



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1063

Introduced 2/7/2005, by Rep. David Reis

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-101	from Ch. 68, par. 2-101
775 ILCS 5/2-104	from Ch. 68, par. 2-104
775 ILCS 5/5-103	from Ch. 68, par. 5-103

Amends the Illinois Human Rights Act. In the Employment Article, deletes language that excludes, from the definition of "employer", certain entities and facilities conducted by and for those who rely upon treatment by prayer through spiritual means. Adds language that excludes, from the definition of "employer": any religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society; and any institution conducted by and for those who rely upon treatment by prayer through spiritual means. Provides that nothing in the Act shall be construed to require any employer to comply with the Act in violation of the U.S. Supreme Court decision in *Boy Scouts of America v. Dale*. In the Public Accommodations Article, changes the exemption for distinctly private facilities so that it applies to single-sex private facilities that are distinctly private in nature, such as restrooms, bathrooms, shower rooms, changing rooms, bath houses, health clubs, and other similar facilities.

LRB094 09993 WGH 40825 b

1 AN ACT concerning human rights.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by
5 changing Sections 2-101, 2-104, and 5-103 as follows:

6 (775 ILCS 5/2-101) (from Ch. 68, par. 2-101)

7 Sec. 2-101. Definitions. The following definitions are
8 applicable strictly in the context of this Article.

9 (A) Employee.

10 (1) "Employee" includes:

11 (a) Any individual performing services for
12 remuneration within this State for an employer;

13 (b) An apprentice;

14 (c) An applicant for any apprenticeship.

15 (2) "Employee" does not include:

16 (a) Domestic servants in private homes;

17 (b) Individuals employed by persons who are not
18 "employers" as defined by this Act;

19 (c) Elected public officials or the members of
20 their immediate personal staffs;

21 (d) Principal administrative officers of the State
22 or of any political subdivision, municipal corporation
23 or other governmental unit or agency;

24 (e) A person in a vocational rehabilitation
25 facility certified under federal law who has been
26 designated an evaluatee, trainee, or work activity
27 client.

28 (B) Employer.

29 (1) "Employer" includes:

30 (a) Any person employing 15 or more employees
31 within Illinois during 20 or more calendar weeks within
32 the calendar year of or preceding the alleged

1 violation;

2 (b) Any person employing one or more employees when
3 a complainant alleges civil rights violation due to
4 unlawful discrimination based upon his or her physical
5 or mental handicap unrelated to ability or sexual
6 harassment;

7 (c) The State and any political subdivision,
8 municipal corporation or other governmental unit or
9 agency, without regard to the number of employees;

10 (d) Any party to a public contract without regard
11 to the number of employees;

12 (e) A joint apprenticeship or training committee
13 without regard to the number of employees.

14 (2) "Employer" does not include:

15 (a) Any religious organization, association, or
16 society, or any nonprofit institution or organization
17 operated, supervised, or controlled by or in
18 conjunction with a religious organization,
19 association, or society.

20 (b) Any institution conducted by and for those who
21 rely upon treatment by prayer through spiritual means
22 in accordance with the tenets of a recognized church or
23 religious denomination ~~any religious corporation,~~
24 ~~association, educational institution, society, or~~
25 ~~non-profit nursing institution conducted by and for~~
26 ~~those who rely upon treatment by prayer through~~
27 ~~spiritual means in accordance with the tenets of a~~
28 ~~recognized church or religious denomination with~~
29 ~~respect to the employment of individuals of a~~
30 ~~particular religion to perform work connected with the~~
31 ~~carrying on by such corporation, association,~~
32 ~~educational institution, society or non-profit nursing~~
33 ~~institution of its activities.~~

34 (C) Employment Agency. "Employment Agency" includes both
35 public and private employment agencies and any person, labor
36 organization, or labor union having a hiring hall or hiring

1 office regularly undertaking, with or without compensation, to
2 procure opportunities to work, or to procure, recruit, refer or
3 place employees.

4 (D) Labor Organization. "Labor Organization" includes any
5 organization, labor union, craft union, or any voluntary
6 unincorporated association designed to further the cause of the
7 rights of union labor which is constituted for the purpose, in
8 whole or in part, of collective bargaining or of dealing with
9 employers concerning grievances, terms or conditions of
10 employment, or apprenticeships or applications for
11 apprenticeships, or of other mutual aid or protection in
12 connection with employment, including apprenticeships or
13 applications for apprenticeships.

14 (E) Sexual Harassment. "Sexual harassment" means any
15 unwelcome sexual advances or requests for sexual favors or any
16 conduct of a sexual nature when (1) submission to such conduct
17 is made either explicitly or implicitly a term or condition of
18 an individual's employment, (2) submission to or rejection of
19 such conduct by an individual is used as the basis for
20 employment decisions affecting such individual, or (3) such
21 conduct has the purpose or effect of substantially interfering
22 with an individual's work performance or creating an
23 intimidating, hostile or offensive working environment.

24 (F) Religion. "Religion" with respect to employers
25 includes all aspects of religious observance and practice, as
26 well as belief, unless an employer demonstrates that he is
27 unable to reasonably accommodate an employee's or prospective
28 employee's religious observance or practice without undue
29 hardship on the conduct of the employer's business.

30 (G) Public Employer. "Public employer" means the State, an
31 agency or department thereof, unit of local government, school
32 district, instrumentality or political subdivision.

33 (H) Public Employee. "Public employee" means an employee of
34 the State, agency or department thereof, unit of local
35 government, school district, instrumentality or political
36 subdivision. "Public employee" does not include public

1 officers or employees of the General Assembly or agencies
2 thereof.

3 (I) Public Officer. "Public officer" means a person who is
4 elected to office pursuant to the Constitution or a statute or
5 ordinance, or who is appointed to an office which is
6 established, and the qualifications and duties of which are
7 prescribed, by the Constitution or a statute or ordinance, to
8 discharge a public duty for the State, agency or department
9 thereof, unit of local government, school district,
10 instrumentality or political subdivision.

11 (J) Eligible Bidder. "Eligible bidder" means a person who,
12 prior to a bid opening, has filed with the Department a
13 properly completed, sworn and currently valid employer report
14 form, pursuant to the Department's regulations. The provisions
15 of this Article relating to eligible bidders apply only to bids
16 on contracts with the State and its departments, agencies,
17 boards, and commissions, and the provisions do not apply to
18 bids on contracts with units of local government or school
19 districts.

20 (K) Citizenship Status. "Citizenship status" means the
21 status of being:

22 (1) a born U.S. citizen;

23 (2) a naturalized U.S. citizen;

24 (3) a U.S. national; or

25 (4) a person born outside the United States and not a
26 U.S. citizen who is not an unauthorized alien and who is
27 protected from discrimination under the provisions of
28 Section 1324b of Title 8 of the United States Code, as now
29 or hereafter amended.

30 (Source: P.A. 86-1343; 87-579; 87-666; 87-895.)

31 (775 ILCS 5/2-104) (from Ch. 68, par. 2-104)

32 Sec. 2-104. Exemptions.

33 (A) Nothing contained in this Act shall prohibit an
34 employer, employment agency or labor organization from:

35 (1) Bona Fide Qualification. Hiring or selecting

1 between persons for bona fide occupational qualifications
2 or any reason except those civil-rights violations
3 specifically identified in this Article.

4 (2) Veterans. Giving preferential treatment to
5 veterans and their relatives as required by the laws or
6 regulations of the United States or this State or a unit of
7 local government.

8 (3) Unfavorable Discharge From Military Service. Using
9 unfavorable discharge from military service as a valid
10 employment criterion when authorized by federal law or
11 regulation or when a position of employment involves the
12 exercise of fiduciary responsibilities as defined by rules
13 and regulations which the Department shall adopt.

14 (4) Ability Tests. Giving or acting upon the results of
15 any professionally developed ability test provided that
16 such test, its administration, or action upon the results,
17 is not used as a subterfuge for or does not have the effect
18 of unlawful discrimination.

19 (5) Merit and Retirement Systems.

20 (a) Applying different standards of compensation,
21 or different terms, conditions or privileges of
22 employment pursuant to a merit or retirement system
23 provided that such system or its administration is not
24 used as a subterfuge for or does not have the effect of
25 unlawful discrimination.

26 (b) Effecting compulsory retirement of any
27 employee who has attained 65 years of age and who, for
28 the 2-year period immediately preceding retirement, is
29 employed in a bona fide executive or a high
30 policymaking position, if such employee is entitled to
31 an immediate nonforfeitable annual retirement benefit
32 from a pension, profit-sharing, savings, or deferred
33 compensation plan, or any combination of such plans of
34 the employer of such employee, which equals, in the
35 aggregate, at least \$44,000. If any such retirement
36 benefit is in a form other than a straight life annuity

1 (with no ancillary benefits) or if the employees
2 contribute to any such plan or make rollover
3 contributions, the retirement benefit shall be
4 adjusted in accordance with regulations prescribed by
5 the Department, so that the benefit is the equivalent
6 of a straight life annuity (with no ancillary benefits)
7 under a plan to which employees do not contribute and
8 under which no rollover contributions are made.

9 (c) Until January 1, 1994, effecting compulsory
10 retirement of any employee who has attained 70 years of
11 age, and who is serving under a contract of unlimited
12 tenure (or similar arrangement providing for unlimited
13 tenure) at an institution of higher education as
14 defined by Section 1201(a) of the Higher Education Act
15 of 1965.

16 (6) Training and Apprenticeship programs. Establishing
17 an educational requirement as a prerequisite to selection
18 for a training or apprenticeship program, provided such
19 requirement does not operate to discriminate on the basis
20 of any prohibited classification except age.

21 (7) Police and Firefighter/Paramedic Retirement.
22 Imposing a mandatory retirement age for
23 firefighters/paramedics or law enforcement officers and
24 discharging or retiring such individuals pursuant to the
25 mandatory retirement age if such action is taken pursuant
26 to a bona fide retirement plan provided that the law
27 enforcement officer or firefighter/paramedic has attained:

28 (a) the age of retirement in effect under
29 applicable State or local law on March 3, 1983; or

30 (b) if the applicable State or local law was
31 enacted after the date of enactment of the federal Age
32 Discrimination in Employment Act Amendments of 1996
33 (P.L. 104-208), the age of retirement in effect on the
34 date of such discharge under such law.

35 This paragraph (7) shall not apply with respect to any
36 cause of action arising under the Illinois Human Rights Act

1 as in effect prior to the effective date of this amendatory
2 Act of 1997.

3 (8) Police and Firefighter/Paramedic Appointment.
4 Failing or refusing to hire any individual because of such
5 individual's age if such action is taken with respect to
6 the employment of an individual as a firefighter/paramedic
7 or as a law enforcement officer and the individual has
8 attained:

9 (a) the age of hiring or appointment in effect
10 under applicable State or local law on March 3, 1983;
11 or

12 (b) the age of hiring in effect on the date of such
13 failure or refusal to hire under applicable State or
14 local law enacted after the date of enactment of the
15 federal Age Discrimination in Employment Act
16 Amendments of 1996 (P.L. 104-208).

17 As used in paragraph (7) or (8):

18 "Firefighter/paramedic" means an employee, the duties
19 of whose position are primarily to perform work directly
20 connected with the control and extinguishment of fires or
21 the maintenance and use of firefighting apparatus and
22 equipment, or to provide emergency medical services,
23 including an employee engaged in this activity who is
24 transferred to a supervisory or administrative position.

25 "Law enforcement officer" means an employee, the
26 duties of whose position are primarily the investigation,
27 apprehension, or detention of individuals suspected or
28 convicted of criminal offenses, including an employee
29 engaged in this activity who is transferred to a
30 supervisory or administrative position.

31 (9) Citizenship Status. Making legitimate distinctions
32 based on citizenship status if specifically authorized or
33 required by State or federal law.

34

35 (B) With respect to any employee who is subject to a
36 collective bargaining agreement:

1 (a) which is in effect on June 30, 1986,
2 (b) which terminates after January 1, 1987,
3 (c) any provision of which was entered into by a labor
4 organization as defined by Section 6(d)(4) of the Fair
5 Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and
6 (d) which contains any provision that would be
7 superseded by this amendatory Act of 1987 (Public Act
8 85-748),
9 such amendatory Act of 1987 shall not apply until the
10 termination of such collective bargaining agreement or January
11 1, 1990, whichever occurs first.

12 (C)(1) For purposes of this Act, the term "handicap" shall
13 not include any employee or applicant who is currently engaging
14 in the illegal use of drugs, when an employer acts on the basis
15 of such use.

16 (2) Paragraph (1) shall not apply where an employee or
17 applicant for employment:

18 (a) has successfully completed a supervised drug
19 rehabilitation program and is no longer engaging in the
20 illegal use of drugs, or has otherwise been rehabilitated
21 successfully and is no longer engaging in such use;

22 (b) is participating in a supervised rehabilitation
23 program and is no longer engaging in such use; or

24 (c) is erroneously regarded as engaging in such use,
25 but is not engaging in such use.

26 It shall not be a violation of this Act for an employer to
27 adopt or administer reasonable policies or procedures,
28 including but not limited to drug testing, designed to ensure
29 that an individual described in subparagraph (a) or (b) is no
30 longer engaging in the illegal use of drugs.

31 (3) An employer:

32 (a) may prohibit the illegal use of drugs and the use
33 of alcohol at the workplace by all employees;

34 (b) may require that employees shall not be under the
35 influence of alcohol or be engaging in the illegal use of
36 drugs at the workplace;

1 (c) may require that employees behave in conformance
2 with the requirements established under the federal
3 Drug-Free Workplace Act of 1988 (11 U.S.C. 701 et seq.) and
4 the Drug Free Workplace Act;

5 (d) may hold an employee who engages in the illegal use
6 of drugs or who is an alcoholic to the same qualification
7 standards for employment or job performance and behavior
8 that such employer holds other employees, even if any
9 unsatisfactory performance or behavior is related to the
10 drug use or alcoholism of such employee; and

11 (e) may, with respect to federal regulations regarding
12 alcohol and the illegal use of drugs, require that:

13 (i) employees comply with the standards
14 established in such regulations of the United States
15 Department of Defense, if the employees of the employer
16 are employed in an industry subject to such
17 regulations, including complying with regulations (if
18 any) that apply to employment in sensitive positions in
19 such an industry, in the case of employees of the
20 employer who are employed in such positions (as defined
21 in the regulations of the Department of Defense);

22 (ii) employees comply with the standards
23 established in such regulations of the Nuclear
24 Regulatory Commission, if the employees of the
25 employer are employed in an industry subject to such
26 regulations, including complying with regulations (if
27 any) that apply to employment in sensitive positions in
28 such an industry, in the case of employees of the
29 employer who are employed in such positions (as defined
30 in the regulations of the Nuclear Regulatory
31 Commission); and

32 (iii) employees comply with the standards
33 established in such regulations of the United States
34 Department of Transportation, if the employees of the
35 employer are employed in a transportation industry
36 subject to such regulations, including complying with

1 such regulations (if any) that apply to employment in
2 sensitive positions in such an industry, in the case of
3 employees of the employer who are employed in such
4 positions (as defined in the regulations of the United
5 States Department of Transportation).

6 (4) For purposes of this Act, a test to determine the
7 illegal use of drugs shall not be considered a medical
8 examination. Nothing in this Act shall be construed to
9 encourage, prohibit, or authorize the conducting of drug
10 testing for the illegal use of drugs by job applicants or
11 employees or making employment decisions based on such test
12 results.

13 (5) Nothing in this Act shall be construed to encourage,
14 prohibit, restrict, or authorize the otherwise lawful exercise
15 by an employer subject to the jurisdiction of the United States
16 Department of Transportation of authority to:

17 (a) test employees of such employer in, and applicants
18 for, positions involving safety-sensitive duties for the
19 illegal use of drugs and for on-duty impairment by alcohol;
20 and

21 (b) remove such persons who test positive for illegal
22 use of drugs and on-duty impairment by alcohol pursuant to
23 subparagraph (a) from safety-sensitive duties in
24 implementing paragraph (3).

25 (D) Nothing in this Act shall be construed to require any
26 employer to comply with this Act in violation of the U.S.
27 Supreme Court decision in Boy Scouts of America and Monmouth
28 Council, et al. v. James Dale (No. 99-699), 530 U.S. 640
29 (2000).

30 (Source: P.A. 90-481, eff. 8-17-97.)

31 (775 ILCS 5/5-103) (from Ch. 68, par. 5-103)

32 Sec. 5-103. Exemption. Nothing in this Article shall apply
33 to:

34 (A) Private Club. A private club, or other establishment
35 not in fact open to the public, except to the extent that the

1 goods, services, facilities, privileges, advantages, or
2 accommodations of the establishment are made available to the
3 customers or patrons of another establishment that is a place
4 of public accommodation.

5 (B) Facilities Distinctly Private. Single-sex private
6 facilities that are ~~Any facility, as to discrimination based on~~
7 ~~sex, which is~~ distinctly private in nature such as restrooms,
8 bathrooms, shower rooms, changing rooms, bath houses, health
9 clubs and other similar facilities ~~for which the Department, in~~
10 ~~its rules and regulations, may grant exemptions based on bona~~
11 ~~fide considerations of public policy.~~

12 (C) Inn, Hotel, Rooming House. Any facility, as to
13 discrimination based on sex, which restricts the rental of
14 rooms to individuals of one sex.

15 (Source: P.A. 85-567.)