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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - THE FAIR CHANCE EMPLOYMENT  
ACT

Introduced By: Senators Euer, Miller, Lawson, Acosta, Quezada, DiMario, Valverde, and  
Bell

Date Introduced: March 11, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled 'LABOR AND LABOR RELATIONS'  
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 60

4 THE FAIR CHANCE EMPLOYMENT ACT

5 **28-60-1. Short title.**

6 This chapter may be known and may be cited as the "Fair Chance Employment Act".

7 **28-60-2. Definitions.**

8 For the purposes of this chapter:

9 (1) "Adverse action" in the context of employment means to fail or refuse to hire, to  
10 discharge, or to not promote any individual; or to limit, segregate or classify employees in any way  
11 which would deprive or tend to deprive any individual of employment opportunities, or otherwise  
12 adversely affect his/her status as an employee. The "adverse action" must relate to employment in  
13 whole or substantial part in Rhode Island.

14 (2) "Arrest" means a record from any jurisdiction that does not result in a conviction and  
15 includes information indicating that a person has been questioned, apprehended, taken into custody  
16 or detained, or held for investigation, by law enforcement, police, or prosecutorial agency and/or  
17 charged with, indicted, or tried and acquitted for any felony, misdemeanor or other criminal  
18 offense. "Arrest" is a term that is separate and distinct from, and that does not include, "unresolved

1 arrest."

2 (3) "Background check report" means any criminal history report, including, but not  
3 limited to, those produced by the Rhode Island attorney general, the Federal Bureau of  
4 Investigation, other law enforcement or police agencies, or courts, or by any consumer reporting  
5 agency or business, employment screening agency or business, or tenant screening agency or  
6 business.

7 (4) "Conviction" means a record from any jurisdiction that includes information indicating  
8 that a person has been convicted of a felony or misdemeanor; provided that, the conviction is one  
9 for which the person has been placed on probation, fined, imprisoned, or paroled. Those matters  
10 identified in § 28-60-2 about which an employer may not inquire and as to which they may not  
11 base an adverse action, are not considered "convictions."

12 (5) "Conviction history" means information regarding one or more convictions or  
13 unresolved arrests, transmitted orally or in writing or by any other means, and obtained from any  
14 source, including, but not limited to, the individual to whom the information pertains and a  
15 background check report.

16 (6) "Directly-related conviction" in the employment context means that the conduct for  
17 which a person was convicted or that is the subject of an unresolved arrest has a direct, specific and  
18 articulable negative bearing on that person's ability to perform the duties or responsibilities  
19 necessarily related to the employment position. In determining whether the conviction or  
20 unresolved arrest is directly related to the employment position, the employer shall consider  
21 whether the employment position offers the opportunity for the same or a similar offense to occur  
22 and whether circumstances leading to the conduct for which the person was convicted or that is the  
23 subject of an unresolved arrest will recur in the employment position. Those matters identified in  
24 § 28-60-3 about which an employer may not inquire and as to which they may not base an adverse  
25 action may not qualify as "directly-related convictions."

26 (7) "Director" means the head of the department of labor and training.

27 (8) "DLT" means the Rhode Island department of labor and training or any successor  
28 department or office.

29 (9) "Employer" means any individual, firm, corporation, partnership, labor organization,  
30 group of persons, association, or other organization however organized, that is located or doing  
31 business in Rhode Island, and that employs five (5) or more persons regardless of location,  
32 including the owner or owners and management and supervisory employees. "Employer" includes  
33 job placement and referral agencies and other employment agencies. "Employer" does not include  
34 any local governmental unit, or any unit of the state government or the federal government.

1           (10) "Employment" means any occupation, vocation, job, or work, including, but not  
2 limited to, temporary or seasonal work, part-time work, contracted work, contingent work, work  
3 on commission, and work through the services of a temporary or other employment agency, or any  
4 form of vocational or educational training with or without pay. The physical location of the  
5 employment or prospective employment of an individual as to whom this chapter applies must be  
6 at least eight (8) hours per week within Rhode Island.

7           (11) "Evidence of rehabilitation or other mitigating factors" may include, but is not limited  
8 to, a person's satisfactory compliance with all terms and conditions of parole and/or probation  
9 (however, inability to pay fines, fees, and restitution due to indigence shall not be considered  
10 noncompliance with terms and conditions of parole and/or probation); employer recommendations,  
11 especially concerning a person's post-conviction employment; educational attainment or vocational  
12 or professional training since the conviction, including training received while incarcerated;  
13 completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment);  
14 letters of recommendation from community organizations, counselors or case managers, teachers,  
15 community leaders, or parole/probation officers who have observed the person since his or her  
16 conviction; and age of the person at the time of the conviction. Examples of mitigating factors that  
17 are offered voluntarily by the person may include, but are not limited to, explanation of the  
18 precedent coercive conditions, intimate physical or emotional abuse, or untreated substance abuse  
19 or mental illness that contributed to the conviction.

20           (12) "Inquire" means any direct or indirect conduct intended to gather information from or  
21 about an applicant, candidate, potential applicant or candidate, or employee, using any mode of  
22 communication, including, but not limited to, application forms, interviews, and background check  
23 reports.

24           (13) "Person" means any individual, person, firm, corporation, business or other  
25 organization or group of persons however organized.

26           (14) "Unresolved arrest" means an arrest that is undergoing an active pending criminal  
27 investigation or trial that has not yet been resolved. An arrest has been resolved if the arrestee was  
28 released and no accusatory pleading was filed charging him or her with an offense, or if the charges  
29 have been dismissed or discharged by the district attorney or the court.

30           **28-60-3. Procedures for use of criminal history information in employment decisions.**

31           (a) Regarding applicants or potential applicants for employment, or employees, an  
32 employer shall not, at any time or by any means, inquire about, require disclosure of, or if such  
33 information is received base an adverse action in whole or in part on:

34           (1) An arrest not leading to a conviction, except under circumstances identified in this

1 section an unresolved arrest;

2 (2) Participation in or completion of a diversion or a deferral of judgment program;

3 (3) A conviction that has been judicially dismissed, expunged, voided, invalidated, or

4 otherwise rendered inoperative;

5 (4) A conviction or any other determination or adjudication in the juvenile justice system,

6 or information regarding a matter considered in or processed through the juvenile justice system;

7 (5) A conviction that is more than seven (7) years old, the date of conviction being the date

8 of sentencing, except that this restriction, and any limitations imposed in this chapter based on the

9 limitation in this subsection, shall not apply where the applicant or employee is or will be:

10 (i) Providing services to or have supervisory or disciplinary authority over a minor;

11 (ii) Providing services to or have supervisory or disciplinary authority over a dependent

12 adult; or

13 (iii) Providing support services or care to or has supervisory authority over a person sixty-

14 five (65) years or older;

15 (6) Information pertaining to an offense other than a felony or misdemeanor, such as an

16 infraction, except that an employer may inquire about, require disclosure of, base an adverse action

17 on, or otherwise consider an infraction or infractions contained in an applicant or employee's

18 driving record if driving is more than a de minimis element of the employment in question; or

19 (7) A conviction that arises out of conduct that has been decriminalized since the date of

20 the conviction, the date of the conviction being the date of sentencing. Accordingly, the matters

21 identified in this section may not be considered in any manner by the employer.

22 (b) The employer shall not require applicants or potential applicants for employment or

23 employees to disclose on any employment application the fact or details of any conviction history,

24 any unresolved arrest, or any matter identified in subsections (a)(1) through (a)(7) of this section.

25 Nor shall the employer inquire on any employment application about the fact or details of any

26 conviction history, any unresolved arrest, or any matter identified in subsections (a)(1) through

27 (a)(7) of this section. An employer may ask on an employment application for an applicant,

28 potential applicant, or employee's written consent for a background check so long as the application

29 includes a clear and conspicuous statement that the employer will not itself conduct or obtain from

30 a third party the background check until after a conditional offer of employment in accordance with

31 subsection (c) of this section.

32 (c) The employer shall not require applicants or potential applicants for employment, or

33 employees, to disclose, and shall not inquire into or discuss, their conviction history or an

34 unresolved arrest until after a conditional offer of employment. The employer may not itself

1 conduct or obtain from a third party a background check until after a conditional offer of  
2 employment.

3 (d) Prior to any conviction history inquiry, the employer shall provide a copy of the notice  
4 described in subsection (b) of this section to the applicant or employee.

5 (e) Prior to obtaining a copy of a background check report, the employer shall comply with  
6 all state and federal requirements to provide notice to the applicant or employee that such a report  
7 is being sought.

8 (f) In making an employment decision based on an applicant's or employee's conviction  
9 history, an employer shall conduct an individualized assessment, considering only directly-related  
10 convictions, the time that has elapsed since the conviction or unresolved arrest, and any evidence  
11 of inaccuracy or evidence of rehabilitation or other mitigating factors.

12 (g) If an employer intends to base an adverse action on an item or items in the applicant or  
13 employee's conviction history, prior to taking any adverse action the employer shall provide the  
14 applicant or employee with a copy of the background check report, if any, and shall notify the  
15 applicant or employee of the prospective adverse action and the items forming the basis for the  
16 prospective adverse action.

17 (h) If, within seven (7) days of the date that the notice described in subsection (g) of this  
18 section is provided by the employer to the applicant or employee, the applicant or employee gives  
19 the employer notice, orally or in writing, of evidence of the inaccuracy of the item or items of  
20 conviction history or any evidence of rehabilitation or other mitigating factors, the employer shall  
21 delay any adverse action for a reasonable period after receipt of the information and during that  
22 time shall reconsider the prospective adverse action in light of the information.

23 (i) Upon taking any final adverse action based upon the conviction history of an applicant  
24 or employee, an employer shall notify the applicant or employee of the final adverse action.

25 (j) It shall be unlawful for any employer to engage in any communication that is intended  
26 and reasonably likely to reach persons who are reasonably likely to seek employment in the state,  
27 and that expresses, directly or indirectly, that any person with an arrest or conviction will not be  
28 considered for employment or may not apply for employment. For purposes of subsection (j) of  
29 this section, engaging in a communication includes, but is not limited to, making a verbal statement  
30 or producing or disseminating any solicitation, advertisement, or signage.

31 (k) Nothing in this chapter shall be construed to prohibit an employer from observing the  
32 conditions of a seniority system or an employee benefit plan, provided such systems or plans are  
33 not a subterfuge to evade the purposes or requirements of this chapter.

34 **28-60-4. Notice and posting requirements for employers.**

1           (a) The employer shall state in all solicitations or advertisements for employees that are  
2 reasonably likely to reach persons who are reasonably likely to seek employment that the employer  
3 will consider for employment qualified applicants with criminal histories in a manner consistent  
4 with the requirements of this chapter.

5           (b) The DLT shall publish and make available to employers, in English, Spanish, and all  
6 languages spoken by more than five percent (5%) of the Rhode Island workforce, a notice suitable  
7 for posting by employers in the workplace informing applicants and employees of their rights under  
8 this chapter. The DLT shall update this notice on December 1 of any year in which there is a change  
9 in the languages spoken by more than five percent (5%) of the Rhode Island workforce.

10          (c) Employers shall post the notice described in subsection (b) of this section in a  
11 conspicuous place at every workplace, job site, or other location in Rhode Island under the  
12 employer's control frequently visited by their employees or applicants, and shall send a copy of this  
13 notice to each labor union or representative of workers with which they have a collective bargaining  
14 agreement or other agreement or understanding, that is applicable to employees in Rhode Island.  
15 The notice shall be posted in English, Spanish, and any language spoken by at least five percent  
16 (5%) of the employees at the workplace, job site, or other location at which it is posted.

17           **28-60-5. Implementation and enforcement of employment provisions.**

18           (a) Administrative enforcement.

19           (1) With regard to the employment provisions of this chapter, the DLT is authorized to take  
20 appropriate steps to enforce this chapter and coordinate enforcement, including the investigation of  
21 any possible violations of this chapter. Where the DLT has reason to believe that a violation has  
22 occurred, it may order any appropriate temporary or interim relief to mitigate the violation or  
23 maintain the status quo pending completion of a full investigation or hearing. The DLT shall not  
24 find a violation based on an employer's decision that an applicant or employee's conviction history  
25 is directly related, but otherwise may find a violation of this chapter, including if the employer  
26 failed to conduct the individualized assessment as required under § 28-60-3(f).

27           (2) Where the DLT determines that a violation has occurred, it may issue a determination  
28 and order any appropriate relief; provided, however, that for a first violation, or for any violation  
29 during the first twelve (12) months following the effective date of this chapter, the DLT must issue  
30 warnings and notices to correct, and offer the employer technical assistance on how to comply with  
31 the requirements of this chapter. For a second violation, the DLT may impose an administrative  
32 penalty of no more than fifty dollars (\$50.00) that the employer must pay to the state for each  
33 employee or applicant as to whom the violation occurred or continued. Thereafter, for subsequent  
34 violations, the penalty may increase to no more than one hundred dollars (\$100), payable to the

1 state for each employee or applicant whose rights were, or continue to be, violated. Such funds  
2 shall be allocated to the DLT and used to offset the costs of implementing and enforcing this  
3 chapter.

4 (3) If multiple employees or applicants are impacted by the same procedural violation at  
5 the same time (e.g. all applicants for a certain job opening are asked for their conviction history on  
6 the initial application), the violation shall be treated as a single violation rather than multiple  
7 violations.

8 (4) Where the DLT determines that a violation has occurred, it may issue a determination  
9 and order any appropriate relief. If multiple employees or applicants are impacted by the same  
10 procedural violation at the same time (e.g., all applicants for a certain job opening are asked for  
11 their conviction history on the initial application), the violation shall be treated as one violation for  
12 each impacted employee or applicant.

13 (5) An employee, applicant or other person may report to the DLT any suspected violation  
14 of this chapter within sixty (60) days of the date the suspected violation occurred. The DLT shall  
15 encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent  
16 permitted by applicable laws, the name and other identifying information of the employee,  
17 applicant or person reporting the violation; provided, however, that with the authorization of such  
18 person, the DLT may disclose his or her name and identifying information as necessary to enforce  
19 this chapter or for other appropriate purposes.

20 (6) The director of the DLT shall establish regulations governing the administrative process  
21 for determining and appealing violations of this chapter. The regulations shall include procedures  
22 for:

23 (i) Providing the employer with notice that it may have violated this chapter;

24 (ii) Providing the employer with a right to respond to the notice;

25 (iii) Providing the employer with notice of the DLT's determination of a violation; and

26 (iv) Providing the employer with an opportunity to appeal the DLT's determination to a  
27 hearing officer, who is appointed by the director or designee.

28 (7) If there is no appeal of the DLT's determination of a violation that determination shall  
29 constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to  
30 any petition or claim brought by the employer against the state regarding the DLT's determination  
31 of a violation.

32 (8) If there is an appeal of the DLT's determination of a violation, the hearing before the  
33 hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any  
34 such hearing, the DLT's determination of a violation shall be considered prima facie evidence of a

1 violation, and the employer shall have the burden of proving, by a preponderance of the evidence,  
2 that the DLT's determination of a violation is incorrect. The hearing officer's decision of the appeal  
3 shall constitute the state's final decision.

4 (b) Civil enforcement. The state or any employee or applicant whose rights under this  
5 chapter have been violated may bring a civil action in a court of competent jurisdiction against the  
6 employer or other person violating this chapter, and, upon prevailing, shall be entitled to such legal  
7 or equitable relief as may be appropriate to remedy the violation including, but not limited to:  
8 reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an  
9 additional sum as liquidated damages in the amount of five hundred dollars (\$500) to each  
10 employee, applicant or other person whose rights under this chapter were violated for each day  
11 such violation continued or was permitted to continue; appropriate injunctive relief; and, further  
12 shall be awarded reasonable attorneys' fees and costs. If an employee or applicant brings an action  
13 under this subsection, DLT shall not have jurisdiction to investigate or issue violations related to  
14 the facts underlying the action, provided the action is not withdrawn or dismissed without prejudice.

15 (c) Interest. In any administrative or civil action brought under this chapter, the DLT or  
16 court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest  
17 specified in § 9-21-8.

18 (d) Remedies cumulative. Except where otherwise provided, the remedies, penalties, and  
19 procedures provided under this chapter are cumulative.

20 (e) Limitation on actions. Civil actions to enforce the employment provisions of this  
21 chapter must be filed within one year after the date of the violation. This limitations period shall  
22 not commence until the date the violation was discovered or could reasonably have been  
23 discovered.

24 (f) Tracking of complaints. DLT shall maintain a record of the number and types of  
25 complaints it receives alleging violations of this chapter, and the resolution of those complaints.  
26 DLT shall report this information to the general assembly within six (6) months of the effective  
27 date of the chapter and then annually thereafter.

28 **28-60-6. Employer records.**

29 (a) An employer shall retain records of employment, application forms, and other pertinent  
30 data and records required under this chapter, for a period of three (3) years, and shall allow the  
31 DLT access to such records, with appropriate notice and at a mutually agreeable time, to monitor  
32 compliance with the requirements of this chapter.

33 (b) An employer shall provide information to the DLT, or designee, on an annual basis as  
34 may be required to verify the employer's compliance with this chapter.



1           (c) In no event shall the DLT require an employer to provide any information or documents  
2 the disclosure of which would violate state or federal law.

3           (d) Where an employer does not maintain or retain adequate records documenting  
4 compliance with this chapter or does not allow the DLT reasonable access to such records, it shall  
5 be presumed that the employer did not comply with this chapter, absent clear and convincing  
6 evidence otherwise.

7           (e) Pursuant to its regulatory authority under this chapter, the DLT shall adopt regulations  
8 that establish procedures for employers to maintain and retain accurate records and to provide  
9 annual reporting of compliance to DLT in a manner that does not require disclosure of any  
10 information that would violate state or federal privacy laws.

11           SECTION 2. 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 - THE FAIR CHANCE EMPLOYMENT  
ACT

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1           This act would prohibit employers from conducting a background check until after a  
2 conditional employment offer is made, and prohibit considering convictions more than seven (7)  
3 years old when making employment decisions, except under certain circumstances.

4           This act would take effect upon passage.

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