

ALABAMA LEGISLATURE COMMITTEE FILES
7026 HOUSE JUDICIARY

1991-1992

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of a State that is not within the outer boundary of any city or town that has a population of 20,000 or more, based on the latest decennial census of the United States."

SEC. 270. LAW ENFORCEMENT TRAINING AND TECHNICAL ASSISTANCE GRANTS.

Section 311(b) of the Family Violence Protection and Services Act (42

U.S.C. 10410(b)) is amended by adding at the end thereof the following new subparagraph:

"(C) Training grants may be made under this section only to private nonprofit organizations that have experience in providing training and technical assistance to law enforcement personnel on a national or regional basis."

SEC. 271. AUTHORIZATION OF APPROPRIATIONS.

Section 310 of the Family Violence Prevention and Services Act (42 U.S.C.

10409) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 310. (a) There are authorized to be appropriated to carry out this title, \$60,000,000 for each of fiscal years 1992, 1993, and 1994.

"(b) Of the sums appropriated under subsection (a) for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 303.

"(c) Of the sums authorized to be appropriated under subsection (a) for any fiscal year, not more than 3 percent shall be used by the Secretary for making grants under section 314."

SEC. 272. REPORT ON RECORDKEEPING.

Not later than 1 year after the date of enactment of this subtitle, the

Attorney General shall complete a study of, and shall submit to Congress a

report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine--

(1) the efforts that have been made by the Department of Justice, including the Federal Bureau of Investigation, to collect statistics on domestic violence; and

(2) the feasibility of requiring that the relationship between an offender and victim be reported in Federal records of crimes of aggravated assault, rape, and other violent crimes.

TITLE III--EMPLOYMENT OPPORTUNITIES

Subtitle A--Glass Ceiling Commission

SEC. 301. SHORT TITLE.

This subtitle may be cited as the "Glass Ceiling Act of 1991".

SEC. 302. FINDINGS AND PURPOSE.

(a) Findings.--Congress finds that--

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in executive management and senior decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" recently undertaken by the Department of Labor has been instrumental in raising public awareness of--

(A) the underrepresentation of women and minorities at the executive management and senior decisionmaking levels in the United States work force; and

(B) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the

Glass Ceiling Initiative would help--

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to

executive management and senior decisionmaking positions in business;

and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in

which executive management and senior decisionmaking positions are

filled, the developmental and skill-enhancing practices used to foster

the necessary qualifications for advancement, and the compensation

programs and reward structures utilized in the corporate sector would

assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to executive management

and senior

decisionmaking positions;

(7) a national award recognizing employers whose practices and

policies promote opportunities for, and eliminate artificial barriers to,

the advancement of women and minorities will foster the advancement of

women and minorities into higher level positions by--

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate

artificial barriers to, the upward mobility of women and minorities;

and

(B) providing specific guidance for other United States employers

that wish to learn how to revise practices and policies to improve

the access and employment opportunities of women and minorities; and

(8) employment quotas based on race, sex, national origin, religious belief, or disability--

(A) are antithetical to the historical commitment of the Nation

to the principle of equality of opportunity; and

(B) do not serve any legitimate business or social purpose.

(b) Purpose.--The purpose of this subtitle is to establish--

(1) a Glass Ceiling Commission to study--

(A) the manner in which business fills executive management and

senior decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently

utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse

skilled work force at the executive management and senior decisionmaking

levels in business.

SEC. 303. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) In General.--There is established a Glass Ceiling Commission (referred to in this subtitle as the "Commission"), to conduct a study and

prepare recommendations concerning--

(1) eliminating artificial barriers to the advancement of women and

minorities; and

(2) increasing the opportunities and developmental experiences of

women and minorities to foster advancement of women and minorities to

executive management and senior decisionmaking positions in business.

(b) Membership.--

(1) Composition.--The Commission shall be composed of 17 members--

(A) five individuals appointed by the President;

(B) three individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly of by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and
(I) the Secretary of Labor.

(2) Considerations.--In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals--

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold executive management or senior decisionmaking positions in corporations or other business entities; and

(C) possess academic expertise or other recognized ability regarding employment and discrimination issues.

(c) Chairperson.--The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) Term of Office.--Members shall be appointed for the life of the Commission.

(e) Vacancies.--Any vacancy occurring in the membership of the Commission

shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) Meetings.--

(1) Meetings prior to completion of report.--The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 304(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) Meetings after completion of report.--The Commission shall meet once each year after the completion of the report described in section 304(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) Quorum.--A majority of the Commission shall constitute a quorum for the transaction of business.

(h) Compensation and Expenses.--

(1) Compensation.--Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) Travel expenses.--Each member of the Commission shall receive

travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Federal service, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) Employment status.--A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of--

- (A) the tort claims provisions of chapter 171 of title 28, United States Code, and
- (B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 304. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO EXECUTIVE MANAGEMENT AND SENIOR DECISIONMAKING POSITIONS IN BUSINESS.

(a) Advancement Study.--The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions in business. In conducting the study, the Commission shall--

- (1) examine the preparedness of women and minorities to advance to executive management and senior decisionmaking positions in business;
- (2) examine the opportunities for women and minorities to advance to executive management and senior decisionmaking positions in business;
- (3) conduct basic research into the practices, policies, and manner in which executive management and senior decisionmaking positions in

business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to executive management and senior decisionmaking positions, and businesses and industries in which women and minorities are not promoted to executive management and senior decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to executive management and senior decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to executive management and senior decisionmaking positions in business.

(b) Report.--Not later than 15 months after the date of the enactment of this subtitle, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing--

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions in business, including recommendations for--

(A) policies and practices to fill vacancies at the executive management and senior decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume executive management and senior decisionmaking positions; and (C) compensation programs and reward structures utilized to reward and retain key employees.

(c) Additional Study.--The Commission may conduct such additional study of the advancement of women and minorities to executive management and senior decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 305. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) In General.--There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) Criteria for Qualification.--To qualify to receive an award under this section a business shall--

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and

developmental experiences of women and minorities to foster advancement

to executive management and senior decisionmaking positions within the

business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as

a consequence; and

(2) meet such additional requirements and specifications as the

Commission determines to be appropriate.

(c) Making and Presentation of Award.--

(1) Award.--After receiving recommendations from the Commission, the

President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that

meet the qualifications described in subsection (b).

(2) Presentation.--The President or the designated representative of

the President shall present the award with such ceremonies as the

President or the designated representative of the President may determine

to be appropriate.

(3) Publicity.--A business that receives an award under this section

may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and

developmental experiences of women and minorities to foster the advancement of women and minorities to executive management and senior

decisionmaking positions.

SEC. 306. POWERS OF THE COMMISSION.

(a) In General.--The Commission is authorized to--

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) Oaths.--Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) Obtaining Information from Federal Agencies.--The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(d) Voluntary Service.--Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) Gifts and Donations.--The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) Use of Mail.--The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 307. CONFIDENTIALITY OF INFORMATION.

(a) Individual Business Information.--

(1) In general.--Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying

out the duties of the Commission, including the duties described in

sections 304 and 305, the Commission shall maintain the confidentiality

of all information that concerns--

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) Consent.--The content of any information described in paragraph

(1) may be disclosed with the prior written consent of the business or

employee, as the case may be, with respect to which the information is maintained.

(b) Aggregate Information.--In carrying out the duties of the Commission,

the Commission may disclose--

(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 308. STAFF AND CONSULTANTS.

(a) Staff.--

(1) Appointment and compensation.--The Commission may appoint and

determine the compensation of such staff as the Commission determines to

be necessary to carry out the duties of the Commission.

(2) Limitations.--The rate of compensation for each staff member

shall not exceed the daily equivalent of the rate specified for GS-18 of

the General Schedule under section 5332 of title 5, United States Code

for each day the staff member is engaged in the performance of duties for

the Commission. The Commission may otherwise appoint and determine the

compensation of staff without regard to the provisions of title 5, United

States Code, that govern appointments in the competitive service, and the

provisions of chapter 51 and subchapter III of chapter 53 of title 5,

United States Code, that relate to classification and General Schedule

pay rates.

(b) Experts and Consultants.--The Chairperson of the Commission may

obtain such temporary and intermittent services of experts and consultants

and compensate the experts and consultants in accordance with section 3109(b)

of title 5, United States Code, as the Commission determines to be necessary

to carry out the duties of the Commission.

(c) Detail of Federal Employees.--On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) Technical Assistance.--On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this subtitle. The sums shall remain available until expended, without fiscal year limitation.

SEC. 310. TERMINATION.

(a) Commission.--Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this subtitle.

(b) Award.--The authority to make awards under section 305 shall terminate 4 years after the date of the enactment of this subtitle.

Subtitle B--Opportunities in Apprenticeship

SEC. 321. SHORT TITLE.

This subtitle may be cited as the "Opportunities in Apprenticeship Act of 1991".

SEC. 322. FINDINGS AND PURPOSE.

(a) Findings.--Congress finds that--
(1) there is a history of underrepresentation of women and minorities in apprenticeship programs;

(2) artificial barriers exist to the participation of women and minorities in apprenticeship programs;

and (3) United States business is increasingly relying on women and minorities to meet employment requirements and is increasingly aware of

the advantages derived from a diverse work force;

(4) the "Skilled Trades Initiative" recently undertaken by the Department of Labor has been instrumental in raising public awareness of

the problems of underrepresentation and barriers to participation in apprenticeship programs;

(5) expansion of outreach and education activities and preapprenticeship training would increase the participation of women and minorities in apprenticeship programs;

and (6) a comprehensive study of the barriers to the participation and retention of women and minorities in apprenticeship programs would assist

in the development of recommendations for eliminating such barriers and improving overall participation; and

(7) employment or participation quotas based on race, sex, national origin, religious belief, or disability--

Nation (A) are antithetical to the historical commitment of the to the principle of equality of opportunity; and

(B) do not serve any legitimate business or social purpose.

(b) Purpose.--The purpose of this subtitle is to establish programs that will expand the opportunities for women and minorities in registered apprenticeship programs by--

make (1) providing outreach, education, and technical assistance to women and minorities aware of, and encourage their participation in,

registered apprenticeship programs;

(2) providing information, skills development, and preapprenticeship

training to women and minorities to enable them to enter registered apprenticeship programs; and
 (3) conducting a comprehensive study to examine the barriers to the participation of women and minorities in registered apprenticeship programs and to develop recommendations for eliminating such barriers.

SEC. 323. OUTREACH AND EDUCATION PROGRAM.

(a) In General.--The Secretary of Labor (referred to in this subtitle as the "Secretary") shall establish in the Department of Labor an outreach and education program designed to expand the opportunities for women and minorities in apprenticeship programs registered with the Department of Labor pursuant to the National Apprenticeship Act (referred to in this subtitle as "registered apprenticeship programs"). The program shall include the activities described in this section.

(b) Information.--

(1) Development.--The Secretary shall develop and disseminate information regarding opportunities for women and minorities in registered apprenticeship programs, which may include information on--
 (A) the nature and advantages of apprenticeship;
 (B) requirements for admission to apprenticeship;
 (C) sources of apprenticeship applications; and
 (D) existing programs and organizations assisting in the preparation of women and minorities for apprenticeable occupations.

(2) Dissemination.--The Secretary shall disseminate information developed in accordance with paragraph (1) to educational institutions, employers, employer associations, unions, State apprenticeship councils, sponsors of apprenticeship programs, organizations representing and

assisting women and minorities, and other appropriate organizations, institutions, groups, and individuals.

(c) Model Programs.--The Secretary shall identify and develop model

preapprenticeship and apprenticeship programs that promote training and employment opportunities for women and minorities, and disseminate information relating to the programs.

(d) Technical Assistance.--The Secretary shall provide appropriate

technical assistance to the organizations, institutions, groups, and individuals described in subsection (b)(2) to promote outreach to, and the

recruitment of, women and minorities for registered apprenticeship programs.

The technical assistance may include--

(1) participation in annual workshops conducted for the purpose of

familiarizing school, employment service, and other appropriate personnel

with the apprenticeship system and current opportunities in the system;

(2) cooperation with local school boards and vocational education

systems to develop programs for preparing students to meet the standards

and criteria required to qualify for entry into apprenticeship programs;

and

(3) organization of and participation in conferences and seminars

involving groups representing and assisting women and minorities to

inform the groups about the apprenticeship system and available apprenticeship opportunities.

(e) Outreach Grants.--

(1) Establishment.--The Secretary may award grants to eligible organizations to pay the Federal share of conducting outreach and

recruitment activities designed to increase the participation of women

- (and minorities in registered apprenticeship programs.
- (2) Use of funds.--An eligible organization shall use funds provided under this subsection to conduct outreach and recruitment activities designed to increase the participation of women and minorities in registered apprenticeship programs. The activities may include--
- (A) dissemination of information to make women and minorities aware of, and encourage participation in, registered apprenticeship programs;
- (B) preparation of women and minorities for apprenticeship selection procedures, including tutoring for tests and coaching for job interviews; and
- (C) outreach combined with skills development and preparatory trade training to enable women and minorities to become eligible for apprenticeship selection.
- (3) Application.--To be eligible for a grant under this subsection, an organization shall submit to the Secretary an application for assistance at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.
- (4) Eligibility.--Organizations eligible to receive funds under this subsection shall include educational institutions, employers, employer associations, unions, State apprenticeship councils, sponsors of registered apprenticeship programs, and organizations representing assisting women and minorities.
- (5) Payment of federal share.--
- (A) Federal share.--The Federal share of the cost of conducting outreach and recruitment activities under this subsection shall not exceed 75 percent.
- (B) Other sources.--The portion of the costs of the activities

conducted under this subsection that is not paid by the grant
may be

paid from any other Federal or non-Federal sources.

SEC. 324. PREAPPRENTICESHIP TRAINING GRANT PROGRAM.

(a) Establishment.--The Secretary may establish in the
Department of

Labor a program of grants to sponsors of registered apprenticeship
programs

to pay the Federal share of providing preapprenticeship training to
women and
minorities.

(b) Use of Funds.--

(1) In general.--Sponsors of registered apprenticeship
programs shall

use funds provided under this section--

(A) to conduct preapprenticeship training programs for
women and

minorities, as described in paragraph (2); and

(B) to provide supportive services, such as child care and
transportation, to women and minorities necessary to enable
them to

participate in preapprenticeship training.

(2) Preapprenticeship training program.--A preapprenticeship
training

program shall include an organized training plan in which
candidates for

apprenticeship are provided with intensified training activities
for the

purpose of placement into a registered apprenticeship program
on

completion or soon after completion of the preapprenticeship
training.

(3) Training.--Training under the program described in
paragraph (2)

may include--

(A) dissemination of information to the participant relating
to

the content of a trade;

(B) development of the manipulative skills of a participant
relating to a trade;

(C) development of the skills of a participant in using
materials, tools, and equipment relating to a trade; and

(D) technical instruction in a trade.

(c) Application.--To be eligible to receive a grant under this section, a sponsor of a registered apprenticeship program requesting assistance shall submit an application for assistance to the Secretary at such time, in such manner and containing or accompanied by such information as the Secretary may reasonably require. At a minimum, the application shall include--

- (1) a description of the need for the assistance;
- (2) a description of the preapprenticeship training program to be conducted, including a description of any supportive services to be provided;
- (3) assurances that there are or will be suitable and appropriate positions available in the apprenticeship program of the sponsor on completion of the preapprenticeship training; and
- (4) commitments that all reasonable efforts shall be made to place participants in the apprenticeship program of the sponsor on completion of training.

(d) Payment of Federal Share.--

- (1) Federal share.--The Federal share of the cost of providing preapprenticeship training under this section shall not exceed 75 percent.
- (2) Other sources.--The portion of the costs of the activities conducted under this subsection that is not paid by the grant may be paid from any other Federal or non-Federal sources.

SEC. 325. STUDY OF PARTICIPATION OF WOMEN AND MINORITIES IN APPRENTICESHIP.

(a) Study.--The Secretary shall conduct a study of the participation of women and minorities in registered apprenticeship programs. The study shall examine--

- (1) the barriers to the participation of women and minorities in

registered apprenticeship programs, including whether the lack of adequate preapprenticeship training and supportive services constitutes a significant barrier to participation, and methods for eliminating the barriers;

(2) techniques by which women and minorities have been recruited into registered apprenticeship programs and methods for improving recruitment;

(3) the retention rates for women and minorities in registered apprenticeship programs and methods for increasing the rates;

(4) the extent to which women and minorities are employed following the completion of registered apprenticeship programs, the nature of the employment, the extent to which the employment is retained, and methods for enhancing employment;

(5) model apprenticeship programs for women and minorities and methods for incorporating and expanding the programs into other registered apprenticeship programs;

(6) the effectiveness of the preapprenticeship grant training program established in section 324; and

(7) other relevant issues affecting the participation of women and minorities in registered apprenticeship programs.

(b) Report.--The Secretary shall submit a report containing the study described in subsection (a) and such recommendations as the Secretary

determines to be appropriate to the appropriate committees of Congress not

later than 2 years after the date of the enactment of this Act.

SEC. 326. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization for Outreach Program and Study.--There are authorized

to be appropriated to carry out section 323 (other than subsection (c)) and

section 325, \$2,000,000 for fiscal year 1992, and such sums as may be necessary for each subsequent fiscal year.

(b) Authorization for Outreach Grants.--There are authorized to be appropriated to carry out section 323(e), \$8,000,000 for fiscal year 1992, and such sums as may be necessary for each subsequent fiscal year.

(c) Authorization for Preapprenticeship Grants.--There are authorized to be appropriated to carry out section 324, \$15,000,000 for fiscal year 1992, and such sums as may be necessary for each subsequent fiscal year.

(d) Reservation.--The Secretary may reserve not more than 5 percent of the funds appropriated in accordance with subsections (a), (b) and (c) in each fiscal year to carry out the enforcement of nondiscrimination and affirmative action requirements relating to registered apprenticeship programs, including the training of Department of Labor personnel for the enforcement purposes.

Subtitle C--Opportunities for Alternative Work Arrangements
SEC. 331. FINDINGS.

Congress finds that--

(1) since 1982, Federal agencies have had authority under subpart II of chapter 61 of title 5, United States Code, to establish alternative work schedules to assist Federal employees who are trying to balance work and family responsibilities;

(2) one form of alternative work schedule allows Federal employees considerable leeway in setting arrival and departure times at work;

(3) under these flexible schedules, employees must be present during a fixed "core time" and must cooperatively work out arrangements with

supervisors and coworkers to ensure that office operations run smoothly;

(4) another form of alternative work schedule enables Federal employees to work more than 8 hours in a day and thus complete their 80-

hour biweekly work requirement in fewer than 10 workdays;

(5) using flexible scheduling, agencies may authorize a variety of work arrangements to assist employees with family responsibilities;

(6) agencies that use alternative work schedules permit parents--

(A) to begin work earlier in order to be home when children return from school in the afternoon; or

(B) to work additional hours per day, and fewer days per week in

order to be home with children an additional number of days;

(7) the Office of Personnel Management encourages Federal agencies to

consider using the flexible schedule programs as valuable tools to help

employees meet dependent care needs and enhance employee morale and productivity;

(8) the Office of Personnel Management provides technical assistance

and training in the use of alternative work scheduling;

(9) the Office of Personnel Management has recently promoted job

sharing for Federal employees;

(10) job sharing is a form of part-time employment in which two part-

time employees voluntarily share the duties and responsibilities of one

full-time position;

(11) under job sharing, each employee is considered to be an individual part-time employee for the purposes of appointment, pay,

classification, leave, benefits, and other personnel considerations;

(12) a variety of different arrangements can be used under job sharing, including those in which--

(A) one job sharer works mornings and the other afternoons;

- (B) job sharers alternate days or alternate weeks; or
- (C) job sharers overlap schedules to provide extra coverage

at

peak times or to allow time for meetings;

(13) the Office of Personnel Management has recently--

agencies

- (A) issued guidance to Federal agencies encouraging the

Federal

to establish additional job-sharing positions and to inform

employees of the option to work less than full-time;

- (B) published a booklet entitled "Job Sharing for Federal Employees" that gives detailed information on setting up a job sharing arrangement and making the arrangement work

effectively; and

- (C) established "The OPM Connection," a pilot program

currently

operating in Boston, Chicago, Los Angeles, and Washington, DC.,

that--

- (i) matches Federal employees who want to work part-

time with

Federal agencies trying to fill part-time and shared jobs;

and

- (ii) helps current Federal employees find other

employees

interested in job sharing; and

(14) job sharing can be especially beneficial for employees

who have

child care responsibilities because of the flexible nature of the arrangement.

SEC. 332. SENSE OF THE CONGRESS.

It is the sense of the Congress that--

- (1) the Office of Personnel Management has made

commendable efforts

to develop alternative work arrangements through flexible scheduling and

job sharing; and

- (2) the Office of Personnel Management should continue

efforts to

develop and expand alternative work arrangements to assist

Federal

employees with family responsibilities and to serve as an

example for

State and local governments and private sector employers and employees.

Please type desired COMMAND.....

SJR

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HOUSE COMMITTEE REPORT

(7)

Date Referred: February 3, 1992

FURTHER REFERRALS:

Date of Committee Action: 4/5/92

The JUDICIARY Committee considered:

CSSJR 24(STA)

CS FOR SENATE JOINT RESOLUTION NO. 24 (STA)

FEDERAL ENFORCEMENT OF A.D.E.A.

Relating to enforcement of the Age Discrimination in Employment Act.

RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title

[] have attached amendments(s)

do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal impact _____

fiscal note(s) LNA 2/3/92, ~~_____~~

[] zero fiscal note _____

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>David A. Donley</i>	✓	<i>Terry Martin</i>		✓	
<i>Alan S. Swartz</i>	✓	<i>Michael Miller</i>		✓	
<i>John G. Ellis</i>	X				
<i>William Pat Parnell</i>	✓				

David A. Donley
 CHAIRMAN'S SIGNATURE

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____
 Title: Relating to enforcement of the Age
Discrimination in Employment Act.
 Sponsor: Senator Keritula
 Requestor: House State Affairs

Department Affected: Legislative Affairs Agency
 BRU: _____
 Component: Legal Services

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director *Pamela Stoops* Phone: 465-3350
 Division: Administrative Services Date: 1/28/92

Approved By: Warren W. Endicott, Executive Director *Warren Endicott*
 Agency: Legislative Affairs Agency Date: 1/28/92

Distribution (by preparer): Leg. Fin. _____ Impacted Agency(ies).



Alaska State Legislature

SENATE

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Dave Donley
Chair, House Judiciary Committee

FROM: Senator Jay Kerttula JK

SUBJECT: SCR 19 and SJR 24- relating to Age Discrimination
in employment

DATE: February 5, 1992

I would appreciate it if you would schedule SCR 19 and SJR 24 for hearing.

SCR 19 requests that the Governor direct the State Commission for Human Rights to "viligantly" enforce state laws pertaining to age discrimination in employment.

SJR 24 requests that President Bush direct the Equal Employment Opportunity Office to viligantly enforce the Age Discrimination in Employment Act.

Although Alaska has always been a "young" state, our older population has more than doubled in the past decade and is one of the fastest growing age groups in the state. Additionally, Alaska has one of the most rapidly growing senior populations in the nation.

However, participation in the workforce by older Alaskans has been declining. Age-related stereotyping and age discrimination, a recessive economy, and a widespread lack of understanding about the employment needs and capabilities of older persons are a few of the reasons for this.

The age group of 55-62 year olds can be especially vulnerable in terms of experiencing age discrimination in employment and yet are too young to be eligible for Social Security, Medicaid, Longevity Bonus and other age -limited benefits that help other seniors who are unemployed.

Additional information is enclosed and I urge your favorable consideration of this request.

JK:pt
enclosures

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OLDER ALASKANS COMMISSION

WALTER J. HICKEL, GOVERNOR

P.O. BOX 3
 JUNEAU ALASKA 99811-0203
 PHONE (907) 465-3250

To: Paula Scavera
 Legislative Research

1/29/91

From: Ann Turner Olson
 Older Alaskans Commission

Paula, here is some information on Alaska's older workers. If you need more or in another area please give me a call.

Though Alaska has always been a "young" state, our older population has more than doubled in the past decade and is one of the fastest growing age groups in the state. Additionally, Alaska has one of the most rapidly growing senior populations in the nation.

This "graying" of the population means our workforce is also getting older. But, participation in the workforce by older Alaskans does not seem to be keeping pace with the changing demographics.

- * In 1970 28% of the older population were active in the labor force
- * By 1980 this had declined to 20%
- * Current estimates show that only 15-16% of older workers are in the labor force

Age related stereotyping and age discrimination, a poor economy, and a widespread lack of understanding about the employment needs and capabilities of older persons are a few of the reasons for this. Retirement incentive programs in both the private and public sector have resulted in many persons leaving the workforce prematurely.

The Older Alaskans Commission recently co-sponsored three state-wide public meetings to hear the experiences and concerns of older workers and job seekers. Over and over these older workers described experiences with employers that indicated ageism or age related stereotyping and discrimination.

"A Profile of Older Alaskans", Alaska Economic Trends, 1988

One individual reported being asked directly in a job interview whether he "thought he'd have any problem taking direction from someone younger than himself". Others present at the meeting said they had been asked similar questions in interviews or told they were "overqualified".

Nearly every person attending the meetings felt frustrated in their efforts to find meaningful work. Many felt they were given only perfunctory consideration in a job interview -- that as soon as their age was known the interview was over.

The age group of 55 to 62 year olds can be especially vulnerable and in need of employment assistance services. They are vulnerable in terms of experiencing age discrimination in employment yet are too young to be eligible for Social Security, Medicaid, Longevity Bonus and other age limited benefits that help other seniors who are unemployed.

WHO ARE ALASKA'S OLDER WORKERS ?

- * Currently over 48,000 Alaskans are over age 55 ... there is a growing trend for middle aged and older Alaskans to remain in the state
- * Older workers are more inclined to be "discouraged workers" not registered with Job Service or actively seeking employment (less than 3,000 of the over 48,000 persons 55 or older were registered with the Job Service statewide in June 1986)
- * Older persons themselves often believe the "myths of aging" and think employers are not interested in hiring them
- * Older workers are often older women --- "displaced homemakers", over age 50, and living at or below poverty level ... once they lose economic self sufficiency, older persons tend to slip faster and stay longer in poverty
- * Older workers often call themselves "retired" (to save face) even though they want or need to work
- * Older workers may be between age 40 and 55 -- not yet targeted for services but already experiencing age discrimination in employment.
- * Half of this group have incomes below \$10,000 a year and want and need to work.

WHAT ARE THE MYTHS AND REALITIES ABOUT OLDER WORKERS ?

MYTH	REALITY
* Attendance is poor	* Older workers attendance is as high or better than younger workers
* Productivity declines	* No consistent pattern exists to show superior productivity in any age group
* Learning capacity is obsolete	* Little evidence to suggest any significant change in learning ability
* Intellectual functioning decreases	* Intelligence remains constant for most persons until at least age 70
* Not worth the investment to train	* Employees age 20 to 30 are less likely to stay with a company as long as those age 50 to 60
* Motivation decreases	* Older workers display greater job satisfaction, less stress on the job
* Accidents on the job increase	* Older workers have fewer accidents in situations that require judgement based on experience

WHAT ARE THE CURRENT PROGRAMS FOR OLDER WORKERS ?

The Title V Senior Employment and Training Program is administered by the Older Alaskans Commission (OAC) and funded by the U.S. Department of Labor, Employment and Training Administration. Title V provides training and part-time employment opportunities for low income persons age 55 years and older.

The OAC funds approximately 200 Title V positions through grants to non-profit agencies in 45 communities in the state. Title V positions provide a variety of community services and give work experience and on job training to Title V workers.

**CHAPTER 14—AGE DISCRIMINATION
IN EMPLOYMENT**

- Sec.**
621. Congressional statement of findings and purpose.
622. Education and research program; recommendation to Congress.
623. Prohibition of age discrimination.
- (a) Employer practices.
 - (b) Employment agency practices.
 - (c) Labor organization practices.
 - (d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation.
 - (e) Printing or publication of notice or advertisement indicating preference, limitation, etc.
 - (f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause.
 - (g) Repealed.
 - (h) Practices of foreign corporations controlled by American employers; foreign persons not controlled by American employers; factors determining control.
 - (i) Firefighters and law enforcement officers attaining hiring or retiring age under State or local law on March 8, 1988.
 - (j) Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees.
 - (k) Date of adoption of system or plan.
 - (l) Minimum age requirements; early retirement benefits.
624. Study by Secretary of Labor; reports to President and Congress; scope of study; implementation of study; transmittal date of reports.
625. Administration.
- (a) Delegation of functions; appointment of personnel; technical assistance.
 - (b) Cooperation with other agencies, employers, labor organizations, and employment agencies.
626. Recordkeeping, investigation, and enforcement.
- (a) Attendance of witnesses; investigations, inspections, records, and homework regulations.
 - (b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion.
 - (c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial.
 - (d) Filing of charge with Commission; timeliness; conciliation, conference, and persuasion.
 - (e) Statute of limitations; reliance in future on administrative ruling, etc.; tolling.
 - (f) Waiver.
627. Notices to be posted.

- Sec.**
628. Rules and regulations; exemptions.
629. Criminal penalties.
630. Definitions.
631. Age limits.
- (a) Individuals at least 40 years of age.
 - (b) Employees or applicants for employment in Federal Government.
 - (c) *Bona fide* executives or high policymakers.
 - (d) Tenured employee at institution of higher education.
632. Annual report to Congress.
633. Federal-State relationship.
- (a) Federal action superseding State action.
 - (b) Limitation of Federal action upon commencement of State proceedings.
- 633a. Nondiscrimination on account of age in Federal Government Employment.
- (a) Federal agencies affected.
 - (b) Enforcement by Equal Employment Opportunity Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission; compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions; *bona fide* occupational qualification.
 - (c) Civil actions; jurisdiction; relief.
 - (d) Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices.
 - (e) Duty of Government agency or official.
 - (f) Applicability of statutory provisions to personnel action of Federal departments, etc.
 - (g) Study and report to President and Congress by Equal Employment Opportunity Commission; scope.
634. Authorization of appropriations.

Library References

Civil Rights § 9.15.
C.J.S. Civil Rights §§ 60, 66.
C.J.S. Labor Relations § 7.

§ 621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desir-

Complete Annotation Materials, see Title 29, U.S.C.A.

able practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment. (Pub.L. 90-202, § 2, Dec. 15, 1967, 81 Stat. 602.)

Editorial Notes

Effective Date; Rules and Regulations. Section 16, formerly 15 of Pub.L. 90-202, renumbered by Pub.L. 93-259, § 25(b)(1), Apr. 8, 1974, 88 Stat. 74, provided that: "This Act [enacting this chapter] shall become effective one hundred and eighty days after enactment [Dec. 15, 1967], except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to an additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment [Dec. 15, 1967] the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions."

Short Title of 1990 Amendment. Pub.L. 101-433, § 1, Oct. 16, 1990, 104 Stat. 978, provided that: "This Act [amending sections 623, 626, and 630 of this title and enacting provisions set out as notes under sections 623 and 626 of this title] may be cited as the 'Older Workers Benefit Protection Act'."

Short Title of 1986 Amendment. Pub.L. 99-592, § 1, Oct. 31, 1986, 100 Stat. 3342, provided that: "This Act [amending sections 623, 630, and 631 of this title, and enacting provisions set out as notes under sections 622 to 624 and section 631 of this title] may be cited as the 'Age Discrimination in Employment Amendments of 1986'."

Short Title of 1978 Amendment. Pub.L. 95-256, § 1, Apr. 6, 1978, 92 Stat. 189, provided that: "This Act [amending sections 623, 624, 626, 631, 633a, and 634 of this title and sections 8335 and 8339 of Title 5, Government Organization and Employees, repealing section 3322 of Title 5, and enacting provisions set out as notes under sections 623, 626, 631, and 633a of this title] may be cited as the 'Age Discrimination in Employment Act Amendments of 1978'."

Short Title. Section 1 of Pub.L. 90-202 provided: "That this Act [enacting this chapter] may be cited as the 'Age Discrimination in Employment Act of 1967'."

Transfer of Functions. All functions vested by this section in the Secretary of Labor or the Civil Service

Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section I-101 of Ex.Ord.No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Severability of Provisions. Pub.L. 101-433, Title III, § 301, Oct. 16, 1990, 104 Stat. 984, provided that: "If any provision of this Act, or an amendment made by this Act [The Older Workers Benefit Protection Act, Pub.L. 101-433, Oct. 16, 1990, 104 Stat. 978, for distribution of this Act to the Code, see Short Title of 1990 Amendment Note, set out under section 621 of this title], or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby."

Congressional Statement of Findings. Pub.L. 101-433, Title I, § 101, Oct. 16, 1990, 104 Stat. 978, provided that: "The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 [2854] (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) [this chapter], which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations."

Federal Practice and Procedure

Propriety of summary judgment in complicated and important litigation see Wright, Miller & Kane: Civil 2d § 2732.2.

Removal right, concurrent jurisdiction, see Wright, Miller & Cooper: Jurisdiction 2d § 3729.

West's Federal Practice Manual

Source and scope of authority, see § 15388.

Code of Federal Regulations

General provisions, see 29 CFR 1625.1 et seq.

Civil Rights § 9.15.

C.J.S. Civil Rights §§ 60, 66.

C.J.S. Labor Relations § 7.

§ 622. Education and research program; recommendation to Congress

(a) The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this chapter, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures—

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this chapter¹, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 631 of this title.

(Pub.L. 90-202, § 3, Dec. 15, 1967, 81 Stat. 602.)

¹ See Pub.L. 90-202, § 16.

Editorial Notes

Study and Proposed Guidelines Relating to Police Officers and Firefighters. Pub.L. 99-592, § 5, Oct. 31, 1986, 100 Stat. 3343, provided that:

"(a) Study.—Not later than 4 years after the date of enactment of this Act [Oct. 31, 1986], the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, shall—

"(1) conduct a study—

"(A) to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perform the requirements of their jobs,

"(B) if such tests are found to be valid measurements of such ability and competency, to determine which particular types of tests most effectively measure such ability and competency, and

"(C) to develop recommendations with respect to specific standards that such tests, and the administration of such tests should satisfy, and

"(2) submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate that includes—

"(A) a description of the results of such study, and

"(B) a statement of the recommendations developed under paragraph (1)(C).

"(b) Consultation requirement.—The Secretary of Labor and the Equal Employment Opportunity Commission shall, during the conduct of the study required under subsection (a) and prior to the development of recommendations under paragraph (1)(C), consult with the United States Fire Administration, the Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters, and their employers, and organizations representing older Americans.

"(c) Proposed guidelines.—Not later than 5 years after the date of the enactment of this Act [Oct. 31, 1986] the Equal Employment Opportunity Commission shall propose, in accordance with subchapter II of chapter 5 of title 5 of the United States Code [5 U.S.C.A. § 551 et seq.] guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs."

§ 623. Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(b) Employment agency practices

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) Labor organization practices

It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discrim-

inate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan—

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of

a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) Repealed. Pub.L. 101-239, Title VI, § 6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233.

(h) Practices of foreign corporations controlled by American employers; foreign persons not controlled by American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the—

- (A) interrelation of operations,
- (B) common management,
- (C) centralized control of labor relations, and
- (D) common ownership or financial control,

of the employer and the corporation.

(i) Firefighters and law enforcement officers attaining hiring or retiring age under State or local law on March 3, 1983

It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(j) **Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees**

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(E) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title and section 401(a)(14)(C) of Title 26, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year

pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of Title 26, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of Title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of Title 26.

(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of Title 26 and subparagraphs (C) and (D) of section 411(b)(2) of Title 26 shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2) of Title 26.

(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title and section 411(a)(8)(B) of Title 26.

(9) For purposes of this subsection—

(A) The terms "employee pension benefit plan", "defined benefit plan", "defined contribution plan", and "normal retirement age" have the

meanings provided such terms in section 1002 of this title.

(B) The term "compensation" has the meaning provided by section 414(s) of Title 26.

(k) Date of adoption of system or plan

A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

(l) Minimum age requirements; early retirement benefits

Notwithstanding clause (i) or (ii) of subsection (f)(2)(B) of this section—

(1) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because—

(A) an employee pension benefit plan (as defined in section 1002(2) of this title) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

(B) a defined benefit plan (as defined in section 1002(35) of this title) provides for—

(i) payments that constitute the subsidized portion of an early retirement benefit; or

(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because following a contingent event unrelated to age—

(i) the value of any retiree health benefits received by an individual eligible for an immediate pension;

(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

(iii) the values described in both clauses (i) and (ii);

are deducted from severance pay made available as a result of the contingent event unrelated to age.

(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i)

shall be reduced by the same percentage as the reduction in the pension benefits.

(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of Title 26) that—

(i) constitutes additional benefits of up to 52 weeks;

(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

(D) For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term "retiree health benefits" means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or

(iii) the package of benefits provided by the employer is as described in clauses (i) and (ii).

(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of \$3,000 per year for benefit years before age 65, and \$750 per year for benefit years beginning at age 65 and above.

(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of \$48,000 for individuals below age 65, and \$24,000 for individuals age 65 and above.

(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

(3) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

(A) paid to the individual that the individual voluntarily elects to receive; or

(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.

(Pub. L. 90-202, § 4, Dec. 15, 1967, 81 Stat. 603; Pub.L. 95-256, § 2(a), Apr. 6, 1978, 92 Stat. 189; Pub.L. 97-248, Title I, § 116(a), Sept. 3, 1982, 96 Stat. 353; Pub.L. 98-369, Title III, § 2301(b), July 18, 1984, 98 Stat. 1063; Pub.L. 98-459, Title VIII, § 802(b), Oct. 9, 1984, 98 Stat. 1792; Pub.L. 99-272, Title IX, § 9201(b)(1), (3), Apr. 7, 1986, 100 Stat. 171; Pub.L. 99-509, Title IX, § 9201, Oct. 21, 1986, 100 Stat. 1973; Pub.L. 99-592, §§ 2(a), (b), 3(a), Oct. 31, 1986, 100 Stat. 3342; Pub.L. 101-239, Title VI, § 6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233; Pub.L. 101-433, Title I, § 103, Oct. 16, 1990, 104 Stat. 978; Pub.L. 101-521, Nov. 5, 1990, 104 Stat. 2287.)

Editorial Notes

Codification. Amendments by section 2(a), (b) of Pub.L. 99-592 to subssecs. (g)(1) and (h)(1) of this section duplicates amendments by Pub.L. 99-272, § 9201(b)(1) and (3), respectively.

Effective Date of 1990 Amendment. Section 105 of Pub.L. 101-433 provided that:

"(a) In general.—Except as otherwise provided in this section, this title and the amendments made by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] shall apply only to—

"(1) any employee benefit established or modified on or after the date of enactment of this Act [Oct. 16, 1990]; and

"(2) other conduct occurring more than 180 days after the date of enactment of this Act.

"(b) Collectively bargained agreements.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

"(1) that is in effect as of the date of enactment of this Act [Oct. 16, 1990];

"(2) that terminates after such date of enactment;

"(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4))" [section 206(d)(4) of this title]; and

"(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

"(c) States and political subdivisions.—

"(1) In general.—With respect to any employee benefits provided by an employer—

"(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

"(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act [Oct. 16, 1990] that would be superseded (in whole or part) by this title and the amendments made by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act [Oct. 16, 1990].

"(2) Election of disability coverage for employees hired prior to effective date.—

"(A) In general.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

"(i) following reasonable notice to all employees, implement new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title) [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title]; and

"(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

"(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act [Oct. 16, 1990]; and

"(II) the employee is given up to 180 days after the offer in which to make the election.

"(B) Previous disability benefits.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satis-

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fy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title) [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title].

"(C) Abrogation of right to receive benefits.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

"(3) State assistance.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

"(4) Definitions.—For purposes of this subsection:

"(A) Employer and state.—The terms 'employer' and 'State' shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) [section 630(b), (i) of this title].

"(B) Disability benefits.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

"(C) Reasonable notice.—The term 'reasonable notice' means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

"(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

"(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

"(d) Discrimination in employee pension benefit plans.—Nothing in this title, or the amendments made by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 (as redesignated by section 103(2) of this Act) [subsec. (j) of this section].

"(e) Continued benefit payments.—Notwithstanding any other provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual's representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act [Oct. 16, 1990] if the intent of the modification is to evade the purposes of this Act [The Older Workers Benefit Protection Act,

Pub.L. 101-433, Oct. 16, 1990, 104 Stat. 978, for distribution of this Act to the Code, see Short Title of 1990 Amendment notes, set out under section 621 of this title]."

Effective Date of 1989 Amendment. Repeal of subsec. (g) of this section by section 6202(b)(3)(C)(i) of Pub.L. 101-239 to apply to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub.L. 101-239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Effective and Termination Dates of 1986 Amendments. Section 7 of Pub.L. 99-592 provided that:

"(a) In general.—Except as provided in subsection (b), this Act and the amendments made by this [amending subsecs. (g)(1) and (h)(1) of this section and section 631 of this title, and enacting provisions set out as notes under sections 622, 624, and 631 of this title] Act shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement—

"(1) which is in effect on June 30, 1986,

"(2) which terminates after January 1, 1987,

"(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4) [section 206(d)(4) of this title]), and

"(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first."

"(b) Effect on existing causes of action.—The amendments made by sections 3 and 4 of this Act [amending subsec. (i) of this section and section 630 of this title, and enacting provisions set out as a note under this section] shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 [this chapter] as in effect before January 1, 1987."

Section 3(b) of Pub.L. 99-592 provided that: "The amendment made by subsection (a) of this section [enacting subsec. (i) of this section] is repealed December 31, 1993."

Amendment by section 9201(b)(1) and (3) of Pub.L. 99-272 effective May 1, 1986, pursuant to section 9201(d)(2) of Pub.L. 99-272.

Effective Date of 1984 Amendments. Section 2301(c)(2) of Pub.L. 98-369 provided that: "The amendment made by subsection (b) [amending this section] shall become effective on January 1, 1985."

Amendment by Pub.L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub.L. 98-459, set out as a note under section 3001 of Title 42, The Public Health and Welfare.

Effective Date of 1982 Amendment. Section 116(c) of Pub.L. 97-248 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on January 1, 1983, and the amendment made by subsection (b) [enacting section 1395y(b)(3) of Title 42, The Public Health and Welfare] shall apply with respect to items and services furnished on or after such date."

Effective Date of 1978 Amendment. Section 2(b) of Pub.L. 95-256 provided that: "The amendment made by subsection (a) of this section [amending this section] shall take effect on the date of enactment of this Act [Apr. 6, 1978], except that, in the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 [section 206(d)(4) of this title]), and which would otherwise be prohibited by the amendment made by section 3(a) of this Act [amending section 631 of this title], the amendment made by subsection (a) of this section [amending this section] shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first."

Transfer of Functions. All functions vested by this section in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex.Ord.No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Severability of Provisions. Any provisions, amendment by, etc. of Pub.L. 101-433 held to be invalid the remainder of such Public Law not to be affected, see section 301 of Pub.L. 101-433, set out as a note under section 621 of this title.

Rules and Regulations. Section 104 of Pub.L. 101-433 provided that: "Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628) [section 628 of this title], the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], only after consultation with the Secretary of the Treasury and the Secretary of Labor."

Federal Practice and Procedure

Class actions maintainable, see Wright & Miller: Civil § 1772 et seq.

Propriety of summary judgment in complicated and important litigation, see Wright, Miller & Kane: Civil 2d § 2732.2.

Federal Jury Practice and Instruction

Instructions, see Devitt, Blackmar & Wolff: Civil § 106.01 et seq.

West's Federal Practice Manual

Damage awards, see § 16409.

Mandatory ages for policemen and firemen, see § 15436 et seq.

Pre-arranged mandatory retirement plans, see § 15435. Private sector employees,

Permitted acts, see § 15390.

Prohibited acts, see § 15389.

Recovery of back pay, distinctions between different statutes and regulations, see § 16392.

Retirement benefit plans, remedies available, see § 16990.

Specific problem areas in retirements, see § 16981.

Code of Federal Regulations

Employment requirements, see 29 CFR 860.1 et seq.
Equal employment opportunity discrimination complaints, Army Department, see 32 CFR 588.1 et seq.

Selected Court Decisions

Disability retirement plan of the Public Employees Retirement System of Ohio was the type of plan subject to exemption from prohibitions of the Age Discrimination in Employment Act [this chapter]; therefore, retiree's failure to prove that reduction in benefits at age 60 was result of intent to discriminate in some nonfringe-benefit aspect of the employment relationship precluded summary judgment and warranted remand to provide retiree with opportunity to demonstrate existence of genuine issue of material fact, in age discrimination action arising out of denial of disability retirement benefits under the PERS. *Public Employees Ret. Sys. of Ohio v. Betts*, 1989, 109 S.Ct. 2854.

Bona fide occupational qualification standard of the Age Discrimination in Employment Act [29 U.S.C.A. § 623(f)(1)] is one of reasonable necessity, not of reasonableness. *Western Air Lines, Inc. v. Criswell*, Cal.1985, 105 S.Ct. 2743, 86 L.Ed.2d 321.

Congress did not intend wholesale invalidation of retirement plans instituted in good faith before passage of the Age Discrimination in Employment Act of 1967 [this chapter], nor did it intend to require employers to bear the burden of showing a business or economic purpose to justify bona fide preexisting plans. *United Air Lines Inc. v. McMann*, Va.1977, 98 S.Ct. 444, 434 U.S. 192, 54 L.Ed.2d 402.

§ 624. Study by Secretary of Labor: reports to President and Congress; scope of study; implementation of study; transmittal date of reports

(a)(1) The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress. Such study shall include—

(A) an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978¹ in raising the upper age limitation established by section 631(a) of this title to 70 years of age;

(B) a determination of the feasibility of eliminating such limitation;

(C) a determination of the feasibility of raising such limitation above 70 years of age; and

(D) an examination of the effect of the exemption contained in section 631(c) of this title, relat-

ing to certain executive employees, and the exemption contained in section 631(d) of this title, relating to tenured teaching personnel.

(2) The Secretary may undertake the study required by paragraph (1) of this subsection directly or by contract or other arrangement.

(b) The report required by subsection (a) of this section shall be transmitted to the President and to the Congress as an interim report not later than January 1, 1981, and in final form not later than January 1, 1982.

(Pub.L. 90-202, § 5, Dec. 15, 1967, 81 Stat. 604; Pub.L. 95-256, § 6, Apr. 6, 1978, 92 Stat. 192.)

¹ Pub.L. 95-256, § 3(a), Apr. 6, 1978, 92 Stat. 189. See section 631 of this title.

Editorial Notes

Study and Report on Elimination of Mandatory Retirement at Institutions of Higher Education. Pub.L. 99-592, § 6(c), Oct. 31, 1986, 100 Stat. 3344, provided that:

"(1) The Equal Employment Opportunity Commission shall, not later than 12 months after the date of enactment of this Act [Oct. 31, 1986], enter into an agreement with the National Academy of Sciences for the conduct of a study to analyze the potential consequences of the elimination of mandatory retirement on institutions of higher education.

"(2) The study required by paragraph (1) of this subsection shall be conducted under the general supervision of the National Academy of Sciences by a study panel composed of 9 members. The study panel shall consist of—

"(A) 4 members who shall be administrators at institutions of higher education selected by the National Academy of Sciences after consultation with the American Council of Education, the Association of American Universities, and the National Association of State Universities and Land Grant Colleges;

"(B) 4 members who shall be teachers or retired teachers at institutions of higher education (who do not serve in an administrative capacity at such institutions), selected by the National Academy of Sciences after consultation with the American Federation of Teachers, the National Education Association, the American Association of University Professors, and the American Association of Retired Persons; and

"(C) one member selected by the National Academy of Sciences.

"(3) The results of the study shall be reported, with recommendations, to the President and to the Congress not later than 5 years after the date of enactment of this Act [Oct. 31, 1986].

"(4) The expenses of the study required by this subsection shall be paid from funds available to the Equal Employment Opportunity Commission."

§ 625. Administration

The Secretary ¹ shall have the power—

(a) Delegation of functions; appointment of personnel; technical assistance

to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this chapter;

(b) Cooperation with other agencies, employers, labor organizations, and employment agencies

to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this chapter.

(Pub.L. 90-202, § 6, Dec. 15, 1967, 81 Stat. 604.)

¹ See 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.

Editorial Notes

Transfer of Functions. All functions relating to age discrimination administration and enforcement vested by this section in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex.Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Federal Practice and Procedure

Class actions maintainable, see Wright & Miller: Civil § 1772 et seq.

West's Federal Practice Manual

Former enforcement procedures, see § 15394.

Library References

Civil Rights ⇐31.

C.J.S. Civil Rights §§ 178, 185.

§ 626. Recordkeeping, investigation, and enforcement

(a) Attendance of witnesses; investigations, inspections, records, and homework regulations

The Equal Employment Opportunity Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title.

(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion

The provisions of this chapter shall be enforced in accordance with the powers, remedies, and pro-

cedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: *Provided*, That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.

(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: *Provided*, That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

(d) Filing of charge with Commission; timeliness; conciliation, conference, and persuasion

No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed—

(1) within 180 days after the alleged unlawful practice occurred; or

(2) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful

practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(e) Statute of limitations; reliance in future on administrative ruling, etc.; tolling

(1) Sections 255 and 259 of this title shall apply to actions under this chapter.

(2) For the period during which the Equal Employment Opportunity Commission is attempting to effect voluntary compliance with requirements of this chapter through informal methods of conciliation, conference, and persuasion pursuant to subsection (b) of this section, the statute of limitations as provided in section 255 of this title shall be tolled, but in no event for a period in excess of one year.

(f) Waiver

(1) An individual may not waive any right or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

(B) the waiver specifically refers to rights or claims arising under this chapter;

(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 623 or 633a of this title may not be considered knowing and voluntary unless at a minimum—

(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this chapter. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

(Pub.L. 90-202, § 7, Dec. 15, 1967, 81 Stat. 604; Pub.L. 95-256, § 4(a), (b)(1), (c)(1), Apr. 6, 1978, 92 Stat. 190, 191; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub.L. 101-433, Title II, § 201, Oct. 16, 1990, 104 Stat. 983.)

Editorial Notes

Effective Date of 1990 Amendment. Section 202(a) of Pub.L. 101-433 provided that: "The amendment made by section 201 [amending this section] shall not apply with respect to waivers that occur before the date of enactment of this Act [Oct. 16, 1990]."

Effective Date of 1978 Amendment. Section 4(b)(2) of Pub.L. 95-256 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect with respect to civil actions brought after the date of enactment of this Act [Apr. 6, 1978]."

Section 4(c)(2) of Pub.L. 95-256 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect with respect to conciliations commenced by the Secretary of Labor after the date of enactment of this Act [Apr. 6, 1978]."

Short Title of 1990 Amendment. Pub.L. 101-504, § 1, Nov. 3, 1990, 104 Stat. 1298, provided that: "This Act [amending provisions set out as notes under section 626 of this title] may be cited as the 'Age Discrimination Claims Assistance Amendments of 1990.'"

Transfer of Functions. "Equal Employment Opportunity Commission" and "Commission" were substituted for "Secretary", meaning the Secretary of Labor, pursuant to Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in the Secretary of Labor to the Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex.Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Severability of Provisions. Any provision, amendment by, etc. of Pub.L. 101-433 held to be invalid, the remainder of such Public Law not to be affected, see section 301 of Pub.L. 101-433, set out as a note under section 621 of this title.

Rule on Waivers. Section 202(b) of Pub.L. 101-433 provided that: "Effective on the date of enactment of this Act [Oct. 16, 1990], the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect."

Age Discrimination Claims Assistance; Extension of Statute of Limitations, Conditions; Notice of Extension; Reports to Congressional Committees. Pub.L. 100-283, Apr. 7, 1988, 102 Stat. 78, as amended Pub.L. 101-504, § 2, Nov. 3, 1990, 104 Stat. 1298, provided that:

"Section 1. Short title.

"This Act [this note] may be cited as the 'Age Discrimination Claims Assistance Act of 1988'.

"Sec. 2. Findings.

"The Congress finds that—

"(1) the Equal Employment Opportunity Commission (hereafter in this Act referred to as the 'Commission') has failed to process an undetermined number of charges filed under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634) [this chapter] before the running of the statute of limitations applicable to bringing civil actions in the Federal courts under such Act, and

"(2) many persons who filed such charges with the Commission have lost the right to bring private civil

actions with respect to the unlawful practices alleged in such charges.

"Sec. 3. Extension of statute of limitations.

"(a) Extension.—Notwithstanding section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) [subsec. (e) of this section], a civil action may be brought under section 7 of such Act [this section] by the Commission or an aggrieved person, during the applicable extension period if—

"(1)(A) with respect to the alleged unlawful practice on which the claim in such civil action is based, a charge was timely filed under such Act with the Commission after December 31, 1983,

"(B) with respect to the alleged unlawful practice on which the claim in such civil action is based, a charge was timely filed under such Act with the Commission after April 6, 1985,

"(2) the Commission did not, within the applicable period set forth in section 7(e) [subsec. (e) of this section] either—

"(A) eliminate such alleged unlawful practice by informal methods of conciliation, conference, and persuasion, or

"(B) notify such person, in writing, of the disposition of such charge and of the right of such person to bring a civil action on such claim,

"(3)(A) with respect to a claim described in paragraph (1)(A) the statute of limitations applicable under such section 7(e) [subsec. (e) of this section] ran before the date of the enactment of this Act [Apr. 7, 1988], or

"(B) with respect to a claim described in paragraph (1)(B) the statute of limitations applicable under such section 7(e) [subsec. (e) of this section] runs after April 6, 1988, but before the expiration of the 180-day period beginning on the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990]."

"(4) a civil action on such claim was not brought by the Commission or such person before the running of the statute of limitations.

"(b) Definition.—The term 'extension period' means—

"(1) with respect to a charge described in paragraph (1)(A), the 450-day period beginning on the date of the enactment of this Act [Apr. 7, 1988], and

"(2) with respect to a charge described in paragraph (1)(B), the 450-day period beginning on the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990], and"

"Sec. 4. Notice of statute of limitations.

"(a) Notice regarding claims for which statute of limitations is extended.—(1) Not later than 60 days after the date of enactment of this Act [Apr. 7, 1988], the Commission shall provide the notice specified in subsection (b) to each person who has filed before April 7, 1985, a charge to which section 3 applies.

"(2) Not later than 60 days after the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990], the Commission shall provide the notice specified in subsection (b) to each person who filed after April 6, 1985, a charge to which section 3 applies and with respect to which the statute of

limitation ran before the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990.

"(3) Not later than 60 days after the expiration of the 180-day period beginning on the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990], the Commission shall provide the notice specified in subsection (b) to each person who filed after April 6, 1985, a charge to which section 3 applies and with respect to which the statute of limitations runs in such 180-day period."

"(b) Contents of notice.—The notice required to be provided under subsection (a) to a person shall be in writing and shall include the following information:

"(1) The rights and benefits to which such person is entitled under the Age Discrimination in Employment Act of 1967 [this chapter].

"(2) The date on which the statute of limitations applicable to such person's claim will run.

"(3) That such person may bring a civil action on such claim before the date specified in paragraph (2).

"Sec. 5. Reports.

"(a) Contents of reports.—For each 180-day period in the 540-day period beginning on the date of enactment of this Act [Apr. 7, 1988], and each 150-day period in the 450-day period beginning on the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990], the Commission shall submit a written report that includes all of the following information:

"(1) The number of persons who have claims to which section 3 applies and the dates charges based on such claims were filed with the Commission.

"(2) The number of persons to whom notice was provided in accordance with section 4(a) and the date the notice was provided.

"(3) With respect to alleged unlawful practices on which claims affected by section 3 are based, the number of such alleged unlawful practices that the Commission has attempted to eliminate by informal methods of conciliation, conference, and persuasion in the 180-day period for which the report is submitted.

"(4) The number of alleged unlawful practices referred to in paragraph (3) that were so eliminated in such period.

"(5) The number of civil actions filed by the Commission on behalf of persons to whom notice was sent under section 4.

"(b) Submission of reports.—Each report required by subsection (a) shall be submitted by the Commission to—

"(1) the Committee on Education and Labor, and the Select Committee on Aging, of the House of Representatives, and

"(2) the Committee on Labor and Human Resources, and the Special Committee on Aging, of the Senate, not later than 30 days after the expiration of the 150-day period for which such report is required."

Federal Practice and Procedure

Class actions maintainable, see Wright & Miller: Civil § 1772 et seq.

Existence of material fact issue regarding equitable tolling as precluding summary judgment, see Wright, Miller & Kane: Civil 2d § 2734.

Removal of cases, see Wright, Miller & Cooper: Jurisdiction 2d § 3729.

Waiver of jury trial, see Wright & Miller: Civil § 2321.

West's Federal Forms

Affirmative defenses, statute of limitations, see § 2112 et seq.

Complaint, see §§ 1665 to 1669.

Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq.

West's Federal Practice Manual

Age Discrimination and Fair Labor Standards Act, see § 15395.

Award of attorney's fees and costs, see §§ 7683.14, 16432.

Damage awards, see § 16409.

Injunctive relief, generally, see § 16436.

Jury trials, see § 16244.

Limitations upon private sector employee suits, see § 15397.

Problems in procedure,

Applicability of other sections of this title, see § 15442.

Exhaustion of administrative remedies, see § 15439.

Time limits within which employee must act, see § 15440.

Reliance defense, see § 15400.

Statutory protection of private sector employees—conciliation by Secretary, see § 15396.

Timetable for enforcement actions by Secretary, see § 15399.

Code of Federal Regulations

Recordkeeping requirements, see 29 CFR 1627.1 et seq.

Library References

Civil Rights ⇐34.

C.J.S. Civil Rights §§ 180, 182, 183.

Selected Court Decisions

Trial court can better manage major Age Discrimination in Employment Act [this chapter] action if it ascertains contours of action at outset; court is not limited to passive waiting for objections about manner in which consents to joinder in class action were obtained, and by monitoring preparation and distribution of notice, court can insure that it is timely, accurate, and informative. *Hoffman-La Roche v. Sperling*, 1989, 110 S.Ct. 482.

To say that violation of Age Discrimination in Employment Act [this chapter] is "willful" if employer either knew or showed reckless disregard for matter of whether its conduct was prohibited by the ADEA was acceptable way to articulate definition of "willful," but where employer certainly did not know that its conduct violated the Act nor could it be said that employer adopted transfer policy in "reckless disregard" of requirements of the Act, but, rather, record made clear that employer's officers acted reasonably and in good faith in attempting to determine whether their plan would violate Act, conduct was not "willful" and respondents were not entitled to liqui-

dated damages. *Trans-World Airlines, Inc. v. Thurston*, N.Y.1985, 105 S.Ct. 613, 83 L.Ed.2d 523.

Under the section of the Age Discrimination in Employment Act [this chapter] which provides that in the case of an alleged unlawful practice occurring in a state which has a law prohibiting age discrimination in employment and authorizing a state authority to grant or seek relief from such discriminatory practice, no suit may be brought under the ADEA before the expiration of 60 days after proceedings have been commenced under the state law, an aggrieved person must resort to appropriate state remedies before bringing age discrimination suit in federal court. *Oscar Mayer & Co. v. Evans*, Iowa 1979, 99 S.Ct. 2066, 441 U.S. 750, 60 L.Ed.2d 609, on remand 602 F.2d 183.

§ 627. Notices to be posted

Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Equal Employment Opportunity Commission setting forth information as the Commission deems appropriate to effectuate the purposes of this chapter.

(Pub.L. 90-202, § 8, Dec. 15, 1967, 81 Stat. 605; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

Editorial Notes

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Federal Practice and Procedure

Class actions maintainable, see Wright & Miller: Civil § 1772 et seq.

West's Federal Practice Manual

Statutory protection of private sector employees, see § 15394.

Code of Federal Regulations

Posting requirements, see 29 CFR 1627.10.

§ 628. Rules and regulations; exemptions

In accordance with the provisions of subchapter II of chapter 5 of Title 5, the Equal Employment Opportunity Commission may issue such rules and regulations as it may consider necessary or appropriate for carrying out this chapter, and may establish such reasonable exemptions to and from any or