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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - FAIR EMPLOYMENT PRACTICES

Introduced By: Senators Goldin, Paiva Weed, Sosnowski, Lynch, and Nesselbush

Date Introduced: March 18, 2015

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 28-5-2, 28-5-3, 28-5-5, 28-5-6, 28-5-7, 28-5-7.2, 28-5-7.3, 28-5-  
2   13, 28-5-14, 28-5-22 and 28-5-38 of the General Laws in Chapter 28-5 entitled "Fair  
3   Employment Practices" are hereby amended to read as follows:

4           **28-5-2. Legislative findings.** -- The practice or policy of discrimination against  
5   individuals because of their race or color, religion, sex, sexual orientation, gender identity or  
6   expression, [familial status](#), disability, age, or country of ancestral origin is a matter of state  
7   concern. Such discrimination foments domestic strife and unrest, threatens the rights and  
8   privileges of the inhabitants of the state, and undermines the foundations of a free democratic  
9   state. The denial of equal employment opportunities because of such discrimination and the  
10   consequent failure to utilize the productive capacities of individuals to their fullest extent deprive  
11   large segments of the population of the state of earnings necessary to maintain decent standards  
12   of living, necessitates their resort to public relief, and intensifies group conflicts, thereby resulting  
13   in grave injury to the public safety, health, and welfare.

14           **28-5-3. Declaration of policy.** -- It is declared to be the public policy of this state to  
15   foster the employment of all individuals in this state in accordance with their fullest capacities,  
16   regardless of their race or color, religion, sex, sexual orientation, gender identity or expression,  
17   [familial status](#), disability, age, or country of ancestral origin, and to safeguard their right to obtain  
18   and hold employment without such discrimination.

19           **28-5-5. Right to equal employment opportunities.** -- The right of all individuals in this

1 state to equal employment opportunities, regardless of race or color, religion, sex, sexual  
2 orientation, gender identity or expression, [familial status](#), disability, age, or country of ancestral  
3 origin, is recognized as and declared to be a civil right.

4 **28-5-6. Definitions.** -- When used in this chapter:

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

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

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

14 (4) "Conviction" means, for the purposes of this chapter only, any verdict or finding of  
15 guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge.

16 (5) "Disability" means a disability as defined in § 42-87-1.

17 (6) "Discriminate" includes segregate or separate.

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

20 (8) (i) "Employer" includes the state and all political subdivisions of the state and any  
21 person in this state employing four (4) or more individuals, and any person acting in the interest  
22 of an employer directly or indirectly.

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

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

28 [\(10\) "Familial status" means the state of being or becoming a provider of care or support](#)  
29 [to a family member. "Family member" shall include the individual's spouse, party to a civil union](#)  
30 [as defined by § 15-3.1-1, parents, grandparents, siblings, or in-laws; and children, grandchildren,](#)  
31 [nieces, or nephews \(including through adoption or other dependent or custodial relationship\). The](#)  
32 [protections afforded against discrimination on the basis of familial status shall apply to any](#)  
33 [person who is pregnant or is in the process of securing legal custody of any individual who has](#)  
34 [not attained the age of eighteen \(18\) years.](#)

1           ~~(10)~~ (11) "Firefighter" means an employee the duties of whose position includes work  
2 connected with the control and extinguishment of fires or the maintenance and use of firefighting  
3 apparatus and equipment, including an employee engaged in this activity who is transferred or  
4 promoted to a supervisory or administrative position.

5           ~~(11)~~ (12) "Gender identity or expression" includes a person's actual or perceived gender,  
6 as well as a person's gender identity, gender-related self image, gender-related appearance, or  
7 gender-related expression; whether or not that gender identity, gender-related self image, gender-  
8 related appearance, or gender-related expression is different from that traditionally associated  
9 with the person's sex at birth.

10          ~~(12)~~ (13) "Labor organization" includes any organization which exists for the purpose, in  
11 whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
12 terms or conditions of employment, or of other mutual aid or protection in relation to  
13 employment.

14          ~~(13)~~ (14) "Law enforcement officer" means an employee the duties of whose position  
15 include investigation, apprehension, or detention of individuals suspected or convicted of  
16 offenses against the criminal laws of the state, including an employee engaged in such activity  
17 who is transferred or promoted to a supervisory or administrative position. For the purpose of this  
18 subdivision, "detention" includes the duties of employees assigned to guard individuals  
19 incarcerated in any penal institution.

20          ~~(14)~~ (15) "Person" includes one or more individuals, partnerships, associations,  
21 organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

22          ~~(15)~~ (16) "Religion" includes all aspects of religious observance and practice, as well as  
23 belief, unless an employer, union or employment agency demonstrates that it is unable to  
24 reasonably accommodate to an employee's or prospective employee's or union member's religious  
25 observance or practice without undue hardship on the conduct of its business.

26          ~~(16)~~ (17) "Sexual orientation" means having or being perceived as having an orientation  
27 for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the  
28 status of persons and does not render lawful any conduct prohibited by the criminal laws of this  
29 state nor impose any duty on a religious organization. This definition does not confer legislative  
30 approval of that status, but is intended to assure the basic human rights of persons to obtain and  
31 hold employment, regardless of that status.

32          ~~(17)~~ (18) The terms, as used regarding persons with disabilities:

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

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

2 **28-5-7. Unlawful employment practices.** -- It shall be an unlawful employment  
3 practice:

4 (1) For any employer:

5 (i) To refuse to hire any applicant for employment because of his or her race or color,  
6 religion, sex, sexual orientation, gender identity or expression, [familial status](#), disability, age, or  
7 country of ancestral origin;

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

14 (iii) In the recruiting of individuals for employment or in hiring them, to utilize any  
15 employment agency, placement service, training school or center, labor organization, or any other  
16 employee referring source which the employer knows, or has reasonable cause to know,  
17 discriminates against individuals because of their race or color, religion, sex, sexual orientation,  
18 gender identity or expression, [familial status](#), disability, age, or country of ancestral origin;

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

22 (v) When an employee has presented to the employer an internal complaint alleging  
23 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual  
24 orientation, gender identity or expression, [familial status](#), or country of ancestral origin, to refuse  
25 to disclose in a timely manner in writing to that employee the disposition of the complaint,  
26 including a description of any action taken in resolution of the complaint; provided, however, no  
27 other personnel information shall be disclosed to the complainant.

28 (2) (i) For any employment agency to fail or refuse to properly classify or refer for  
29 employment or otherwise discriminate against any individual because of his or her race or color,  
30 religion, sex, sexual orientation, gender identity or expression, [familial status](#), disability, age, or  
31 country of ancestral origin; or

32 (ii) For any employment agency, placement service, training school or center, labor  
33 organization, or any other employee referring source to comply with an employer's request for the  
34 referral of job applicants if the request indicates either directly or indirectly that the employer will

1 not afford full and equal employment opportunities to individuals regardless of their race or color,  
2 religion, sex, sexual orientation, gender identity or expression, [familial status](#), disability, age, or  
3 country of ancestral origin;

4 (3) For any labor organization:

5 (i) To deny full and equal membership rights to any applicant for membership because of  
6 his or her race or color, religion, sex, sexual orientation, gender identity or expression, [familial](#)  
7 [status](#), disability, age, or country of ancestral origin;

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

14 (iii) To fail or refuse to classify properly or refer for employment, or otherwise to  
15 discriminate against any member because of his or her race or color, religion, sex, sexual  
16 orientation, gender identity or expression, [familial status](#), disability, age, or country of ancestral  
17 origin; or

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

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

26 (i) Elicit or attempt to elicit any information directly or indirectly pertaining to his or her  
27 race or color, religion, sex, sexual orientation, gender identity or expression, [familial status](#),  
28 disability, age, or country of ancestral origin;

29 (ii) Make or keep a record of his or her race or color, religion, sex, sexual orientation,  
30 gender identity or expression, [familial status](#), disability, age, or country of ancestral origin;

31 (iii) Use any form of application for employment, or personnel or membership blank  
32 containing questions or entries directly or indirectly pertaining to race or color, religion, sex,  
33 sexual orientation, gender identity or expression, [familial status](#), disability, age, or country of  
34 ancestral origin;

1 (iv) Print or publish or cause to be printed or published any notice or advertisement  
2 relating to employment or membership indicating any preference, limitation, specification, or  
3 discrimination based upon race or color, religion, sex, sexual orientation, gender identity or  
4 expression, [familial status](#), disability, age, or country of ancestral origin; or

5 (v) Establish, announce, or follow a policy of denying or limiting, through a quota  
6 system or otherwise, employment or membership opportunities of any group because of the race  
7 or color, religion, sex, sexual orientation, gender identity or expression, [familial status](#), disability,  
8 age, or country of ancestral origin of that group;

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

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

19 (7) For any employer to include on any application for employment, except applications  
20 for law enforcement agency positions or positions related to law enforcement agencies, a question  
21 inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been  
22 arrested, charged with or convicted of any crime; provided, that:

23 (i) If a federal or state law or regulation creates a mandatory or presumptive  
24 disqualification from employment based on a person's conviction of one or more specified  
25 criminal offenses, an employer may include a question or otherwise inquire whether the applicant  
26 has ever been convicted of any of those offenses; or

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

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

1 (8) (i) For any person who, on June 7, 1988, is providing either by direct payment or by  
2 making contributions to a fringe benefit fund or insurance program, benefits in violation with §§  
3 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7, 1988 or if  
4 there is an applicable collective bargaining agreement in effect on June 7, 1988, until the  
5 termination of that agreement, in order to come into compliance with §§ 28-5-6, 28-5-7 and 28-5-  
6 38, to reduce the benefits or the compensation provided any employee on June 7, 1988, either  
7 directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance  
8 program.

9 (ii) Where the costs of these benefits on June 7, 1988 are apportioned between employers  
10 and employees, the payments or contributions required to comply with §§ 28-5-6, 28-5-7 and 28-  
11 5-38 may be made by employers and employees in the same proportion.

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

14 **28-5-7.2. Proof of unlawful employment practices in disparate impact cases.** -- (a) An  
15 unlawful employment practice prohibited by § 28-5-7 may be established by proof of disparate  
16 impact. An unlawful employment practice by proof of disparate impact is established when:

17 (1) A complainant demonstrates that an employment practice results in a disparate  
18 impact on the basis of race, color, religion, sex, sexual orientation, gender identity or expression,  
19 [familial status](#), disability, age, or country of ancestral origin, and the respondent fails to  
20 demonstrate that the practice is required by business necessity; or

21 (2) A complainant demonstrates that a group of employment practices results in  
22 disparate impact on the basis of race, color, religion, sex, sexual orientation, gender identity or  
23 expression, [familial status](#), disability, age, or country of ancestral origin, and the respondent fails  
24 to demonstrate that the practices are required by business necessity; provided that:

25 (i) If a complainant demonstrates that a group of employment practices results in a  
26 disparate impact, the complainant shall not be required to demonstrate which specific practice or  
27 practices within the group results in the disparate impact; and

28 (ii) If the respondent demonstrates that a specific employment practice within that group  
29 of employment practices does not contribute to the disparate impact, the respondent shall not be  
30 required to demonstrate that the practice is required by business necessity.

31 (b) A demonstration that an employment practice is required by business necessity may  
32 be used as a defense only against a claim under this section.

33 (c) As used in this section:

34 (1) "Complainant" and "respondent" mean those individuals or entities defined as such in

1 § 28-5-17;

2 (2) "Demonstrates" means meets the burdens of production and persuasion;

3 (3) "Group of employment practices" means a combination of employment practices or  
4 an overall employment process; and

5 (4) "Required by business necessity" means essential to effective job performance.

6 (d) Nothing contained in this section shall be construed as limiting the methods of proof  
7 of unlawful employment practices under § 28-5-7 to the methods set in this section.

8 **28-5-7.3. Discriminatory practice need not be sole motivating factor.** -- An unlawful  
9 employment practice may be established in an action or proceeding under this chapter when the  
10 complainant demonstrates that race, color, religion, sex, sexual orientation, gender identity or  
11 expression, [familial status](#), disability, age, or country of ancestral origin was a motivating factor  
12 for any employment practice, even though the practice was also motivated by other factors.  
13 Nothing contained in this section shall be construed as requiring direct evidence of unlawful  
14 intent or as limiting the methods of proof of unlawful employment practices under § 28-5-7.

15 **28-5-13. Powers and duties of commission.** -- The commission shall have the following  
16 powers and duties:

17 (1) To establish and maintain a principal office in the city of Providence, Rhode Island,  
18 and any other offices within the state that it may deem necessary.

19 (2) To meet and function at any place within the state.

20 (3) To appoint any attorneys, clerks, and other employees and agents that it may deem  
21 necessary, fix their compensation within the limitations provided by law, and prescribe their  
22 duties. The provisions of chapter 4 of title 36 shall not apply to this chapter.

23 (4) To adopt, promulgate, amend, and rescind rules and regulations to effectuate the  
24 provisions of this chapter, and the policies and practice of the commission in connection with this  
25 chapter.

26 (5) To formulate policies to effectuate the purposes of this chapter.

27 (6) To receive, investigate, and pass upon charges of unlawful employment practices.

28 (7) (i) In connection with any investigation or hearing held pursuant to the provisions of  
29 this chapter, to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take  
30 the testimony of any person under oath, and, in connection with the investigation or hearing, to  
31 require the production for examination of any books and papers relating to any matter under  
32 investigation or in question before the commission.

33 (ii) The commission may make rules as to the issuance of subpoenas by individual  
34 commissioners.



1 (iii) Contumacy or refusal to obey a subpoena issued pursuant to this section shall  
2 constitute a contempt punishable, upon the application of the commission, by the superior court in  
3 the county in which the hearing is held or in which the witness resides or transacts business.

4 (8) Utilize voluntary and uncompensated services of private individuals and  
5 organizations as may from time to time be offered and needed.

6 (9) (i) Create any advisory agencies and conciliation councils, local or statewide, that  
7 will aid in effectuating the purposes of this chapter. The commission may itself, or it may  
8 empower these agencies and councils to:

9 (A) Study the problems of discrimination in all or specific fields of human relationships  
10 when based on race or color, religion, sex, sexual orientation, gender identity or expression,  
11 [familial status](#), disability, age, or country of ancestral origin, and

12 (B) Foster through community effort or otherwise good will among the groups and  
13 elements of the population of the state.

14 (ii) The agencies and councils may make recommendations to the commission for the  
15 development of policies and procedure in general.

16 (iii) Advisory agencies and conciliation councils created by the commission shall be  
17 composed of representative citizens serving without pay, but with reimbursement for actual and  
18 necessary traveling expenses.

19 (10) Issue any publications and any results of investigations and research that in its  
20 judgment will tend to promote good will and minimize or eliminate discrimination based on race  
21 or color, religion, sex, sexual orientation, gender identity or expression, [familial status](#), disability,  
22 age, or country of ancestral origin.

23 (11) From time to time, but not less than once a year, report to the legislature and the  
24 governor, describing the investigations, proceedings, and hearings the commission has conducted  
25 and their outcome, the decisions it has rendered, and the other work performed by it, and make  
26 recommendations for any further legislation, concerning abuses and discrimination based on race  
27 or color, religion, sex, sexual orientation, gender identity or expression, [familial status](#), disability,  
28 age or country of ancestral origin, that may be desirable.

29 **28-5-14. Educational program.** -- In order to eliminate prejudice among the various  
30 ethnic groups in this state and to further good will among those groups, the commission and the  
31 state department of elementary and secondary education are jointly directed to prepare a  
32 comprehensive educational program, designed for the students of the public schools of this state  
33 and for all other residents of the state, calculated to emphasize the origin of prejudice based on  
34 race or color, religion, sex, sexual orientation, gender identity or expression, [familial status](#),

1 disability, age or country of ancestral origin, its harmful effects, and its incompatibility with  
2 American principles of equality and fair play.

3 **28-5-22. Evidence of predetermined pattern.** -- The commission shall, in ascertaining  
4 the practices followed by the respondent, take into account all evidence, statistical or otherwise,  
5 which may tend to prove the existence of a predetermined pattern of employment or membership.  
6 Nothing in this section shall be construed to authorize or require any employer or labor  
7 organization to employ or admit applicants for employment or membership in the proportion to  
8 which their race or color, religion, sex, sexual orientation, gender identity or expression, [familial](#)  
9 [status](#), disability, age, or country of ancestral origin bears to the total population or in accordance  
10 with any criterion other than the individual qualifications of the applicant.

11 **28-5-38. Liberal construction.** -- (a) The provisions of this chapter shall be construed  
12 liberally for the accomplishment of the purposes of it, and any law inconsistent with any  
13 provision of this chapter shall not apply.

14 (b) Nothing contained in this chapter shall be deemed to repeal any of the provisions of  
15 any law of this state relating to discrimination because of race or color, religion, sex, sexual  
16 orientation, gender identity or expression, [familial status](#), disability, age or country of ancestral  
17 origin.

18 (c) Nothing contained in this chapter shall be deemed to repeal any of the provisions of  
19 any law of this state relating to parental leave.

20 SECTION 2. Section 42-112-1 of the General Laws in Chapter 42-112 entitled "The  
21 Civil Rights Act of 1990" is hereby amended to read as follows:

22 **42-112-1. Discrimination prohibited.** -- (a) All persons within the state, regardless of  
23 race, color, religion, sex, [familial status](#), disability, age, or country of ancestral origin, have,  
24 except as is otherwise provided or permitted by law, the same rights to make and enforce  
25 contracts, to inherit, purchase, to lease, sell, hold, and convey real and personal property, to sue,  
26 be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the  
27 security of persons and property, and are subject to like punishment, pains, penalties, taxes,  
28 licenses, and exactions of every kind, and to no other.

29 (b) For the purposes of this section, the right to "make and enforce contracts, to inherit,  
30 purchase, to lease, sell, hold, and convey real and personal property" includes the making,  
31 performance, modification and termination of contracts and rights concerning real or personal  
32 property, and the enjoyment of all benefits, terms, and conditions of the contractual and other  
33 relationships.

34 (c) Nothing contained in this chapter shall be construed to affect chapter 14.1 of title 37,

1 chapter 5.1 of title 28 or any other remedial programs designed to address past societal  
2 discrimination.

3 (d) For the purposes of this section, the terms "sex" and "age" have the same meaning as  
4 those terms are defined in § 28-5-6, the state fair employment practices act. The term "disability"  
5 has the same meaning as that term is defined in § 42-87-1, and the terms, as used regarding  
6 persons with disabilities, "auxiliary aids and services," "readily achievable," "reasonable  
7 accommodation," "reasonable modification," and "undue hardship" shall have the same meaning  
8 as those terms are defined in § 42-87-1.1.

9 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

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1           This act would provide protection against unfair employment practices to individuals  
2 based on their "familial status" which is defined as being a person providing care and support to a  
3 family member.

4           This act would take effect upon passage.

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