

2012 -- S 2411

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES

Introduced By: Senators Metts, Perry, Pichardo, Jabour, and Miller

Date Introduced: February 15, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-5-6 of the General Laws in Chapter 28-5 entitled "Fair
2 Employment Practices" is hereby amended to read as follows:

3 **28-5-6. Definitions.** -- When used in this chapter:

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

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

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

13 (4) "Conviction" means an adjudication by a court of competent jurisdiction that the
14 defendant committed a crime.

15 (5) "Direct causal relationship" means that the nature of the criminal conduct for which
16 the person was convicted has a direct bearing on his or her fitness or ability to perform one or
17 more of the duties or responsibilities necessarily related to the license or employment sought.

18 ~~(4)~~ (6) "Disability" means a disability as defined in section 42-87-1.

19 ~~(5)~~ (7) "Discriminate" includes segregate or separate.

1 ~~(6)~~ (8) "Employee" does not include any individual employed by his or her parents,
2 spouse, or child, or in the domestic service of any person.

3 ~~(7)~~ (9) (i) "Employer" includes the state and all political subdivisions of the state and any
4 person in this state employing four (4) or more individuals, and any person acting in the interest
5 of an employer directly or indirectly.

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

9 (10) "Employment" means any occupation, vocation, or any form of vocational or
10 educational training.

11 ~~(8)~~ (11) "Employment agency" includes any person undertaking with or without
12 compensation to procure opportunities to work, or to procure, recruit, refer, or place employees.

13 ~~(9)~~ (12) "Firefighter" means an employee the duties of whose position includes work
14 connected with the control and extinguishment of fires or the maintenance and use of firefighting
15 apparatus and equipment, including an employee engaged in this activity who is transferred or
16 promoted to a supervisory or administrative position.

17 ~~(10)~~ (13) "Gender identity or expression" includes a person's actual or perceived gender,
18 as well as a person's gender identity, gender-related self image, gender-related appearance, or
19 gender-related expression; whether or not that gender identity, gender-related self image, gender-
20 related appearance, or gender-related expression is different from that traditionally associated
21 with the person's sex at birth.

22 ~~(11)~~ (14) "Labor organization" includes any organization which exists for the purpose, in
23 whole or in part, of collective bargaining or of dealing with employers concerning grievances,
24 terms or conditions of employment, or of other mutual aid or protection in relation to
25 employment.

26 ~~(12)~~ (15) "Law enforcement officer" means an employee the duties of whose position
27 include investigation, apprehension, or detention of individuals suspected or convicted of
28 offenses against the criminal laws of the state, including an employee engaged in such activity
29 who is transferred or promoted to a supervisory or administrative position. For the purpose of this
30 subdivision, "detention" includes the duties of employees assigned to guard individuals
31 incarcerated in any penal institution.

32 (16) "License" means any certificate, license, permit or grant of permission required by
33 the laws of this state, its political subdivisions, or instrumentalities as a condition for the lawful
34 practice of any occupation, employment, trade, vocation, business or profession. "License" shall

1 not include any license or permit to own, possess, or carry a pistol, handgun, rifle, shotgun or
2 other firearm.

3 ~~(13)~~ (17) "Person" includes one or more individuals, partnerships, associations,
4 organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

5 (18) "Public agency" means the state or any local subdivision thereof, or any state or
6 local department, agency, board or commission.

7 ~~(14)~~ (19) "Religion" includes all aspects of religious observance and practice, as well as
8 belief, unless an employer, union or employment agency demonstrates that it is unable to
9 reasonably accommodate to an employee's or prospective employee's or union member's religious
10 observance or practice without undue hardship on the conduct of its business.

11 ~~(15)~~ (20) "Sexual orientation" means having or being perceived as having an orientation
12 for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the
13 status of persons and does not render lawful any conduct prohibited by the criminal laws of this
14 state nor impose any duty on a religious organization. This definition does not confer legislative
15 approval of that status, but is intended to assure the basic human rights of persons to obtain and
16 hold employment, regardless of that status.

17 ~~(16)~~(21) The terms, as used regarding persons with disabilities:

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

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

21 SECTION 2. Chapter 28-5 of the General Laws entitled "Fair Employment Practices" is
22 hereby amended by adding thereto the following section:

23 **28-5-41.2. Right to fair employment practices -- Previous criminal offenses. – (a) No**
24 application for any license or employment from any public agency or private employer shall be
25 denied by reason of the applicant's having been previously convicted of one or more criminal
26 offenses, unless:

27 (1) There is a direct causal relationship between one or more of the previous criminal
28 offenses and the specific license or employment sought.

29 (2) The employment is in the area of law enforcement or corrections or a law
30 enforcement agency.

31 (3) The individual is not bondable under a standard fidelity bond or an equivalent bond
32 where such bond is required by state or federal law, or established administrative regulation or
33 established business practice of the employer.

34 (4) The issuance of the license or granting of the employment would involve an

1 unreasonable risk to property or to the safety or welfare of specific individuals or the general
2 public.

3 (b) When determining if there is a direct causal relationship between the criminal offense
4 and the specific license or employment being sought, the following must be taken into
5 consideration:

6 (1) The public policy to encourage the licensure and employment of persons previously
7 convicted of one or more criminal offenses and thus encourage people with criminal histories to
8 find gainful employment.

9 (2) Any information produced by the person, or produced on his/her behalf, in regard to
10 his/her rehabilitation and good conduct.

11 (3) A finding of "moral turpitude" or "lack of good moral character" based solely on a
12 criminal conviction is not sufficient cause for denying license or employment.

13 (c) No application for employment or licensing, except applications for law enforcement
14 agency positions or positions related to law enforcement agencies, or for a position which any
15 provision of the general laws specifically disqualifies a person from employment because of a
16 prior criminal conviction and authorizes such inquires, shall include a question inquiring whether
17 the applicant has ever been convicted of a crime. Where state law limits the types of crimes which
18 may disqualify a person from employment, any such inquires shall be so limited.

19 (d) This section supersedes all provisions of the general laws, including all provisions of
20 title 5 which discriminate based upon the existence of a prior criminal record. Any employment
21 decision as outlined in title 5 which rely on criminal records, a finding of "moral turpitude" or
22 "lack of good moral character" shall follow the guidelines as set forth in this section.

23 (e) No employer shall be liable for any employment decision, or decision to enter into a
24 contract with an independent contractor that has been made according to the terms of this section.

25 (f) At the request of any person previously convicted of one or more criminal offense
26 who has been denied a license or employment, a public agency or private employer shall provide,
27 within thirty (30) days of the written request, a written statement setting forth the reason for such
28 a denial.

29 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would prohibit an employer from refusing to hire a person based solely on the
2 existence of a criminal record, with some exceptions, or for a governmental agency from denying
3 an individual a license to work in a particular trade or business based solely on that individual
4 having a criminal record, with certain exceptions.

5 This act would take effect upon passage.

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