



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4620

by Rep. LaShawn K. Ford

SYNOPSIS AS INTRODUCED:

775 ILCS 5/1-102	from Ch. 68, par. 1-102
775 ILCS 5/2-103	from Ch. 68, par. 2-103
775 ILCS 5/2-104	from Ch. 68, par. 2-104

Amends the Illinois Human Rights Act. Provides that it is the policy of this State to prevent discrimination based on prior criminal conviction in employment. Establishes that it is a civil rights violation for an employer, employment agency, or labor organization to inquire into or to use the fact of a prior criminal conviction, or an arrest or criminal history record information (rather than an arrest or criminal history record information) as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment, unless otherwise required by federal or State law.

LRB096 14642 KTG 29484 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 1-102, 2-102, 2-103, and 2-104 as follows:

6 (775 ILCS 5/1-102) (from Ch. 68, par. 1-102)

7 Sec. 1-102. Declaration of Policy. It is the public policy
8 of this State:

9 (A) Freedom from Unlawful Discrimination. To secure for all
10 individuals within Illinois the freedom from discrimination
11 against any individual because of his or her race, color,
12 religion, sex, national origin, ancestry, age, order of
13 protection status, marital status, physical or mental
14 disability, military status, sexual orientation, or
15 unfavorable discharge from military service in connection with
16 employment, real estate transactions, access to financial
17 credit, and the availability of public accommodations.

18 (B) Freedom from Sexual Harassment-Employment and Higher
19 Education. To prevent sexual harassment in employment and
20 sexual harassment in higher education.

21 (C) Freedom from Discrimination Based on Citizenship
22 Status-Employment. To prevent discrimination based on
23 citizenship status in employment.

1 (D) Freedom from Discrimination Based on Familial
2 Status-Real Estate Transactions. To prevent discrimination
3 based on familial status in real estate transactions.

4 (D-1) Freedom from Discrimination Based on Prior Criminal
5 Conviction-Employment. To prevent discrimination based on
6 prior criminal conviction in employment.

7 (E) Public Health, Welfare and Safety. To promote the
8 public health, welfare and safety by protecting the interest of
9 all people in Illinois in maintaining personal dignity, in
10 realizing their full productive capacities, and in furthering
11 their interests, rights and privileges as citizens of this
12 State.

13 (F) Implementation of Constitutional Guarantees. To secure
14 and guarantee the rights established by Sections 17, 18 and 19
15 of Article I of the Illinois Constitution of 1970.

16 (G) Equal Opportunity, Affirmative Action. To establish
17 Equal Opportunity and Affirmative Action as the policies of
18 this State in all of its decisions, programs and activities,
19 and to assure that all State departments, boards, commissions
20 and instrumentalities rigorously take affirmative action to
21 provide equality of opportunity and eliminate the effects of
22 past discrimination in the internal affairs of State government
23 and in their relations with the public.

24 (H) Unfounded Charges. To protect citizens of this State
25 against unfounded charges of unlawful discrimination, sexual
26 harassment in employment and sexual harassment in higher

1 education, and discrimination based on citizenship status in
2 employment.

3 (Source: P.A. 95-668, eff. 10-10-07; 96-447, eff. 1-1-10.)

4 (775 ILCS 5/2-103) (from Ch. 68, par. 2-103)

5 Sec. 2-103. Arrest Record; Prior Criminal Conviction.

6 (A) Unless otherwise authorized by law, it is a civil
7 rights violation for any employer, employment agency or labor
8 organization to inquire into or to use the fact of a prior
9 criminal conviction, or an arrest or criminal history record
10 information ordered expunged, sealed or impounded under
11 Section 5.2 of the Criminal Identification Act as a basis to
12 refuse to hire, to segregate, or to act with respect to
13 recruitment, hiring, promotion, renewal of employment,
14 selection for training or apprenticeship, discharge,
15 discipline, tenure or terms, privileges or conditions of
16 employment. This Section does not prohibit a State agency, unit
17 of local government or school district, or private organization
18 from requesting or utilizing prior criminal conviction
19 information or sealed felony conviction information obtained
20 from the Department of State Police under the provisions of
21 Section 3 of the Criminal Identification Act or under other
22 State or federal laws or regulations that require criminal
23 background checks in evaluating the qualifications and
24 character of an employee or a prospective employee.

25 (B) The prohibition against the use of the fact of an

1 arrest contained in this Section shall not be construed to
2 prohibit an employer, employment agency, or labor organization
3 from obtaining or using other information which indicates that
4 a person actually engaged in the conduct for which he or she
5 was arrested.

6 (Source: P.A. 96-409, eff. 1-1-10.)

7 (775 ILCS 5/2-104) (from Ch. 68, par. 2-104)

8 Sec. 2-104. Exemptions.

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

11 (1) Bona Fide Qualification. Hiring or selecting
12 between persons for bona fide occupational qualifications
13 or any reason except those civil-rights violations
14 specifically identified in this Article.

15 (2) Veterans. Giving preferential treatment to
16 veterans and their relatives as required by the laws or
17 regulations of the United States or this State or a unit of
18 local government.

19 (3) Unfavorable Discharge From Military Service. Using
20 unfavorable discharge from military service as a valid
21 employment criterion when authorized by federal law or
22 regulation or when a position of employment involves the
23 exercise of fiduciary responsibilities as defined by rules
24 and regulations which the Department shall adopt.

25 (4) Ability Tests. Giving or acting upon the results of

1 any professionally developed ability test provided that
2 such test, its administration, or action upon the results,
3 is not used as a subterfuge for or does not have the effect
4 of unlawful discrimination.

5 (5) Merit and Retirement Systems.

6 (a) Applying different standards of compensation,
7 or different terms, conditions or privileges of
8 employment pursuant to a merit or retirement system
9 provided that such system or its administration is not
10 used as a subterfuge for or does not have the effect of
11 unlawful discrimination.

12 (b) Effecting compulsory retirement of any
13 employee who has attained 65 years of age and who, for
14 the 2-year period immediately preceding retirement, is
15 employed in a bona fide executive or a high
16 policymaking position, if such employee is entitled to
17 an immediate nonforfeitable annual retirement benefit
18 from a pension, profit-sharing, savings, or deferred
19 compensation plan, or any combination of such plans of
20 the employer of such employee, which equals, in the
21 aggregate, at least \$44,000. If any such retirement
22 benefit is in a form other than a straight life annuity
23 (with no ancillary benefits) or if the employees
24 contribute to any such plan or make rollover
25 contributions, the retirement benefit shall be
26 adjusted in accordance with regulations prescribed by

1 the Department, so that the benefit is the equivalent
2 of a straight life annuity (with no ancillary benefits)
3 under a plan to which employees do not contribute and
4 under which no rollover contributions are made.

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

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

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

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

26 (b) if the applicable State or local law was

1 enacted after the date of enactment of the federal Age
2 Discrimination in Employment Act Amendments of 1996
3 (P.L. 104-208), the age of retirement in effect on the
4 date of such discharge under such law.

5 This paragraph (7) shall not apply with respect to any
6 cause of action arising under the Illinois Human Rights Act
7 as in effect prior to the effective date of this amendatory
8 Act of 1997.

9 (8) Police and Firefighter/Paramedic Appointment.
10 Failing or refusing to hire any individual because of such
11 individual's age if such action is taken with respect to
12 the employment of an individual as a firefighter/paramedic
13 or as a law enforcement officer and the individual has
14 attained:

15 (a) the age of hiring or appointment in effect
16 under applicable State or local law on March 3, 1983;
17 or

18 (b) the age of hiring in effect on the date of such
19 failure or refusal to hire under applicable State or
20 local law enacted after the date of enactment of the
21 federal Age Discrimination in Employment Act
22 Amendments of 1996 (P.L. 104-208).

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

24 "Firefighter/paramedic" means an employee, the duties
25 of whose position are primarily to perform work directly
26 connected with the control and extinguishment of fires or

1 the maintenance and use of firefighting apparatus and
2 equipment, or to provide emergency medical services,
3 including an employee engaged in this activity who is
4 transferred to a supervisory or administrative position.

5 "Law enforcement officer" means an employee, the
6 duties of whose position are primarily the investigation,
7 apprehension, or detention of individuals suspected or
8 convicted of criminal offenses, including an employee
9 engaged in this activity who is transferred to a
10 supervisory or administrative position.

11 (9) Citizenship Status. Making legitimate distinctions
12 based on citizenship status if specifically authorized or
13 required by State or federal law.

14 (10) Prior Criminal Conviction. Using a prior criminal
15 conviction as a valid employment criterion when authorized
16 by federal or State law.

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

19 (a) which is in effect on June 30, 1986,

20 (b) which terminates after January 1, 1987,

21 (c) any provision of which was entered into by a labor
22 organization as defined by Section 6(d)(4) of the Fair
23 Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

24 (d) which contains any provision that would be
25 superseded by this amendatory Act of 1987 (Public Act
26 85-748),

1 such amendatory Act of 1987 shall not apply until the
2 termination of such collective bargaining agreement or January
3 1, 1990, whichever occurs first.

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

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

10 (a) has successfully completed a supervised drug
11 rehabilitation program and is no longer engaging in the
12 illegal use of drugs, or has otherwise been rehabilitated
13 successfully and is no longer engaging in such use;

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

16 (c) is erroneously regarded as engaging in such use,
17 but is not engaging in such use.

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

23 (3) An employer:

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

26 (b) may require that employees shall not be under the

1 influence of alcohol or be engaging in the illegal use of
2 drugs at the workplace;

3 (c) may require that employees behave in conformance
4 with the requirements established under the federal
5 Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and
6 the Drug Free Workplace Act;

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

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

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

24 (ii) employees comply with the standards
25 established in such regulations of the Nuclear
26 Regulatory Commission, if the employees of the

1 employer are employed in an industry subject to such
2 regulations, including complying with regulations (if
3 any) that apply to employment in sensitive positions in
4 such an industry, in the case of employees of the
5 employer who are employed in such positions (as defined
6 in the regulations of the Nuclear Regulatory
7 Commission); and

8 (iii) employees comply with the standards
9 established in such regulations of the United States
10 Department of Transportation, if the employees of the
11 employer are employed in a transportation industry
12 subject to such regulations, including complying with
13 such regulations (if any) that apply to employment in
14 sensitive positions in such an industry, in the case of
15 employees of the employer who are employed in such
16 positions (as defined in the regulations of the United
17 States Department of Transportation).

18 (4) For purposes of this Act, a test to determine the
19 illegal use of drugs shall not be considered a medical
20 examination. Nothing in this Act shall be construed to
21 encourage, prohibit, or authorize the conducting of drug
22 testing for the illegal use of drugs by job applicants or
23 employees or making employment decisions based on such test
24 results.

25 (5) Nothing in this Act shall be construed to encourage,
26 prohibit, restrict, or authorize the otherwise lawful exercise

1 by an employer subject to the jurisdiction of the United States
2 Department of Transportation of authority to:

3 (a) test employees of such employer in, and applicants
4 for, positions involving safety-sensitive duties for the
5 illegal use of drugs and for on-duty impairment by alcohol;
6 and

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

11 (Source: P.A. 95-331, eff. 8-21-07.)