall have a private cause of action against such an institution of higher education that violates the provisions of subsec-

tion (2)(a), (c), (d), (e), or (f) of this section to seek injunctive relief.
(b) Any staff member of an institution of higher education shall have a private cause of action against such an institution of higher education that violates the provisions of subsection (2)(b), (c), (d), (e), or (g) of this section to seek injunctive relief.
(c) Notwithstanding any other provision of law to the contrary, a civil action brought under this subsection shall be brought in the county where a defendant institution of higher education is located and in which all or a substantial part of the actions or omissions giving rise to the claim occurred.
(7) The provisions of this section shall not be construed to:
(a) Limit research by students, faculty, or other research personnel of an institution of higher education or the dissemination of such research;
(b) Limit creative works by students, faculty, or other personnel of an institution of higher education or the dissemination of such creative works;
(c) Limit activities of student organizations registered with an institution of higher education as long as the organization and activity do not use state funds;
(d) Limit the appearance of guest speakers and performers who do not receive any form of compensation in exchange for their presentations, performances, or appearances as long as attendance is voluntary;
(e) Prohibit an institution of higher education from establishing bona fide qualifications based on sex that are reasonably necessary to the normal operation of an institution of higher education;
(f) Limit the academic freedom of any individual faculty member of an institution of higher education to direct the instruction within such faculty member's own course not otherwise subject to this section or to limit the free discussion of ideas in a classroom setting;
(g) Prohibit any program or training that is generated by licensed attorneys and required for the institution of higher education to comply with its obligation under title IX of the education amendments of 1972, the federal Americans with disabilities act, the federal age discrimination in employment act, title VI of the federal civil rights act of 1964, any applicable court order, or other applicable state and federal law, provided that the institution of higher education makes any materials associated with such program or training publicly available on its website;
(h) Prohibit an institution of higher eduction from regulating student speech or activity that is prohibited by law or from investigating or soliciting information about potentially illegal speech, speech associated with potentially illegal activity, or incidents in which speech rights were potentially curtailed. Except as further limited by this section, institutions shall be allowed to restrict student expression not otherwise protected by section 9, article I of the constitution of the state of Idaho; or
(i) Prohibit an institution of higher education from supporting citizens of federally recognized American Indian tribes by:
(i) Establishing and maintaining designated centers for American Indian students;
(ii) Supporting American Indian cultural events; or

(iii) Offering or facilitating scholarships for American Indian students.

[67-5909D, added 2025, ch. 317, sec. 2, p. 1322.]

67-5910. LIMITATIONS. (1) This chapter does not apply to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, or society of its religious activities.

(2) It is not a discriminatory practice:

(a) For an employer to employ an employee, or an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship or other training or retraining program, on the basis of his religion, sex, national origin, or age if religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise, or

(b) For an employer, employment agency, or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit involuntary retirement of any individual specified in subsection (9) of this section because of the age of such individual; however, the prohibition against age discrimination contained in this chapter shall not be construed to prohibit compulsory retirement if such retirement is permitted under the terms of 29 U.S.C., section 631(c)(1) and (2), or

(c) For a religious educational institution or an educational organization to limit employment or give preference to members of the same religion, or

(d) For an employer, employment agency, or labor organization to discriminate against a person with a disability which, under the circumstances, poses a direct threat to the health or safety of the person with a disability or others. The burden of proving this defense is upon the employer, labor organization, or employment agency.

(3) Nothing in this chapter shall require a person who owns, leases or operates a place of public accommodation, to permit an individual with a disability to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such place of public accommodation, where such individual poses a direct threat to the health or safety of others. The burden of proving this defense is upon the person who owns, leases or operates a place of public accommodation.

(4) This chapter does not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages or accommodations of the establishment are made available to the customers or patrons of another establishment that is a place of public accommodation.

(5) The provisions of section 67-5909(6), Idaho Code, do not apply to:

(a) Any agency of or any governmental entity within the state; or

(b) Religious organizations or entities controlled by religious organizations, including places of worship.

(6) Notwithstanding any other provisions of this chapter, it is not a discriminatory practice for:

(a) A religious educational institution or an educational institution operated, supervised, or controlled by a religious institution or organization to limit admission or give preference to applicants of the same religion, or

(b) An educational institution to accept and administer an inter vivos or testamentary gift upon the terms and conditions prescribed by the donor.

(7) The provisions of section 67-5909(8), Idaho Code, do not apply:

(a) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two (2) families living independently of each other, if the lessor or a member of his family resides in one (1) of the housing accommodations, or

(b) To the rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides therein.

(8) It is not a discriminatory practice for a religious institution or organization or a charitable or educational organization operated, supervised or controlled by a religious institution or organization to give preference to members of the same religion in a real property transaction.

(9) The prohibitions against discrimination based on age contained in this chapter shall be limited to individuals who are at least forty (40) years of age.

[67-5910, added 1969, ch. 459, sec. 10, p. 1277; am. 1982, ch. 83, sec. 4, p. 155; am. 1988, ch.28, sec. 1, p. 35; am. 1988, ch. 225, sec. 4, p. 437; am. 1994, ch. 268, sec. 4, p. 830; am. 2005, ch. 278, sec. 5, p. 875.]

67-5911. REPRISALS FOR OPPOSING UNLAWFUL PRACTICES. It shall be unlawful for a person or any business entity subject to regulation by this chapter to discriminate against any individual because he or she has opposed any practice made unlawful by this chapter or because such individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

[67-5911, added 1982, ch. 83, sec. 5, p. 156; am. 2005, ch. 278, sec. 6, p. 877.]

67-5912. PERSONS IMMUNE FROM CIVIL PERSONAL LIABILITY FOR ACTS PERFORMED IN CONNECTION WITH CARRYING OUT PROVISIONS OF THIS ACT. The members of the commission, the attorney general and any personnel they employ or state employees they utilize shall be immune from civil personal liability for any act performed or omitted in the course of carrying out the provisions of this act.

[67-5912, added 1969, ch. 459, sec. 12, p. 1277; am. 1976, ch. 342, sec. 5, p. 1144.]

CHAPTER 60
IDAHO WOMEN'S COMMISSION