



Rep. Esther Golar

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1 AMENDMENT TO SENATE BILL 567

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 567 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Human Rights Act is amended by  
5 changing Sections 2-103, 7-109.1, and 7A-102 as follows:

6 (775 ILCS 5/2-103) (from Ch. 68, par. 2-103)

7 Sec. 2-103. Arrest Record.

8 (A) Unless otherwise authorized by law, it is a civil  
9 rights violation for any employer, employment agency or labor  
10 organization to inquire into or to use the fact of an arrest or  
11 criminal history record information ordered expunged, sealed  
12 or impounded under Section 5.2 of the Criminal Identification  
13 Act as a basis to refuse to hire, to segregate, or to act with  
14 respect to recruitment, hiring, promotion, renewal of  
15 employment, selection for training or apprenticeship,  
16 discharge, discipline, tenure or terms, privileges or

1 conditions of employment. This Section does not prohibit a  
2 State agency, unit of local government or school district, or  
3 private organization from requesting or utilizing sealed  
4 felony conviction information obtained from the Department of  
5 State Police under the provisions of Section 3 of the Criminal  
6 Identification Act or under other State or federal laws or  
7 regulations that require criminal background checks in  
8 evaluating the qualifications and character of an employee or a  
9 prospective employee.

10 (B) The prohibition against the use of the fact of an  
11 arrest contained in this Section shall not be construed to  
12 prohibit an employer, employment agency, or labor organization  
13 from obtaining or using other information which indicates that  
14 a person actually engaged in the conduct for which he or she  
15 was arrested.

16 (C) It is a civil rights violation for any employer,  
17 employment agency, or labor organization to take criminal  
18 background information into account in making adverse  
19 employment decisions if doing so has a disparate impact with  
20 respect to any of the characteristics listed in item (Q) of  
21 Section 1-103 of this Act. It shall, however, be a defense to a  
22 claim of a violation of this subsection that the employment  
23 decision is job-related and consistent with business  
24 necessity. This subsection (C) does not apply to employment  
25 positions for which employers are required to exclude  
26 applicants with certain criminal convictions from employment

1 due to federal or State law.

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

3 (775 ILCS 5/7-109.1) (from Ch. 68, par. 7-109.1)

4 Sec. 7-109.1. Federal or State Court Proceedings. The  
5 Department may administratively close a charge pending before  
6 the Department if the issues which are the basis of the charge  
7 are being litigated in a State or federal court proceeding. For  
8 charges under Article 7A, the Department shall  
9 administratively close a charge pending before the Department  
10 if the issues that are the basis of the charge are being  
11 litigated in another venue.

12 (Source: P.A. 86-1343.)

13 (775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)

14 Sec. 7A-102. Procedures.

15 (A) Charge.

16 (1) Within 180 days after the date that a civil rights  
17 violation allegedly has been committed, a charge in writing  
18 under oath or affirmation may be filed with the Department  
19 by an aggrieved party or issued by the Department itself  
20 under the signature of the Director.

21 (2) The charge shall be in such detail as to  
22 substantially apprise any party properly concerned as to  
23 the time, place, and facts surrounding the alleged civil  
24 rights violation.

1           (3) Charges deemed filed with the Department pursuant  
2 to subsection (A-1) of this Section shall be deemed to be  
3 in compliance with this subsection.

4           (A-1) Equal Employment Opportunity Commission Charges.

5           (1) If a charge is filed with the Equal Employment  
6 Opportunity Commission (EEOC) within 180 days after the  
7 date of the alleged civil rights violation, the charge  
8 shall be deemed filed with the Department on the date filed  
9 with the EEOC. If the EEOC is the governmental agency  
10 designated to investigate the charge first, the Department  
11 shall take no action until the EEOC makes a determination  
12 on the charge and after the complainant notifies the  
13 Department of the EEOC's determination. In such cases,  
14 after receiving notice from the EEOC that a charge was  
15 filed, the Department shall notify the parties that (i) a  
16 charge has been received by the EEOC and has been sent to  
17 the Department for dual filing purposes; (ii) the EEOC is  
18 the governmental agency responsible for investigating the  
19 charge and that the investigation shall be conducted  
20 pursuant to the rules and procedures adopted by the EEOC;  
21 (iii) it will take no action on the charge until the EEOC  
22 issues its determination; (iv) the complainant must submit  
23 a copy of the EEOC's determination within 30 days after  
24 service of the determination by the EEOC on complainant;  
25 and (v) that the time period to investigate the charge  
26 contained in subsection (G) of this Section is tolled from

1 the date on which the charge is filed with the EEOC until  
2 the EEOC issues its determination.

3 (2) If the EEOC finds reasonable cause to believe that  
4 there has been a violation of federal law and if the  
5 Department is timely notified of the EEOC's findings by  
6 complainant, the Department shall notify complainant that  
7 the Department has adopted the EEOC's determination of  
8 reasonable cause and that complainant has the right, within  
9 90 days after receipt of the Department's notice, to either  
10 file his or her own complaint with the Illinois Human  
11 Rights Commission or commence a civil action in the  
12 appropriate circuit court or other appropriate court of  
13 competent jurisdiction. The Department's notice to  
14 complainant that the Department has adopted the EEOC's  
15 determination of reasonable cause shall constitute the  
16 Department's Report for purposes of subparagraph (D) of  
17 this Section.

18 (3) For those charges alleging violations within the  
19 jurisdiction of both the EEOC and the Department and for  
20 which the EEOC either (i) does not issue a determination,  
21 but does issue the complainant a notice of a right to sue,  
22 including when the right to sue is issued at the request of  
23 the complainant, or (ii) determines that it is unable to  
24 establish that illegal discrimination has occurred and  
25 issues the complainant a right to sue notice, and if the  
26 Department is timely notified of the EEOC's determination

1 by complainant, the Department shall notify the parties  
2 that the Department will adopt the EEOC's determination as  
3 a dismissal for lack of substantial evidence unless the  
4 complainant requests in writing within 35 days after  
5 receipt of the Department's notice that the Department  
6 review the EEOC's determination.

7 (a) If the complainant does not file a written  
8 request with the Department to review the EEOC's  
9 determination within 35 days after receipt of the  
10 Department's notice, the Department shall notify  
11 complainant that the decision of the EEOC has been  
12 adopted by the Department as a dismissal for lack of  
13 substantial evidence and that the complainant has the  
14 right, within 90 days after receipt of the Department's  
15 notice, to commence a civil action in the appropriate  
16 circuit court or other appropriate court of competent  
17 jurisdiction. The Department's notice to complainant  
18 that the Department has adopted the EEOC's  
19 determination shall constitute the Department's report  
20 for purposes of subparagraph (D) of this Section.

21 (b) If the complainant does file a written request  
22 with the Department to review the EEOC's  
23 determination, the Department shall review the EEOC's  
24 determination and any evidence obtained by the EEOC  
25 during its investigation. If, after reviewing the  
26 EEOC's determination and any evidence obtained by the

1 EEOC, the Department determines there is no need for  
2 further investigation of the charge, the Department  
3 shall issue a report and the Director shall determine  
4 whether there is substantial evidence that the alleged  
5 civil rights violation has been committed pursuant to  
6 subsection (D) of Section 7A-102. If, after reviewing  
7 the EEOC's determination and any evidence obtained by  
8 the EEOC, the Department determines there is a need for  
9 further investigation of the charge, the Department  
10 may conduct any further investigation it deems  
11 necessary. After reviewing the EEOC's determination,  
12 the evidence obtained by the EEOC, and any additional  
13 investigation conducted by the Department, the  
14 Department shall issue a report and the Director shall  
15 determine whether there is substantial evidence that  
16 the alleged civil rights violation has been committed  
17 pursuant to subsection (D) of Section 7A-102 of this  
18 Act.

19 (4) Pursuant to this Section, if the EEOC dismisses the  
20 charge or a portion of the charge of discrimination  
21 because, under federal law, the EEOC lacks jurisdiction  
22 over the charge, and if, under this Act, the Department has  
23 jurisdiction over the charge of discrimination, the  
24 Department shall investigate the charge or portion of the  
25 charge dismissed by the EEOC for lack of jurisdiction  
26 pursuant to subsections (A), (A-1), (B), (B-1), (C), (D),

1 (E), (F), (G), (H), (I), (J), and (K) of Section 7A-102 of  
2 this Act.

3 (5) The time limit set out in subsection (G) of this  
4 Section is tolled from the date on which the charge is  
5 filed with the EEOC to the date on which the EEOC issues  
6 its determination.

7 (B) Notice and Response to Charge. The Department shall,  
8 within 10 days of the date on which the charge was filed, serve  
9 a copy of the charge on the respondent. This period shall not  
10 be construed to be jurisdictional. The charging party and the  
11 respondent may each file a position statement and other  
12 materials with the Department regarding the charge of alleged  
13 discrimination within 60 days of receipt of the notice of the  
14 charge. The position statements and other materials filed shall  
15 remain confidential unless otherwise agreed to by the party  
16 providing the information and shall not be served on or made  
17 available to the other party during pendency of a charge with  
18 the Department. The Department shall require the respondent to  
19 file a verified response to the allegations contained in the  
20 charge within 60 days of receipt of the notice of the charge.  
21 The respondent shall serve a copy of its response on the  
22 complainant or his representative. All allegations contained  
23 in the charge not timely denied by the respondent shall be  
24 deemed admitted, unless the respondent states that it is  
25 without sufficient information to form a belief with respect to  
26 such allegation. The Department may issue a notice of default



1 directed to any respondent who fails to file a verified  
2 response to a charge within 60 days of receipt of the notice of  
3 the charge, unless the respondent can demonstrate good cause as  
4 to why such notice should not issue. The term "good cause"  
5 shall be defined by rule promulgated by the Department. Within  
6 30 days of receipt of the respondent's response, the  
7 complainant may file a reply to said response and shall serve a  
8 copy of said reply on the respondent or his representative. A  
9 party shall have the right to supplement his response or reply  
10 at any time that the investigation of the charge is pending.  
11 The Department shall, within 10 days of the date on which the  
12 charge was filed, and again no later than 335 days thereafter,  
13 send by certified or registered mail written notice to the  
14 complainant and to the respondent informing the complainant of  
15 the complainant's right to either file a complaint with the  
16 Human Rights Commission or commence a civil action in the  
17 appropriate circuit court under subparagraph (2) of paragraph  
18 (G), including in such notice the dates within which the  
19 complainant may exercise this right. In the notice the  
20 Department shall notify the complainant that the charge of  
21 civil rights violation will be dismissed with prejudice and  
22 with no right to further proceed if a written complaint is not  
23 timely filed with the Commission or with the appropriate  
24 circuit court by the complainant pursuant to subparagraph (2)  
25 of paragraph (G) or by the Department pursuant to subparagraph  
26 (1) of paragraph (G).

1           (B-1) Mediation. The complainant and respondent may agree  
2 to voluntarily submit the charge to mediation without waiving  
3 any rights that are otherwise available to either party  
4 pursuant to this Act and without incurring any obligation to  
5 accept the result of the mediation process. Nothing occurring  
6 in mediation shall be disclosed by the Department or admissible  
7 in evidence in any subsequent proceeding unless the complainant  
8 and the respondent agree in writing that such disclosure be  
9 made.

10           (C) Investigation.

11           (1) After the respondent has been notified, the  
12 Department shall conduct a full investigation of the  
13 allegations set forth in the charge.

14           (2) The Director or his or her designated  
15 representatives shall have authority to request any member  
16 of the Commission to issue subpoenas to compel the  
17 attendance of a witness or the production for examination  
18 of any books, records or documents whatsoever.

19           (3) If any witness whose testimony is required for any  
20 investigation resides outside the State, or through  
21 illness or any other good cause as determined by the  
22 Director is unable to be interviewed by the investigator or  
23 appear at a fact finding conference, his or her testimony  
24 or deposition may be taken, within or without the State, in  
25 the same manner as is provided for in the taking of  
26 depositions in civil cases in circuit courts.

1           (4) Upon reasonable notice to the complainant and the  
2           respondent, the Department shall conduct a fact finding  
3           conference, unless prior to 365 days after the date on  
4           which the charge was filed the Director has determined  
5           whether there is substantial evidence that the alleged  
6           civil rights violation has been committed, the charge has  
7           been dismissed for lack of jurisdiction, or the parties  
8           voluntarily and in writing agree to waive the fact finding  
9           conference. Any party's failure to attend the conference  
10          without good cause shall result in dismissal or default.  
11          The term "good cause" shall be defined by rule promulgated  
12          by the Department. A notice of dismissal or default shall  
13          be issued by the Director. The notice of default issued by  
14          the Director shall notify the respondent that a request for  
15          review may be filed in writing with the Commission within  
16          30 days of receipt of notice of default. The notice of  
17          dismissal issued by the Director shall give the complainant  
18          notice of his or her right to seek review of the dismissal  
19          before the Human Rights Commission or commence a civil  
20          action in the appropriate circuit court. If the complainant  
21          chooses to have the Human Rights Commission review the  
22          dismissal order, he or she shall file a request for review  
23          with the Commission within 90 days after receipt of the  
24          Director's notice. If the complainant chooses to file a  
25          request for review with the Commission, he or she may not  
26          later commence a civil action in a circuit court. If the

1 complainant chooses to commence a civil action in a circuit  
2 court, he or she must do so within 90 days after receipt of  
3 the Director's notice.

4 (D) Report.

5 (1) Each charge shall be the subject of a report to the  
6 Director. The report shall be a confidential document  
7 subject to review by the Director, authorized Department  
8 employees, the parties, and, where indicated by this Act,  
9 members of the Commission or their designated hearing  
10 officers.

11 (2) Upon review of the report, the Director shall  
12 determine whether there is substantial evidence that the  
13 alleged civil rights violation has been committed. The  
14 determination of substantial evidence is limited to  
15 determining the need for further consideration of the  
16 charge pursuant to this Act and includes, but is not  
17 limited to, findings of fact and conclusions, as well as  
18 the reasons for the determinations on all material issues.  
19 Substantial evidence is evidence which a reasonable mind  
20 accepts as sufficient to support a particular conclusion  
21 and which consists of more than a mere scintilla but may be  
22 somewhat less than a preponderance.

23 (3) If the Director determines that there is no  
24 substantial evidence, the charge shall be dismissed by  
25 order of the Director and the Director shall give the  
26 complainant notice of his or her right to seek review of

1 the dismissal order before the Commission or commence a  
2 civil action in the appropriate circuit court. If the  
3 complainant chooses to have the Human Rights Commission  
4 review the dismissal order, he or she shall file a request  
5 for review with the Commission within 90 days after receipt  
6 of the Director's notice. If the complainant chooses to  
7 file a request for review with the Commission, he or she  
8 may not later commence a civil action in a circuit court.  
9 If the complainant chooses to commence a civil action in a  
10 circuit court, he or she must do so within 90 days after  
11 receipt of the Director's notice.

12 (4) If the Director determines that there is  
13 substantial evidence, he or she shall notify the  
14 complainant and respondent of that determination. The  
15 Director shall also notify the parties that the complainant  
16 has the right to either commence a civil action in the  
17 appropriate circuit court or request that the Department of  
18 Human Rights file a complaint with the Human Rights  
19 Commission on his or her behalf. Any such complaint shall  
20 be filed within 90 days after receipt of the Director's  
21 notice. If the complainant chooses to have the Department  
22 file a complaint with the Human Rights Commission on his or  
23 her behalf, the complainant must, within 30 days after  
24 receipt of the Director's notice, request in writing that  
25 the Department file the complaint. If the complainant  
26 timely requests that the Department file the complaint, the

1 Department shall file the complaint on his or her behalf.  
2 If the complainant fails to timely request that the  
3 Department file the complaint, the complainant may file his  
4 or her complaint with the Commission or commence a civil  
5 action in the appropriate circuit court. If the complainant  
6 files a complaint with the Human Rights Commission, the  
7 complainant shall give notice to the Department of the  
8 filing of the complaint with the Human Rights Commission.

9 (E) Conciliation.

10 (1) When there is a finding of substantial evidence,  
11 the Department may designate a Department employee who is  
12 an attorney licensed to practice in Illinois to endeavor to  
13 eliminate the effect of the alleged civil rights violation  
14 and to prevent its repetition by means of conference and  
15 conciliation.

16 (2) When the Department determines that a formal  
17 conciliation conference is necessary, the complainant and  
18 respondent shall be notified of the time and place of the  
19 conference by registered or certified mail at least 10 days  
20 prior thereto and either or both parties shall appear at  
21 the conference in person or by attorney.

22 (3) The place fixed for the conference shall be within  
23 35 miles of the place where the civil rights violation is  
24 alleged to have been committed.

25 (4) Nothing occurring at the conference shall be  
26 disclosed by the Department unless the complainant and

1 respondent agree in writing that such disclosure be made.

2 (5) The Department's efforts to conciliate the matter  
3 shall not stay or extend the time for filing the complaint  
4 with the Commission or the circuit court.

5 (F) Complaint.

6 (1) When the complainant requests that the Department  
7 file a complaint with the Commission on his or her behalf,  
8 the Department shall prepare a written complaint, under  
9 oath or affirmation, stating the nature of the civil rights  
10 violation substantially as alleged in the charge  
11 previously filed and the relief sought on behalf of the  
12 aggrieved party. The Department shall file the complaint  
13 with the Commission.

14 (2) If the complainant chooses to commence a civil  
15 action in a circuit court, he or she must do so in the  
16 circuit court in the county wherein the civil rights  
17 violation was allegedly committed. The form of the  
18 complaint in any such civil action shall be in accordance  
19 with the Illinois Code of Civil Procedure.

20 (G) Time Limit.

21 (1) When a charge of a civil rights violation has been  
22 properly filed, the Department, within 365 days thereof or  
23 within any extension of that period agreed to in writing by  
24 all parties, shall issue its report as required by  
25 subparagraph (D). Any such report shall be duly served upon  
26 both the complainant and the respondent.

1           (2) If the Department has not issued its report within  
2           365 days after the charge is filed, or any such longer  
3           period agreed to in writing by all the parties, the  
4           complainant shall have 90 days to either file his or her  
5           own complaint with the Human Rights Commission or commence  
6           a civil action in the appropriate circuit court. If the  
7           complainant files a complaint with the Commission, the form  
8           of the complaint shall be in accordance with the provisions  
9           of paragraph (F)(1). If the complainant commences a civil  
10          action in a circuit court, the form of the complaint shall  
11          be in accordance with the Illinois Code of Civil Procedure.  
12          The aggrieved party shall notify the Department that a  
13          complaint has been filed and shall serve a copy of the  
14          complaint on the Department on the same date that the  
15          complaint is filed with the Commission or in circuit court.  
16          If the complainant files a complaint with the Commission,  
17          he or she may not later commence a civil action in circuit  
18          court.

19          (3) If an aggrieved party files a complaint with the  
20          Human Rights Commission or commences a civil action in  
21          circuit court pursuant to paragraph (2) of this subsection,  
22          or if the time period for filing a complaint has expired,  
23          the Department shall immediately cease its investigation  
24          and dismiss the charge of civil rights violation. Any final  
25          order entered by the Commission under this Section is  
26          appealable in accordance with paragraph (B)(1) of Section



1 8-111. Failure to immediately cease an investigation and  
2 dismiss the charge of civil rights violation as provided in  
3 this paragraph (3) constitutes grounds for entry of an  
4 order by the circuit court permanently enjoining the  
5 investigation. The Department may also be liable for any  
6 costs and other damages incurred by the respondent as a  
7 result of the action of the Department.

8 (4) (Blank). ~~The Department shall stay any~~  
9 ~~administrative proceedings under this Section after the~~  
10 ~~filing of a civil action by or on behalf of the aggrieved~~  
11 ~~party under any federal or State law seeking relief with~~  
12 ~~respect to the alleged civil rights violation.~~

13 (H) This amendatory Act of 1995 applies to causes of action  
14 filed on or after January 1, 1996.

15 (I) This amendatory Act of 1996 applies to causes of action  
16 filed on or after January 1, 1996.

17 (J) The changes made to this Section by Public Act 95-243  
18 apply to charges filed on or after the effective date of those  
19 changes.

20 (K) The changes made to this Section by this amendatory Act  
21 of the 96th General Assembly apply to charges filed on or after  
22 the effective date of those changes.

23 (Source: P.A. 96-876, eff. 2-2-10; 97-22, eff. 1-1-12; 97-596,  
24 eff. 8-26-11; 97-813, eff. 7-13-12.)".