

1 **LABOR COMPLIANCE PROTECTION AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mark A. Wheatley**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends a provision related to discriminatory and prohibited employment
10 practices.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ prohibits an employer from:
- 14 • prohibiting an employee from discussing or disclosing the employee's wage or
 - 15 salary;
 - 16 • requiring an employee to sign a waiver or agreement prohibiting the employee
 - 17 from discussing the employee's wage or salary; or
 - 18 • retaliating against an employee for discussing or disclosing the employee's
 - 19 wages, or, in certain conditions, for discussing or disclosing another employee's
 - 20 wages.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **34A-5-106**, as last amended by Laws of Utah 2015, Chapter 13



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

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

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

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

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

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

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

- (A) education;
- (B) training;
- (C) ability, with or without reasonable accommodation;
- (D) moral character;
- (E) integrity;
- (F) disposition to work;
- (G) adherence to reasonable rules and regulations; and
- (H) other job related qualifications required by an employer.

(iii) (A) As used in this chapter, "to discriminate in matters of compensation" means

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

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

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

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

68 (b) An employment agency may not:

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

72 (A) race;

73 (B) color;

74 (C) sex;

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

76 (E) religion;

77 (F) national origin;

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

79 (H) disability;

80 (I) sexual orientation; or

81 (J) gender identity; or

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

85 (A) race;

86 (B) color;

87 (C) sex;

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

89 (E) religion;

90 (F) national origin;

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

92 (H) disability;

93 (I) sexual orientation; or

94 (J) gender identity.

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

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

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

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

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

103 (A) race;

104 (B) sex;

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

106 (D) religion;

107 (E) national origin;

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

109 (G) disability;

110 (H) sexual orientation; or

111 (I) gender identity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

209 (g) A person that is an employer, employment agency, labor organization,
210 apprenticeship program, on-the-job training program, or vocational school of an individual who
211 is an employee, applicant, or member of the person may not:

- 212 (i) prohibit the individual from disclosing or discussing the individual's wage or salary;
- 213 (ii) require the individual to sign a waiver or agreement that prohibits the individual

214 from discussing the individual's wage or salary; or

215 (iii) retaliate against the individual for:

216 (A) disclosing or discussing the individual's wage or salary; or

217 (B) discussing or disclosing another employee's, applicant's, or member's wage or

218 salary, if the discussion or disclosure is voluntary for the employee, applicant, or member.

219 (2) Subsections (1)(a) through (1)(~~f~~)(g) may not be construed to prevent:

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

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

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

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

227 (i) for an employer to hire and employ an employee, for an employment agency to
228 classify or refer for employment an individual, for a labor organization to classify its
229 membership or to classify or refer for employment an individual, or for an employer, labor
230 organization, or joint labor-management committee controlling an apprenticeship or other
231 training or retraining program to admit or employ an individual in the program on the basis of
232 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin,
233 disability, sexual orientation, or gender identity in those certain instances when religion, sex,
234 pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age
235 or older, national origin, disability, sexual orientation, or gender identity is a bona fide
236 occupational qualification reasonably necessary to the normal operation of that particular
237 business or enterprise;

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

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

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

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

246 (A) the employer's:

247 (I) spouse;

248 (II) child; or

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

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

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

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

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

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

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

276 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this
277 chapter, except that an employee benefit plan may not excuse the failure to hire an individual.

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

281 (a) under Subsection (6); and

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

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel