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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - FAIR EMPLOYMENT PRACTICES

Introduced By: Senators Metts, Goldin, Pichardo, Jabour, and Miller

Date Introduced: February 13, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-5-6 of the General Laws in Chapter 28-5 entitled "Fair
2 Employment Practices" is hereby amended to read as follows:

3 **28-5-6. Definitions.** -- When used in this chapter:

4 (1) "Age" means anyone who is at least forty (40) years of age.

5 (2) "Because of sex" or "on the basis of sex" include, but are not limited to, because of or
6 on the basis of pregnancy, childbirth, or related medical conditions, and women affected by
7 pregnancy, childbirth, or related medical conditions shall be treated the same for all employment
8 related purposes, including receipt of benefits under fringe benefit programs, as other persons not
9 so affected but similar in their ability or inability to work, and nothing in this chapter shall be
10 interpreted to permit otherwise.

11 (3) "Commission" means the Rhode Island commission against discrimination created by
12 this chapter

13 (4) "Conviction" means an adjudication by a court of competent jurisdiction that the
14 defendant committed a crime.

15 (5) "Direct relationship" means that the nature of the criminal conduct for which the
16 person was convicted has a direct bearing on his or her fitness or ability to perform one or more
17 of the duties or responsibilities necessarily related to the license or employment sought.

18 ~~(4)~~(6) "Disability" means a disability as defined in section 42-87-1.

19 ~~(5)~~(7) "Discriminate" includes segregate or separate.

1 ~~(6)~~(8) "Employee" does not include any individual employed by his or her parents,
2 spouse, or child, or in the domestic service of any person.

3 ~~(7)~~~~(8)~~(9) "Employer" includes the state and all political subdivisions of the state and any
4 person in this state employing four (4) or more individuals, and any person acting in the interest
5 of an employer directly or indirectly.

6 (ii) Nothing in this subdivision shall be construed to apply to a religious corporation,
7 association, educational institution, or society with respect to the employment of individuals of its
8 religion to perform work connected with the carrying on of its activities.

9 ~~(8)~~(10) "Employment agency" includes any person undertaking with or without
10 compensation to procure opportunities to work, or to procure, recruit, refer, or place employees.

11 ~~(9)~~(11) "Firefighter" means an employee the duties of whose position includes work
12 connected with the control and extinguishment of fires or the maintenance and use of firefighting
13 apparatus and equipment, including an employee engaged in this activity who is transferred or
14 promoted to a supervisory or administrative position.

15 ~~(10)~~(12) "Gender identity or expression" includes a person's actual or perceived gender,
16 as well as a person's gender identity, gender-related self image, gender-related appearance, or
17 gender-related expression; whether or not that gender identity, gender-related self image, gender-
18 related appearance, or gender-related expression is different from that traditionally associated
19 with the person's sex at birth.

20 ~~(11)~~(13) "Labor organization" includes any organization which exists for the purpose, in
21 whole or in part, of collective bargaining or of dealing with employers concerning grievances,
22 terms or conditions of employment, or of other mutual aid or protection in relation to
23 employment.

24 ~~(12)~~(14) "Law enforcement officer" means an employee the duties of whose position
25 include investigation, apprehension, or detention of individuals suspected or convicted of
26 offenses against the criminal laws of the state, including an employee engaged in such activity
27 who is transferred or promoted to a supervisory or administrative position. For the purpose of this
28 subdivision, "detention" includes the duties of employees assigned to guard individuals
29 incarcerated in any penal institution.

30 ~~(13)~~(15) "Person" includes one or more individuals, partnerships, associations,
31 organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

32 (16) "Public agency" means the state or any local subdivision thereof, or any state or
33 local department, agency, board or commission.

34 ~~(14)~~(17) "Religion" includes all aspects of religious observance and practice, as well as

1 belief, unless an employer, union or employment agency demonstrates that it is unable to
2 reasonably accommodate to an employee's or prospective employee's or union member's religious
3 observance or practice without undue hardship on the conduct of its business.

4 ~~(15)~~(18) "Sexual orientation" means having or being perceived as having an orientation
5 for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the
6 status of persons and does not render lawful any conduct prohibited by the criminal laws of this
7 state nor impose any duty on a religious organization. This definition does not confer legislative
8 approval of that status, but is intended to assure the basic human rights of persons to obtain and
9 hold employment, regardless of that status.

10 ~~(16)~~(19) The terms, as used regarding persons with disabilities:

11 (i) "Auxiliary aids and services" and "reasonable accommodation" shall have the same
12 meaning as those items are defined in section 42-87-1.1; and

13 (ii) "Hardship" means an "undue hardship" as defined in section 42-87-1.1.

14 SECTION 2. Section 28-5-7 of the General Laws in Chapter 28-5 entitled "Fair
15 Employment Practices" is hereby amended to read as follows:

16 **28-5-7. Unlawful employment practices.** -- It shall be an unlawful employment
17 practice:

18 (1) For any employer:

19 (i) To refuse to hire any applicant for employment because of his or her race or color,
20 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
21 ancestral origin;

22 (ii) Because of those reasons, to discharge an employee or discriminate against him or
23 her with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or
24 any other matter directly or indirectly related to employment. However, if an insurer or employer
25 extends insurance related benefits to persons other than or in addition to the named employee,
26 nothing in this subdivision shall require those benefits to be offered to unmarried partners of
27 named employees;

28 (iii) In the recruiting of individuals for employment or in hiring them, to utilize any
29 employment agency, placement service, training school or center, labor organization, or any other
30 employee referring source which the employer knows, or has reasonable cause to know,
31 discriminates against individuals because of their race or color, religion, sex, sexual orientation,
32 gender identity or expression, disability, age, or country of ancestral origin;

33 (iv) To refuse to reasonably accommodate an employee's or prospective employee's
34 disability unless the employer can demonstrate that the accommodation would pose a hardship on

1 the employer's program, enterprise, or business; or

2 (v) When an employee has presented to the employer an internal complaint alleging
3 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual
4 orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a
5 timely manner in writing to that employee the disposition of the complaint, including a
6 description of any action taken in resolution of the complaint; provided, however, no other
7 personnel information shall be disclosed to the complainant.

8 (2) (i) For any employment agency to fail or refuse to properly classify or refer for
9 employment or otherwise discriminate against any individual because of his or her race or color,
10 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
11 ancestral origin; or

12 (ii) For any employment agency, placement service, training school or center, labor
13 organization, or any other employee referring source to comply with an employer's request for the
14 referral of job applicants if the request indicates either directly or indirectly that the employer will
15 not afford full and equal employment opportunities to individuals regardless of their race or color,
16 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
17 ancestral origin;

18 (3) For any labor organization:

19 (i) To deny full and equal membership rights to any applicant for membership because of
20 his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability,
21 age, or country of ancestral origin;

22 (ii) Because of those reasons, to deny a member full and equal membership rights, expel
23 him or her from membership, or otherwise discriminate in any manner against him or her with
24 respect to his or her hire, tenure, compensation, terms, conditions or privileges of employment, or
25 any other matter directly or indirectly related to membership or employment, whether or not
26 authorized or required by the constitution or bylaws of the labor organization or by a collective
27 labor agreement or other contract;

28 (iii) To fail or refuse to classify properly or refer for employment, or otherwise to
29 discriminate against any member because of his or her race or color, religion, sex, sexual
30 orientation, gender identity or expression, disability, age, or country of ancestral origin; or

31 (iv) To refuse to reasonably accommodate a member's or prospective member's disability
32 unless the labor organization can demonstrate that the accommodation would pose a hardship on
33 the labor organization's program, enterprise, or business;

34 (4) Except where based on a bona fide occupational qualification certified by the

1 commission or where necessary to comply with any federal mandated affirmative action
2 programs, for any employer or employment agency, labor organization, placement service,
3 training school or center, or any other employee referring source, prior to employment or
4 admission to membership of any individual, to:

5 (i) Elicit or attempt to elicit any information directly or indirectly pertaining to his or her
6 race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or
7 country of ancestral origin;

8 (ii) Make or keep a record of his or her race or color, religion, sex, sexual orientation,
9 gender identity or expression, disability, age, or country of ancestral origin;

10 (iii) Use any form of application for employment, or personnel or membership blank
11 containing questions or entries directly or indirectly pertaining to race or color, religion, sex,
12 sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

13 (iv) Print or publish or cause to be printed or published any notice or advertisement
14 relating to employment or membership indicating any preference, limitation, specification, or
15 discrimination based upon race or color, religion, sex, sexual orientation, gender identity or
16 expression, disability, age, or country of ancestral origin; or

17 (v) Establish, announce, or follow a policy of denying or limiting, through a quota
18 system or otherwise, employment or membership opportunities of any group because of the race
19 or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country
20 of ancestral origin of that group;

21 (5) For any employer or employment agency, labor organization, placement service,
22 training school or center, or any other employee referring source to discriminate in any manner
23 against any individual because he or she has opposed any practice forbidden by this chapter, or
24 because he or she has made a charge, testified, or assisted in any manner in any investigation,
25 proceeding, or hearing under this chapter;

26 (6) For any person, whether or not an employer, employment agency, labor organization,
27 or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to
28 be an unlawful employment practice, or to obstruct or prevent any person from complying with
29 the provisions of this chapter or any order issued pursuant to this chapter, or to attempt directly or
30 indirectly to commit any act declared by this section to be an unlawful employment practice;

31 (7) For any employer to include on any application for employment, except applications
32 for law enforcement agency positions or positions related to law enforcement agencies [or where](#)
33 [any federal or state law or regulation creates mandatory or presumptive disqualification based on](#)
34 [a person's conviction of one or more types of criminal offenses](#), a question inquiring or to

1 otherwise inquire either orally or in writing whether the applicant has ever been arrested, ~~or~~
2 charged with or convicted of any crime; provided, that after determining that an applicant is a
3 finalist or after making a conditional offer of employment, an employee may ask an applicant for
4 information about his or her criminal convictions, in accordance with all applicable state and
5 federal laws ~~nothing in this subdivision shall prevent an employer from inquiring whether the~~
6 ~~applicant has ever been convicted of any crime;~~

7 (8) (a) For an employer to deny an applicant based on his or her criminal record except if:

8 (i) There is a direct relationship between one or more of the previous criminal offenses
9 and employment sought. If the employer finds that there is a direct relationship, an employer
10 must take into consideration any information produced by the person, or produced on his/her
11 behalf, in regard to his/her rehabilitation and good conduct; or

12 (ii) The applicant is applying for a position for which any federal or state law or
13 regulation creates mandatory or presumptive disqualification based on a person's conviction of
14 one or more types of criminal offenses;

15 (iii) The applicant is not bondable under a standard fidelity bond or an equivalent bond
16 where such bond is required; or

17 (iv) The granting of the employment would involve an unreasonable risk to property, or
18 to the safety or welfare of specific individuals, employees or the general public.

19 (b) No employer shall be liable because it has complied with this section.

20 ~~(8) (i)~~ (9) For any person who, on June 7, 1988, is providing either by direct payment or
21 by making contributions to a fringe benefit fund or insurance program, benefits in violation with
22 sections 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7,
23 1988 or if there is an applicable collective bargaining agreement in effect on June 7, 1988, until
24 the termination of that agreement, in order to come into compliance with sections 28-5-6, 28-5-7
25 and 28-5-38, to reduce the benefits or the compensation provided any employee on June 7, 1988,
26 either directly or by failing to provide sufficient contributions to a fringe benefit fund or
27 insurance program.

28 (ii) Where the costs of these benefits on June 7, 1988 are apportioned between employers
29 and employees, the payments or contributions required to comply with sections 28-5-6, 28-5-7
30 and 28-5-38 may be made by employers and employees in the same proportion.

31 (iii) Nothing in this section shall prevent the readjustment of benefits or compensation
32 for reasons unrelated to compliance with sections 28-5-6, 28-5-7 and 28-5-38.

33 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - FAIR EMPLOYMENT PRACTICES

1 This act would prohibit inquiries on employment applications regarding prior criminal
2 convictions except when federal or state law specifically disqualifies a person from employment
3 because of a prior conviction or authorizes such inquiries. Further, this act specifies the situations
4 when an employer may inquire about a potential employee's criminal record and the factors an
5 employer must take into account in evaluating an applicant's criminal record.

6 This act would take effect upon passage.

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