

**2013 -- S 0357 SUBSTITUTE A**

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LC01392/SUB A/4  
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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, for the purposes of this chapter only, any verdict or finding of  
14   guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge.

15          ~~(4)~~(5) "Disability" means a disability as defined in section 42-87-1.

16          ~~(5)~~(6) "Discriminate" includes segregate or separate.

17          ~~(6)~~(7) "Employee" does not include any individual employed by his or her parents,  
18   spouse, or child, or in the domestic service of any person.

19          ~~(7)~~(8)(i) "Employer" includes the state and all political subdivisions of the state and any

1 person in this state employing four (4) or more individuals, and any person acting in the interest  
2 of an employer directly or indirectly.

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

6 ~~(8)~~(9) "Employment agency" includes any person undertaking with or without  
7 compensation to procure opportunities to work, or to procure, recruit, refer, or place employees.

8 ~~(9)~~(10) "Firefighter" means an employee the duties of whose position includes work  
9 connected with the control and extinguishment of fires or the maintenance and use of firefighting  
10 apparatus and equipment, including an employee engaged in this activity who is transferred or  
11 promoted to a supervisory or administrative position.

12 ~~(10)~~(11) "Gender identity or expression" includes a person's actual or perceived gender,  
13 as well as a person's gender identity, gender-related self image, gender-related appearance, or  
14 gender-related expression; whether or not that gender identity, gender-related self image, gender-  
15 related appearance, or gender-related expression is different from that traditionally associated  
16 with the person's sex at birth.

17 ~~(11)~~(12) "Labor organization" includes any organization which exists for the purpose, in  
18 whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
19 terms or conditions of employment, or of other mutual aid or protection in relation to  
20 employment.

21 ~~(12)~~(13) "Law enforcement officer" means an employee the duties of whose position  
22 include investigation, apprehension, or detention of individuals suspected or convicted of  
23 offenses against the criminal laws of the state, including an employee engaged in such activity  
24 who is transferred or promoted to a supervisory or administrative position. For the purpose of this  
25 subdivision, "detention" includes the duties of employees assigned to guard individuals  
26 incarcerated in any penal institution.

27 ~~(13)~~(14) "Person" includes one or more individuals, partnerships, associations,  
28 organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

29 ~~(14)~~(15) "Religion" includes all aspects of religious observance and practice, as well as  
30 belief, unless an employer, union or employment agency demonstrates that it is unable to  
31 reasonably accommodate to an employee's or prospective employee's or union member's religious  
32 observance or practice without undue hardship on the conduct of its business.

33 ~~(15)~~(16) "Sexual orientation" means having or being perceived as having an orientation  
34 for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the

1 status of persons and does not render lawful any conduct prohibited by the criminal laws of this  
2 state nor impose any duty on a religious organization. This definition does not confer legislative  
3 approval of that status, but is intended to assure the basic human rights of persons to obtain and  
4 hold employment, regardless of that status.

5 ~~(16)~~(17) The terms, as used regarding persons with disabilities:

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

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

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

11 **28-5-7. Unlawful employment practices.** -- It shall be an unlawful employment  
12 practice:

13 (1) For any employer:

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

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

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

28 (iv) To refuse to reasonably accommodate an employee's or prospective employee's  
29 disability unless the employer can demonstrate that the accommodation would pose a hardship on  
30 the employer's program, enterprise, or business; or

31 (v) When an employee has presented to the employer an internal complaint alleging  
32 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual  
33 orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a  
34 timely manner in writing to that employee the disposition of the complaint, including a

1 description of any action taken in resolution of the complaint; provided, however, no other  
2 personnel information shall be disclosed to the complainant.

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

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

13 (3) For any labor organization:

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

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

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

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

29 (4) Except where based on a bona fide occupational qualification certified by the  
30 commission or where necessary to comply with any federal mandated affirmative action  
31 programs, for any employer or employment agency, labor organization, placement service,  
32 training school or center, or any other employee referring source, prior to employment or  
33 admission to membership of any individual, to:

34 (i) Elicit or attempt to elicit any information directly or indirectly pertaining to his or her

1 race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or  
2 country of ancestral origin;

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

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

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

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

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

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

26 (7) For any employer to include on any application for employment, except applications  
27 for law enforcement agency positions or positions related to law enforcement agencies, a question  
28 inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been  
29 arrested, ~~or~~ charged with or convicted of any crime; provided, that ~~nothing in this subdivision~~  
30 ~~shall prevent an employer from inquiring whether the applicant has ever been convicted of any~~  
31 ~~crime; ;~~

32 (i) If a federal or state law or regulation creates a mandatory or presumptive  
33 disqualification from employment based on a person's conviction of one or more specified  
34 criminal offenses, an employer may include a question or otherwise inquire whether the applicant

1 has ever been convicted of any of those offenses; or

2 (ii) If a standard fidelity bond or an equivalent bond is required for the position for which  
3 the applicant is seeking employment and his or her conviction of one or more specified criminal  
4 offenses would disqualify the applicant from obtaining such a bond, an employer may include a  
5 question or otherwise inquire whether the applicant has ever been convicted of any of those  
6 offenses; and

7 (iii) Notwithstanding, any employer may ask an applicant for information about his or her  
8 criminal convictions at the first interview or thereafter, in accordance with all applicable state and  
9 federal laws.

10 (8)(i) For any person who, on June 7, 1988, is providing either by direct payment or by  
11 making contributions to a fringe benefit fund or insurance program, benefits in violation with  
12 sections 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7,  
13 1988 or if there is an applicable collective bargaining agreement in effect on June 7, 1988, until  
14 the termination of that agreement, in order to come into compliance with sections 28-5-6, 28-5-7  
15 and 28-5-38, to reduce the benefits or the compensation provided any employee on June 7, 1988,  
16 either directly or by failing to provide sufficient contributions to a fringe benefit fund or  
17 insurance program.

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

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

23 SECTION 3. This act shall take effect on January 1, 2014.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - FAIR EMPLOYMENT PRACTICES

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1           This act would prohibit an employer from inquiring either orally or in writing about an  
2 applicant's prior criminal convictions, with certain exceptions, until the first interview with the  
3 applicant. An employer may inquire about the applicant's criminal convictions during the first  
4 interview and thereafter in accordance with all applicable state and federal laws.

5           This act would take effect January 1, 2014.

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