

1 **VETERAN'S DEFINITION AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Peter C. Knudson**

5 House Sponsor: Paul Ray

6

LONG TITLE

7 **Committee Note:**

8 The Veterans' and Military Affairs Commission recommended this bill.

9 Membership: 5 legislators 18 non-legislators

10 Legislative Vote: 3 voting for 0 voting against 2 absent

11 **General Description:**

12 This bill conforms existing statutes to the new definition of a veteran.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ amends documentation requirements for verification for honorable or general
- 16 discharges as related to public and private sector employment;
- 17 ▶ defines discharge documents;
- 18 ▶ modifies the definition of a veteran for veterans' preference; and
- 19 ▶ specifies the definition of a veteran for specific areas and positions.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **34-50-102**, as enacted by Laws of Utah 2015, Chapter 263



- 28 [34-50-103](#), as enacted by Laws of Utah 2015, Chapter 263
- 29 [53B-8-107](#), as last amended by Laws of Utah 2013, Chapter 214
- 30 [67-19-15](#), as last amended by Laws of Utah 2015, Chapter 401
- 31 [71-8-2](#), as last amended by Laws of Utah 2013, Chapter 214
- 32 [71-8-4](#), as last amended by Laws of Utah 2014, Chapter 91
- 33 [71-8-5](#), as enacted by Laws of Utah 2013, Chapter 308
- 34 [71-10-1](#), as last amended by Laws of Utah 2014, Chapter 137
- 35 [71-11-2](#), as last amended by Laws of Utah 2013, Chapter 214
- 36 [71-11-6](#), as last amended by Laws of Utah 2005, First Special Session, Chapter 7

37

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

39 Section 1. Section [34-50-102](#) is amended to read:

40 **[34-50-102. Definitions.](#)**

41 As used in this chapter:

42 [~~(1) "DD 214" means the United States Department of Defense Certificate of Release~~
43 ~~or Discharge from Active Duty.~~]

44 [~~(2)~~] (1) "Department" means the same as that term is defined in Section [71-11-2](#).

45 (2) "Discharge Document" means a document received by a servicemember upon
46 separation from military service, including:

47 (a) a DD 214, United States Department of Defense Certificate of Release or Discharge
48 from Active Duty;

49 (b) a DD 256, United States Department of Defense Honorable Discharge Certificate;

50 (c) a DD 257, United States General Discharge Certificate; or

51 (d) an NGB 22, Utah National Guard Certificate of Release or Discharge.

52 (3) "Preference eligible" means the same as that term is defined in Section [71-10-1](#).

53 (4) "Private employer" means the same as that term is defined in Section [63G-12-102](#).

54 (5) "Veteran" means the same as that term is defined in Section [~~71-10-1~~] [68-3-12.5](#).

55 Section 2. Section [34-50-103](#) is amended to read:

56 **[34-50-103. Voluntary veterans preference employment policy -- Private](#)**
57 **[employment -- Antidiscrimination requirements.](#)**

58 (1) A private sector employer may create a veterans employment preference policy.

59 (2) The veterans employment preference policy shall be:

60 (a) in writing; and

61 (b) applied uniformly to employment decisions regarding hiring, promotion, or
62 retention including during a reduction in force.

63 (3) A private employer may require a veteran to submit a ~~[DD-214]~~ discharge
64 document form to be eligible for the preference.

65 (4) A private employer's veterans employment preference policy shall be publicly
66 posted by the employer at the place of employment or on the Internet if the employer has a
67 website or uses the Internet to advertise employment opportunities.

68 Section 3. Section **53B-8-107** is amended to read:

69 **53B-8-107. Military member surviving dependents -- Tuition waiver.**

70 (1) As used in this section~~["qualifying deceased military member" means a person: (a)~~
71 ~~who]:~~

72 (a) "Federal active duty" means serving under ~~§~~ **§** ~~orders in accordance with~~
72a United
73 States Code, Title 10 ~~§~~ **§** ~~or Title 32~~ ~~§~~ , at any time on or after September 11, 2001.

74 (b) "Qualifying deceased military member" means a person who:

75 (i) ~~[is]~~ was killed while serving on state or federal active duty, under orders of
76 competent authority and not as a result of the member's own misconduct; or

77 (ii) dies of wounds or injuries received while serving on state or federal active duty,
78 under orders of competent authority and not as a result of the member's own misconduct; and

79 ~~[(b) who: (i) is]~~ (iii) was a member of the armed forces of the United States and a Utah
80 resident;

81 ~~[(ii) is]~~ (iv) was a member of the reserve component of the armed forces on or after
82 September 11, 2001, and a Utah resident; or

83 ~~[(iii) is]~~ (v) was a member of the Utah National Guard on or after September 11, 2001.

84 (c) "State active duty" means serving in the Utah National Guard in any duty status
85 authorized by the governor under Title 39, Militias and Armories ~~§~~ **§** ~~United States Code, Title 10;~~
86 ~~or United States Code, Title 32]~~ ~~§~~ .

87 (2) This section shall be known as the Scott B. Lundell Military Survivors' tuition
88 waiver.

89 (3) A state institution of higher education shall waive undergraduate tuition for a

90 dependent of a qualifying deceased military member under the following conditions:

91 (a) the dependent has been accepted by the institution in accordance with the
92 institution's admissions guidelines;

93 (b) except as provided in Subsection (4), the dependent is a resident student as
94 determined under Section 53B-8-102;

95 (c) the dependent may not have already completed a course of studies leading to an
96 undergraduate degree;

97 (d) the dependent may only utilize the waiver for courses that are applicable toward the
98 degree or certificate requirements of the program in which the dependent is enrolled; and

99 (e) the dependent may not be excluded from the waiver if the dependent has previously
100 taken courses at or has been awarded credit by a state institution of higher education.

101 (4) Notwithstanding Subsection (3)(b), a dependent of a qualifying deceased military
102 member that was a member of the Utah National Guard is not required to be a resident student
103 as determined under Section 53B-8-102.

104 (5) The tuition waiver in this section is applicable for undergraduate study only.

105 (6) The Department of Veterans' and Military Affairs, after consultation with the
106 adjutant general if necessary, shall certify to the institution that the dependent is a surviving
107 dependent eligible for the tuition waiver in accordance with this section.

108 (7) The waiver in this section does not apply to fees, books, or housing expenses.

109 (8) The State Board of Regents may request reimbursement from the Legislature for
110 costs incurred in providing the tuition waiver under this section.

111 Section 4. Section 67-19-15 is amended to read:

112 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
113 **positions -- Coverage of career service provisions.**

114 (1) Except as otherwise provided by law or by rules and regulations established for
115 federally aided programs, the following positions are exempt from the career service provisions
116 of this chapter and are designated under the following schedules:

117 (a) schedule AA includes the governor, members of the Legislature, and all other
118 elected state officers;

119 (b) schedule AB includes appointed executives and board or commission executives
120 enumerated in Section 67-22-2;

- 121 (c) schedule AC includes all employees and officers in:
- 122 (i) the office and at the residence of the governor;
- 123 (ii) the Utah Science Technology and Research Initiative (USTAR);
- 124 (iii) the Public Lands Policy Coordinating Council;
- 125 (iv) the Office of the State Auditor; and
- 126 (v) the Office of the State Treasurer;
- 127 (d) schedule AD includes employees who:
- 128 (i) are in a confidential relationship to an agency head or commissioner; and
- 129 (ii) report directly to, and are supervised by, a department head, commissioner, or
- 130 deputy director of an agency or its equivalent;
- 131 (e) schedule AG includes employees in the Office of the Attorney General who are
- 132 under their own career service pay plan under Sections [67-5-7](#) through [67-5-13](#);
- 133 (f) schedule AH includes:
- 134 (i) teaching staff of all state institutions; and
- 135 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
- 136 (A) educational interpreters as classified by the department; or
- 137 (B) educators as defined by Section [53A-25b-102](#);
- 138 (g) schedule AN includes employees of the Legislature;
- 139 (h) schedule AO includes employees of the judiciary;
- 140 (i) schedule AP includes all judges in the judiciary;
- 141 (j) schedule AQ includes:
- 142 (i) members of state and local boards and councils appointed by the governor and
- 143 governing bodies of agencies;
- 144 (ii) a water commissioner appointed under Section [73-5-1](#);
- 145 (iii) other local officials serving in an ex officio capacity; and
- 146 (iv) officers, faculty, and other employees of state universities and other state
- 147 institutions of higher education;
- 148 (k) schedule AR includes employees in positions that involve responsibility:
- 149 (i) for determining policy;
- 150 (ii) for determining the way in which a policy is carried out; or
- 151 (iii) of a type not appropriate for career service, as determined by the agency head with

152 the concurrence of the executive director;

153 (l) schedule AS includes any other employee:

154 (i) whose appointment is required by statute to be career service exempt;

155 (ii) whose agency is not subject to this chapter; or

156 (iii) whose agency has authority to make rules regarding the performance,

157 compensation, and bonuses for its employees;

158 (m) schedule AT includes employees of the Department of Technology Services,

159 designated as executive/professional positions by the executive director of the Department of

160 Technology Services with the concurrence of the executive director;

161 (n) schedule AU includes patients and inmates employed in state institutions;

162 (o) employees of the Department of Workforce Services, designated as schedule AW:

163 (i) who are temporary employees that are federally funded and are required to work

164 under federally qualified merit principles as certified by the director; or

165 (ii) for whom substantially all of their work is repetitive, measurable, or transaction

166 based, and who voluntarily apply for and are accepted by the Department of Workforce

167 Services to work in a pay for performance program designed by the Department of Workforce

168 Services with the concurrence of the executive director; and

169 (p) for employees in positions that are temporary, seasonal, time limited, funding

170 limited, or variable hour in nature, under schedule codes and parameters established by the

171 department by administrative rule.

172 (2) The civil service shall consist of two schedules as follows:

173 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

174 (ii) Removal from any appointive position under schedule A, unless otherwise

175 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

176 (b) Schedule B is the competitive career service schedule, consisting of:

177 (i) all positions filled through competitive selection procedures as defined by the

178 executive director; or

179 (ii) positions filled through a department approved on-the-job examination intended to

180 appoint a qualified person with a disability, or a veteran [~~as defined in Section 71-10-1.~~] in

181 accordance with Title 71, Chapter 10, Veteran's Preference.

182 (3) (a) The executive director, after consultation with the heads of concerned executive

183 branch departments and agencies and with the approval of the governor, shall allocate positions
184 to the appropriate schedules under this section.

185 (b) Agency heads shall make requests and obtain approval from the executive director
186 before changing the schedule assignment and tenure rights of any position.

187 (c) Unless the executive director's decision is reversed by the governor, when the
188 executive director denies an agency's request, the executive director's decision is final.

189 (4) (a) Compensation for employees of the Legislature shall be established by the
190 directors of the legislative offices in accordance with Section 36-12-7.

191 (b) Compensation for employees of the judiciary shall be established by the state court
192 administrator in accordance with Section 78A-2-107.

193 (c) Compensation for officers, faculty, and other employees of state universities and
194 institutions of higher education shall be established as provided in Title 53B, Chapter 1,
195 Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of
196 Higher Education.

197 (d) Unless otherwise provided by law, compensation for all other schedule A
198 employees shall be established by their appointing authorities, within ranges approved by, and
199 after consultation with the executive director of the Department of Human Resource
200 Management.

201 (5) An employee who is in a position designated schedule AC and who holds career
202 service status on June 30, 2010, shall retain the career service status if the employee:

203 (a) remains in the position that the employee is in on June 30, 2010; and

204 (b) does not elect to convert to career service exempt status in accordance with a rule
205 made by the department.

206 Section 5. Section 71-8-2 is amended to read:

207 **71-8-2. Department of Veterans' and Military Affairs created -- Appointment of**
208 **executive director -- Department responsibilities.**

209 (1) There is created the Department of Veterans' and Military Affairs.

210 (2) The governor shall appoint an executive director for the department, after
211 consultation with the Veterans' Advisory Council, who is subject to Senate confirmation.

212 (a) The executive director shall be ~~[a veteran]~~ an individual who:

213 (i) has served on active duty in the armed forces for more than 180 consecutive days;

214 (ii) was a member of a reserve component who served in a campaign or expedition for
215 which a campaign medal has been authorized; or

216 (iii) incurred an actual service-related injury or disability in the line of duty, whether or
217 not that person completed 180 consecutive days of active duty; and

218 (iv) was separated or retired under honorable conditions.

219 (b) Any veteran or veteran's group may submit names to the council for consideration.

220 (3) The department shall:

221 (a) conduct and supervise all veteran activities as provided in this title; and

222 (b) adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative
223 Rulemaking Act, to carry out the provisions of this title.

224 Section 6. Section **71-8-4** is amended to read:

225 **71-8-4. Veterans' Advisory Council -- Membership -- Duties and responsibilities**

226 **-- Per diem and travel expenses.**

227 (1) There is created a Veterans' Advisory Council whose purpose is to advise the
228 executive director of the Department of Veterans' and Military Affairs on issues relating to
229 veterans.

230 (2) The council shall consist of the following 14 members:

231 (a) 11 voting members to serve four-year terms:

232 (i) seven veterans at large appointed by the governor;

233 (ii) the commander or the commander's designee, whose terms shall last for as long as
234 they hold that office, from each of the following organizations:

235 (A) Veterans of Foreign Wars;

236 (B) American Legion; and

237 (C) Disabled American Veterans; and

238 (iii) a representative from the Office of the Governor; and

239 (b) three nonvoting members:

240 (i) the executive director of the Department of Veterans' and Military Affairs;

241 (ii) the director of the VA Health Care System or his designee; and

242 (iii) the director of the VA Benefits Administration Regional Office in Salt Lake City,
243 or his designee.

244 (3) (a) Except as required by Subsection (3)(b), as terms of current council members

245 expire, the governor shall appoint each new or reappointed member to a four-year term
246 commencing on July 1.

247 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
248 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
249 council members are staggered so that approximately half of the members appointed by the
250 governor are appointed every two years.

251 (4) When a vacancy occurs in the membership for any reason, the governor shall
252 appoint a replacement for the unexpired term within 60 days of receiving notice.

253 (5) Members appointed by the governor may not serve more than three consecutive
254 terms.

255 (6) (a) Any veterans' group or veteran may provide the executive director with a list of
256 recommendations for members on the council.

257 (b) The executive director shall provide the governor with the list of recommendations
258 for members to be appointed to the council.

259 (c) The governor shall make final appointments to the council by June 30 of any year in
260 which appointments are to be made under this chapter.

261 (7) The council shall elect a chair and vice chair from among the council members
262 every two years. The chair and vice chair shall each be [veterans] an individual who:

263 (a) has served on active duty in the armed forces for more than 180 consecutive days;

264 (b) was a member of a reserve component who served in a campaign or expedition for
265 which a campaign medal has been authorized; or

266 (c) incurred an actual service-related injury or disability in the line of duty, whether or
267 not that person completed 180 consecutive days of active duty; and

268 (d) was separated or retired under honorable conditions.

269 (8) (a) The council shall meet at least once every quarter.

270 (b) The executive director of the Department of Veterans' and Military Affairs may
271 convene additional meetings, as necessary.

272 (9) The department shall provide staff to the council.

273 (10) Six voting members are a quorum for the transaction of business.

274 (11) The council shall:

275 (a) solicit input concerning veterans issues from veterans' groups throughout the state;

276 (b) report issues received to the executive director of the Department of Veterans' and
277 Military Affairs and make recommendations concerning them;

278 (c) keep abreast of federal developments that affect veterans locally and advise the
279 executive director of them;

280 (d) approve, by a majority vote, the use of money generated from veterans' license
281 plates under Section 41-1a-422 for veterans' programs; and

282 (e) assist the director in developing guidelines and qualifications for:

283 (i) participation by donors and recipients in the Veterans' Assistance Registry created
284 in Section 71-12-101; and

285 (ii) developing a process for providing contact information between qualified donors
286 and recipients.

287 (12) A member may not receive compensation or benefits for the member's service, but
288 may receive per diem and travel expenses in accordance with:

289 (a) Section 63A-3-106;

290 (b) Section 63A-3-107; and

291 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
292 63A-3-107.

293 Section 7. Section 71-8-5 is amended to read:

294 **71-8-5. Veterans' services coordinator qualifications -- Duties.**

295 (1) The veterans' services coordinator shall:

296 (a) be ~~[a veteran]~~ an individual who:

297 (i) has served on active duty in the armed forces for more than 180 consecutive days;

298 (ii) was a member of a reserve component who served in a campaign or expedition for
299 which a campaign medal has been authorized; or

300 (iii) incurred an actual service-related injury or disability in the line of duty, whether or
301 not that person completed 180 consecutive days of active duty; and

302 (iv) was separated or retired under honorable conditions;

303 (b) have the education and experience in the use of computer technology, including
304 databases, to collect, manage, and store information; and

305 (c) have some education and experience in public relations.

306 (2) The veterans' services coordinator shall be responsible to:

- 307 (a) identify all government entities that provide services for veterans;
308 (b) develop a process for coordination of veterans' services across all government
309 entities; and
310 (c) develop and provide training for veterans' affairs specialists on the coordination of
311 veterans' services with the department.

312 Section 8. Section **71-10-1** is amended to read:

313 **71-10-1. Definitions.**

314 As used in this chapter:

- 315 (1) "Active duty" means active military duty and does not include active duty for
316 training, initial active duty for training, or inactive duty for training.
- 317 (2) "Government entity" means the state, any county, municipality, local district,
318 special service district, or any other political subdivision or administrative unit of the state,
319 including state institutions of education.
- 320 (3) "Preference eligible" means:
- 321 (a) any individual who has served on active duty in the armed forces for more than 180
322 consecutive days, or was a member of a reserve component who served in a campaign or
323 expedition for which a campaign medal has been authorized and who has been separated under
324 honorable conditions;
- 325 (b) a veteran with a disability, regardless of the percentage of disability;
- 326 (c) the spouse or unmarried widow or widower of a veteran;
- 327 (d) a purple heart recipient; or
- 328 (e) a retired member of the armed forces.
- 329 (4) "Veteran" means[: ~~(a) an individual who has served on active duty in the armed
330 forces for more than 180 consecutive days, or was a member of a reserve component who
331 served in a campaign or expedition for which a campaign medal has been authorized and who
332 has been separated or retired under honorable conditions; or (b) any individual incurring an
333 actual service-related injury or disability in the line of duty whether or not that person
334 completed 180 consecutive days of active duty;~~ the same as that term is defined in Section
335 [68-3-12.5](#).
- 336 (5) "Veteran with a disability" means an individual who has:
- 337 (a) been separated or retired from the armed forces under honorable conditions; and

338 (b) established the existence of a service-connected disability or is receiving
339 compensation, disability retirement benefits, or pension because of a public statute
340 administered by the federal Department of Veterans Affairs or a military department.

341 Section 9. Section 71-11-2 is amended to read:

342 **71-11-2. Definitions.**

343 As used in this chapter:

344 (1) "Administrator" means a Veterans' Nursing Home Administrator selected in
345 accordance with Section 71-11-5.

346 (2) "Board" means any Veterans' Nursing Home Advisory Board.

347 (3) "Department" means the Department of Veterans' and Military Affairs created in
348 Section 71-8-2.

349 (4) "Executive director" means the executive director of the Department of Veterans'
350 and Military Affairs.

351 (5) "Home" means any Utah Veterans' Nursing Home.

352 (6) "Veteran" [~~is as defined in Subsection 71-10-1(4)~~] means the same as that term is
353 defined in Section 68-3-12.5.

354 Section 10. Section 71-11-6 is amended to read:

355 **71-11-6. Eligibility -- Admission requirements.**

356 (1) Application for admission shall be made separately to each nursing home
357 administrator.

358 (2) Veterans and their spouses or surviving spouses who are residents of Utah, meet
359 federal eligibility requirements, and are in need of nursing home care may be admitted to any
360 home.

361 (3) Preference shall be given to veterans who are without adequate means of support
362 and unable, due to wounds, disease, old age, or infirmity, to properly maintain themselves.