

ATTORNEY GENERAL AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill amends provisions related to the retirement of an attorney general.

Highlighted Provisions:

This bill:

- ▶ repeals a provision that requires an attorney in career service status to retire at the age of 70; and
- ▶ makes conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-5-106, as last amended by Laws of Utah 2003, Chapter 65

67-5-8, as last amended by Laws of Utah 2011, Chapters 138 and 439

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 any action described in Subsections (1)(a) through (f).

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

- 34 (A) race;
- 35 (B) color;
- 36 (C) sex;
- 37 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 38 (E) age, if the individual is 40 years of age or older;
- 39 (F) religion;
- 40 (G) national origin; or
- 41 (H) disability.

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

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

52 (iii) (A) As used in this chapter, "to discriminate in matters of compensation" means
53 the payment of differing wages or salaries to employees having substantially equal experience,
54 responsibilities, and skill for the particular job.

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

56 (I) nothing in this chapter prevents increases in pay as a result of longevity with the
57 employer, if the salary increases are uniformly applied and available to all employees on a

58 substantially proportional basis; and

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

62 (b) An employment agency may not:

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

66 (A) race;

67 (B) color;

68 (C) sex;

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

70 (E) religion;

71 (F) national origin;

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

73 (H) disability; or

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

77 (A) race;

78 (B) color;

79 (C) sex;

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

81 (E) religion;

82 (F) national origin;

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

84 (H) disability.

85 (c) A labor organization may not exclude any individual otherwise qualified from full

86 membership rights in the labor organization, expel the individual from membership in the labor
87 organization, or otherwise discriminate against or harass any of the labor organization's
88 members in full employment of work opportunity, or representation, because of:

- 89 (i) race;
- 90 (ii) sex;
- 91 (iii) pregnancy, childbirth, or pregnancy-related conditions;
- 92 (iv) religion;
- 93 (v) national origin;
- 94 (vi) age, if the individual is 40 years of age or older; or
- 95 (vii) disability.

96 (d) Unless based upon a bona fide occupational qualification, or required by and given
97 to an agency of government for security reasons, an employer, employment agency, or labor
98 organization may not print, or circulate, or cause to be printed or circulated, any statement,
99 advertisement, or publication, use any form of application for employment or membership, or
100 make any inquiry in connection with prospective employment or membership that expresses,
101 either directly or indirectly:

- 102 (i) any limitation, specification, or discrimination as to:
 - 103 (A) race;
 - 104 (B) color;
 - 105 (C) religion;
 - 106 (D) sex;
 - 107 (E) pregnancy, childbirth, or pregnancy-related conditions;
 - 108 (F) national origin;
 - 109 (G) age, if the individual is 40 years of age or older; or
 - 110 (H) disability;

111 (ii) the intent to make any limitation, specification, or discrimination described in
112 Subsection (1)(d)(i).

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

114 or the employees or members of an employer, employment agency, or labor organization, may
115 not:

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

118 (ii) obstruct or prevent any person from complying with this chapter, or any order
119 issued under this chapter; or

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

121 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational
122 school, providing, coordinating, or controlling apprenticeship programs, or providing,
123 coordinating, or controlling on-the-job-training programs, instruction, training, or retraining
124 programs may not:

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

128 (I) race;

129 (II) color;

130 (III) sex;

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

132 (V) religion;

133 (VI) national origin;

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

135 (VIII) disability;

136 (B) discriminate against or harass any qualified person in that person's pursuit of
137 programs described in Subsection (1)(f)(i)(A), or to discriminate against such a person in the
138 terms, conditions, or privileges of programs described in Subsection (1)(f)(i)(A), because of:

139 (I) race;

140 (II) color;

141 (III) sex;

142 (IV) pregnancy, childbirth, or pregnancy-related conditions;
143 (V) religion;
144 (VI) national origin;
145 (VII) age, if the individual is 40 years of age or older; or
146 (VIII) disability; or
147 (C) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or
148 published, any notice or advertisement relating to employment by the employer, or membership
149 in or any classification or referral for employment by a labor organization, or relating to any
150 classification or referral for employment by an employment agency, indicating any preference,
151 limitation, specification, or discrimination based on:
152 (I) race;
153 (II) color;
154 (III) sex;
155 (IV) pregnancy, childbirth, or pregnancy-related conditions;
156 (V) religion;
157 (VI) national origin;
158 (VII) age, if the individual is 40 years of age or older; or
159 (VIII) disability.
160 (ii) Notwithstanding Subsection (1)(f)(i)(C), if the following is a bona fide
161 occupational qualification for employment, a notice or advertisement described in Subsection
162 (1)(f)(i)(C) may indicate a preference, limitation, specification, or discrimination based on:
163 (A) race;
164 (B) color;
165 (C) religion;
166 (D) sex;
167 (E) pregnancy, childbirth, or pregnancy-related conditions;
168 (F) age;
169 (G) national origin; or

170 (H) disability.

171 (2) Nothing contained in Subsections (1)(a) through (1)(f) shall be construed to
172 prevent:

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

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

177 (c) a restriction on the activities of individuals licensed by the liquor authority with
178 respect to persons under 21 years of age.

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

180 (i) for an employer to hire and employ employees, for an employment agency to
181 classify or refer for employment any individual, for a labor organization to classify its
182 membership or to classify or refer for employment any individual or for an employer, labor
183 organization, or joint labor-management committee controlling apprenticeship or other training
184 or retraining programs to admit or employ any individual in any such program, on the basis of
185 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, or
186 disability in those certain instances where religion, sex, pregnancy, childbirth, or
187 pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin,
188 or disability is a bona fide occupational qualification reasonably necessary to the normal
189 operation of that particular business or enterprise;

190 (ii) for a school, college, university, or other educational institution to hire and employ
191 employees of a particular religion if:

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

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

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

- 198 (A) the employer's:
- 199 (I) spouse;
- 200 (II) child; or
- 201 (III) son-in-law or daughter-in-law;
- 202 (B) any person for whom the employer is or would be liable to furnish financial
- 203 support if those persons were unemployed;
- 204 (C) any person to whom the employer during the preceding six months has furnished
- 205 more than one-half of total financial support regardless of whether or not the employer was or
- 206 is legally obligated to furnish support; or
- 207 (D) any person whose education or training was substantially financed by the employer
- 208 for a period of two years or more.
- 209 (b) Nothing in this chapter applies to any business or enterprise on or near an Indian
- 210 reservation with respect to any publicly announced employment practice of the business or
- 211 enterprise under which preferential treatment is given to any individual because that individual
- 212 is a native American Indian living on or near an Indian reservation.
- 213 (c) Nothing in this chapter shall be interpreted to require any employer, employment
- 214 agency, labor organization, vocational school, joint labor-management committee, or
- 215 apprenticeship program subject to this chapter to grant preferential treatment to any individual
- 216 or to any group because of the race, color, religion, sex, age, national origin, or disability of the
- 217 individual or group on account of an imbalance which may exist with respect to the total
- 218 number or percentage of persons of any race, color, religion, sex, age, national origin, or
- 219 disability employed by any employer, referred or classified for employment by an employment
- 220 agency or labor organization, admitted to membership or classified by any labor organization,
- 221 or admitted to or employed in, any apprenticeship or other training program, in comparison
- 222 with the total number or percentage of persons of that race, color, religion, sex, age, national
- 223 origin, or disability in any community or county or in the available work force in any
- 224 community or county.
- 225 (4) It is not a discriminatory or prohibited practice with respect to age to observe the

226 terms of a bona fide seniority system or any bona fide employment benefit plan such as a
227 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this
228 chapter, except that no such employee benefit plan shall excuse the failure to hire an individual.

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

232 (a) under Subsection (6); and

233 [~~(b) under Section 67-5-8; and~~]

234 [~~(c)~~] (b) when age is a bona fide occupational qualification.

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

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

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

242 Section 2. Section **67-5-8** is amended to read:

243 **67-5-8. Eligibility for career service status.**

244 (1) (a) The attorney general has sole authority to determine who may be employed with
245 the Office of the Attorney General.

246 (b) An employee of the state or any of its departments or agencies has no claim or right
247 to a position in the attorney general's office by virtue of that employment.

248 (2) (a) An employee of the Office of the Attorney General shall be placed in a career
249 service status if:

250 (i) for an employee who is an attorney, the attorney is a member in good standing of
251 the Utah State Bar Association; and

252 (ii) except as provided in Subsection (3), the employee has been employed by the
253 Office of the Attorney General as a probationary employee for a period of:

254 (A) at least one year but no more than 18 months; or
255 (B) in the case of investigators, at least 18 months, but no more than two years.

256 (b) An employee now employed by the attorney general's office in career service may
257 not be terminated under this chapter except for cause.

258 (3) (a) The attorney general shall determine whether an employee should be granted
259 career service status.

260 (b) If, at the end of the probationary period established under Subsection (2), the
261 attorney general determines that an employee should be granted career service status, the
262 attorney general shall notify the employee in writing of that decision and place a copy of the
263 notification in the employee's personnel file.

264 (c) If the attorney general determines that career service status should not be granted,
265 the attorney general may either terminate the employee or extend the probationary period for a
266 period not to exceed one year.

267 (d) The attorney general shall notify the employee in writing of that decision and place
268 a copy of the notification in the employee's personnel file.

269 (e) An employee terminated under this section has no appeal rights under this chapter.

270 ~~[(4) (a) An attorney in career service status under this chapter shall retire upon attaining~~
271 ~~the age of 70 years.]~~

272 ~~[(b) Subject to the provisions of Sections 49-11-504 and 49-11-505, an attorney~~
273 ~~required to retire under this section may be employed by the attorney general, after retirement,~~
274 ~~as a special assistant attorney general.]~~

275 ~~[(c) An attorney employed in the capacity of a special assistant under Subsection (4)(b)~~
276 ~~is not in career service status and is subject to termination in accordance with Section 67-5-12.]~~